

MASTER SITE LEASE

This master site lease (“**Master Site Lease**”), dated [Month] [Day], 2017 for reference purposes only, is made and entered into by and between the **Piedmont Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as lessor (“**District**”), and [Contractor], a California company duly organized and existing under the laws of the State of California, as lessee (“**Contractor**”) (together, the “**Parties**”).

WHEREAS, the District currently owns a parcel or parcels of land located at 800 Magnolia Avenue, Piedmont, CA 94611 and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“**School Site**”); and

WHEREAS, the District desires to provide for the construction of a new performing arts theater and a new “STEAM” classroom building (“**Project**”); and

WHEREAS, the District determines that a portion of the School Site is adequate to accommodate the Project, as more particularly described in **Exhibit B** (“**Project Site**”) attached hereto and incorporated herein by this reference; and

WHEREAS, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Contractor agrees to lease the Project Site back to the District and perform the work of the Project (“**Master Facilities Lease**”), which Master Facilities Lease is incorporated herein by this reference; and

WHEREAS, the Board of Education of the District (“**Board**”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Contractor and by immediately entering into the Master Facilities Lease under which District will lease back the Project from Contractor; and

WHEREAS, the District further determines that it has entered into this Master Site Lease and the Master Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

WHEREAS, the District is authorized under Education Code section 17406 to lease the Project Site to Contractor and to have Contractor develop and cause the construction of the Project thereon and lease the Project Site back to the District by means of the Master Facilities Lease, and the Board has duly authorized the execution and delivery of this Master Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Contractor as lessee is authorized and competent to lease the Project Site from District and to develop and cause the construction of the Project on the Project Site, and has duly authorized the execution and delivery of this Master Site Lease; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with the execution and entering into this Master Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Master Site Lease;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Master Site Lease.
 - 2.1. **Exhibit A:** Descriptions of the School Site
 - 2.2. **Exhibit B:** Descriptions of the Project Site and Descriptions of the Project
3. **Lease of the Project Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Master Site Lease, to have and to hold for the term of this Master Site Lease. This Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Master Site Lease.
 - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Master Facilities Lease are:
 - 3.1.1. As indicated to be within specific phases of the Project; and
 - 3.1.2. For which portions of the Lease Payments are still owing.
4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.
5. **Term.** The term of this Master Site Lease shall commence as of the **Effective Date**, which is the date upon which the District's Board approves this Master Site Lease and the Parties execute the same, and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Master Site Lease.
7. **Termination**
 - 7.1. **Termination Due to Default by Contractor.** If Contractor defaults pursuant to the provisions of the Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provisions allowing termination, then the Contractor shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate at the same time as the Master Facilities Lease.
 - 7.2. **Termination for Convenience of the District.** The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate this Master Site Lease, in whole or in part, when it is in the interest of, or for the convenience of, the District; provided, however, that such termination for the District's convenience shall be deemed to also include the District's termination of the Master Facilities Lease in accordance with the terms and conditions set forth therein.
8. **Title to School Site.** During the term of this Master Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Master Site Lease or the Master Facilities Lease shall change, in any way, the District's ownership interest in the School Site.

9. **Improvements.** Title to all improvements made on the Project Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Master Facilities Lease.
10. **No Merger.** The leaseback of the Project Site by the Contractor to the District pursuant to the Master Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Contractor shall continue to have a leasehold estate in the Project Site pursuant to this Master Site Lease throughout the term hereof.
11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.
12. **Quiet Enjoyment.** Subject to any rights the District may have under the Master Facilities Lease to possession and enjoyment of the Project Site or otherwise, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof.
13. **Waste.** The Contractor agrees that at all times that it is in possession of the Project Site, it will not commit, suffer or permit any waste on the Project Site, and that it will not willfully or knowingly use or permit the use of the Project Site for any illegal purpose or act.
14. **Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Master Site Lease and the Master Facilities Lease.
15. **Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:
 - 15.1. **Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
 - 15.2. **Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.
 - 15.3. **No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Master Site Lease nor the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.
 - 15.4. **CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.
 - 15.5. **No Litigation.** To the best of the District's actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other

government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Site Lease.

15.6. Condemnation Proceedings.

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Master Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Master Site Lease and the Master Facilities Lease.

15.7. Use and Zoning. To the best of the District's actual knowledge, the Project Site is properly zoned for its intended purpose and the use or activities contemplated by this Master Site Lease will not conflict with local, state or federal law.

15.8. Taxes. To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

15.9. Hazardous Materials. District is not currently aware of any contamination to the Project Site by Hazardous Materials, except for Hazardous Materials of which District has already informed Contractor. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Contractor.

16. Representations of the Contractor. The Contractor represents, covenants and warrants to the District as follows:

16.1. Due Organization and Existence. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has power to enter into this Master Site Lease and the Master Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

16.2. Authorization. The Contractor has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.

16.3. No Violations. Neither the execution and delivery of this Master Site Lease or the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Project Site, except for Permitted Encumbrances.

16.4. No Bankruptcy. Contractor is not now nor has it ever been in bankruptcy or receivership.

16.5. No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Master Site Lease or the Master Facilities Lease.

17. Insurance and Indemnity. The Contractor and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Master Facilities Lease.

- 18. Assignment and Subleasing.** This Master Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.
- 19. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Master Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Master Site Lease.
- 20. Liens and Further Encumbrances.** Contractor agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Master Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.
- 21. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below.
- 21.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.
- 21.2.** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

<p>If to District: Piedmont Unified School District 760 Magnolia Avenue Piedmont, California 94611 Telephone: 510-594-3608 ATTN: Michael Brady, Director, Maintenance, Operations & Facilities</p>	<p>If to Contractor: _____, Inc. _____, Avenue _____, CA _____ ATTN: _____</p>
<p>With a copy to: Orbach Huff Suarez & Henderson LLP 1901 Harrison Street, Ste.1630 Oakland, CA 94611 Attention: Glenn Gould, Esq.</p>	

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

- 22. Binding Effect.** This Master Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.
- 23. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Master Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
- 24. Severability.** In the event any provision of this Master Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision

hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Site Lease or the Master Facilities Lease.

- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Master Facilities Lease, this Master Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
- 27. Execution in Counterparts.** This Master Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 28. Contractor and District Representatives.** Whenever under the provisions of this Master Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 29. Applicable Law.** This Master Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
- 30. No Attorney's Fees.** If either party brings an action or proceeding involving the School Site or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
- 31. Captions.** The captions or headings in this Master Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Site Lease.
- 32. Prior Agreements.** This Master Site Lease and the corresponding Master Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 33. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Site Lease.
- 34. Recitals Incorporated.** The Recitals set forth at the beginning of this Master Site Lease are hereby incorporated into its terms and provisions by this reference.
- 35. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.
- 36. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Site Lease.
- 37. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Site Lease or the Master Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Master Site Lease shall in all cases be construed according to its fair meaning, not

strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Master Site Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017

Dated: _____, 2017

Piedmont Unified School District

[Contractor Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT A
TO
MASTER SITE LEASE

DESCRIPTION OF SCHOOL SITE

[Insert screen-shot of School Site]

EXHIBIT B
TO
MASTER SITE LEASE

DESCRIPTION OF PROJECT SITE
AND
DESCRIPTIONS OF THE PROJECT AT SCHOOL SITE

PROJECT SITE DESCRIPTION:

Attached is a site diagram for the portions of [NAME] School Site that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

[Describe Project Site]

PROJECT DESCRIPTION:

[EXAMPLE]: _____ Project consists of _____ phases. Phase _____ is demolition of _____ . Phase _____ is the Construction of _____

[Describe Project]

MASTER FACILITIES LEASE

This master facilities lease (“**Master Facilities Lease**”), dated [Month] [Day], 2017 for reference purposes only, is made and entered into by and between [Contractor Name] (“**Contractor**”), a California company duly organized and existing under the laws of the State of California, as sublessor, and **Piedmont Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as sublessee (“**District**”) (together, the “**Parties**”).

RECITALS

WHEREAS, the District currently owns a parcel or parcels of land located at 800 Magnolia Avenue, Piedmont, CA 94611 and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“**School Site**”); and

WHEREAS, the District desires to provide for the construction of a new performing arts theater and a new “STEAM” classroom building (“**Project**”); and

WHEREAS, the District has determined that a portion of the School Site are adequate to accommodate the Project, as more particularly described in **Exhibit B** (“**Project Site**”) attached hereto and incorporated herein by reference; and

WHEREAS, District has retained HKIT Architects (individually and collectively referred to as “**Architect**”) to prepare plans and specifications (“**Plans and Specifications**”) and as the architects/engineers of record for the Project; and

WHEREAS, District and Contractor have executed a site lease at the same time as this Master Facilities Lease whereby the District is leasing the Project Site to the Contractor (“**Master Site Lease**”); and

WHEREAS, Contractor represents that it has the expertise and experience to perform the services set forth in this Master Facilities Lease; and

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site to Contractor and to have Contractor develop and construct the Project on the Project Site and to lease back to the District the Project Site and the Project, and has duly authorized the execution and delivery of this Master Facilities Lease; and

WHEREAS, Contractor is authorized to lease the Project Site as lessee and to develop the Project and to have the Project constructed on the Project Site and to lease the Project and the Project Site back to the District, and has duly authorized the execution and delivery of this Master Facilities Lease; and

WHEREAS, the Board of Education of the District (the “**Board**”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Contractor and by simultaneously entering into this Master Facilities Lease under which the District will lease back the Project Site and the Project from Contractor and if necessary, make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Master Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Master Facilities Lease; and

WHEREAS, the District further acknowledges and agrees that it has entered into the Master Site Lease and the

Master Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

1. Definitions. In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Master Facilities Lease, have the meanings herein specified.

1.1. "Contractor" or "Lessor" means [Contractor Name], a corporation, organized and existing under the laws of the State of California, and its successors and assigns.

1.2. "Contractor's Representative" means the Managing Member of Contractor, or any person authorized to act on behalf of Contractor under or with respect to this Master Facilities Lease.

1.3. "Contract, Contract Documents: The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

- 1.1.1.1.** Master Site Lease
- 1.1.1.2.** Master Facilities Lease, with all of its Exhibits
- 1.1.1.3.** General Construction Provisions
- 1.1.1.4.** Special Construction Provisions
- 1.1.1.5.** Noncollusion Declaration
- 1.1.1.6.** Iran Contracting Act Certification
- 1.1.1.7.** Workers' Compensation Certification
- 1.1.1.8.** Prevailing Wage Certification
- 1.1.1.9.** Disabled Veterans Business Enterprise Participation Certification
- 1.1.1.10.** Drug-Free Workplace Certification
- 1.1.1.11.** Tobacco-Free Environment Certification
- 1.1.1.12.** Lead-Based Paint Certification
- 1.1.1.13.** Hazardous Materials Certification
- 1.1.1.14.** Imported Materials Certification
- 1.1.1.15.** Criminal Background Investigation/Fingerprinting Certification
- 1.1.1.16.** Roofing Contract Financial Interest Certification
- 1.1.1.17.** Storm Water Pollution Prevention Plan
- 1.1.1.18.** Performance Bond
- 1.1.1.19.** Payment Bond (Contractor's Labor & Material Bond)
- 1.1.1.20.** All Plans, Specifications, and Drawings
- 1.1.1.21.** Any and all addenda to any of the above documents
- 1.1.1.22.** Any and all change orders or written modifications to the above documents if approved in writing by the District.

1.4. "District" or "Lessee" means the **Piedmont Unified School District**, a school district duly organized and existing under the laws of the State of California.

1.5. "District Representative" means the Superintendent of the District, or designee, or any other person authorized by the Board of Education of the District to act on behalf of the District under or with respect to this Master Facilities Lease.

1.6. "Permitted Encumbrances" means, as of any particular time:

- 1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;
- 1.6.2. The Project Master Site Lease;
- 1.6.3. This Master Facilities Lease,
- 1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Master Facilities Lease; and
- 1.6.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of this Master Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Site.

2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Master Facilities Lease:

2.1. Exhibit A: Description of the School Site

2.2. Exhibit B: Description of the Project Site and Description of the Project

2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions for the Leased Project Site

2.4. Exhibit D: General Construction Provisions

2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for the Leased Project Site

2.6. Exhibit F: Project Schedule

2.7. Exhibit G: Schedule of Values

2.8. Exhibit H: Terms and Conditions for Preliminary Services

2.9. Exhibit I: Certificates and Bonds to Lease-Leaseback Documents

2.10. Exhibit J: Division 1 Documents

2.11. Exhibit K: Special Construction Provisions

3. Lease of Project and Project Site.

3.1. Contractor hereby leases the Project and the Project Site to the District, and the District hereby leases said Project and Project Site from Contractor upon the terms and conditions set forth in this Master Facilities Lease.

3.2. The leasing by Contractor to the District of the Project Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Master Facilities Lease and its fee estate as lessor under the Master

Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site pursuant to the Master Site Lease throughout the term thereof and the term of this Master Facilities Lease.

3.3. As to the Project Site, this Master Facilities Lease shall be deemed and constitute a sublease.

3.4. No Disruption to Educational Activities

3.4.1. **Occupied School Site. [IF APPLICABLE]** The Contractor acknowledges that portions of the Project Site shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and process whereby the Contractor’s activities shall be kept separate from the operating school even though the operating school is within the Project Site. The specifics of the plan and process are as indicated in **Exhibit K**.

3.4.2. **Work During Instructional Time. [IF APPLICABLE]** Contractor affirms that Work may be performed during ongoing instruction in or near existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize disruption to the school site.

3.4.3. **Student Testing.** Contractor shall, at no additional cost to the District and at the District’s request, coordinate its Work to not disturb District students when students at the School Site are taking State-required tests as set forth in the Special Construction Provisions (**Exhibit K**).

4. Term.

4.1. Master Facilities Lease is Legally Binding. This Master Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board’s approval of this Master Facilities Lease (“**Effective Date**”). The Term of this Master Facilities Lease for the purposes of District’s obligation to make Lease Payments shall commence on the date of Final Completion of the Project as defined in **Exhibit D** to this Master Facilities Lease (“**Commencement Date**”) and shall terminate **twelve (12) months** after the Commencement Date (the “**Term**”), subject to the District’s right to purchase the Project as set forth in the attached **Exhibit C**.

4.2. Memorandum of Commencement. On the Commencement Date, the Parties shall execute the Memorandum of Commencement attached hereto as **Exhibit E** to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Master Facilities Lease that exist upon execution of this Master Facilities Lease and prior to the beginning of the Term.

5. Payment. In consideration for the lease of the Project Site by the Contractor back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C**.

6. Termination.

6.1. Except as otherwise expressly provided in this Master Facilities Lease, this Master Facilities Lease shall not terminate.

6.2. Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Master Facilities Lease or the Contractor’s performance of the Master Facilities Lease, in whole or in part, when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment

delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the Guaranteed Project Cost as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District or for any other damages, direct or indirect, which the Contractor or anyone claiming through the Contractor alleges resulted from the District's election to terminate under this paragraph 6.4 or where a termination for default has been converted to a termination for convenience pursuant to the provisions of Article 15.1.7 of the General Construction Provisions (**Exhibit D**). The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 of the General Construction Provisions after exercising the right hereunder to terminate for the District's convenience.

7. Title.

7.1. During the Term of this Master Facilities Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Master Facilities Lease or the Master Site Lease shall change, in any way, the District's ownership interest.

7.2. During the Term of this Master Facilities Lease, Contractor shall have a leasehold interest in the Project Site pursuant to the Master Site Lease.

7.3. Subject to and in accordance with Article 8.3.8 of the General Construction Provisions, title to the Project and the Project Site shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Master Facilities Lease and transfer of title to the Project.

8. Quiet Enjoyment. Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project and Project Site, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project and Project Site, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Master Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site as provided herein.

9. Representations of the District. The District represents, covenants and warrants to the Contractor as follows:

9.1. Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

9.2. Authorization. The District has the full power and authority to enter into, to execute and to deliver this Master Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Facilities Lease.

9.3. No Violations. Neither the execution and delivery of this Master Facilities Lease nor the Master Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.

9.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* (“**CEQA**”) in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before the construction of the Project may commence. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 *et seq.*).

9.5. No Litigation. Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Facilities Lease.

9.6. Condemnation Proceedings.

9.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Master Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Master Facilities Lease.

10. Representations of the Contractor. The Contractor represents, covenants and warrants to the District as follows:

10.1. Due Organization and Existence. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Master Facilities Lease and the Master Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

10.2. Authorization. Contractor has the full power and authority to enter into, to execute and to deliver this Master Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Facilities Lease.

10.3. No Violations. Neither the execution and delivery of this Master Facilities Lease and the Master Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Contractor is now a party or by which Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Contractor, or upon the Project Site, except Permitted Encumbrances.

10.4. No Bankruptcy. Contractor is not now nor has it ever been in bankruptcy or receivership.

10.5. No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Master Facilities Lease.

10.6. No Encumbrances. Contractor shall not pledge any District payments of any kind, related to the Master Site Lease, this Master Facilities Lease, or in any way derived from the Project Site, and shall not mortgage or encumber the Project Site.

10.7. Continued Existence. Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:

- 10.7.1. Eighteen (18) months following Project Completion, or
- 10.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project.

Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

11. Preliminary Services

11.1. The terms and conditions pertaining to the performance of preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit H** to this Facilities Lease. To the extent any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit H** shall control regarding the performance of preliminary services.

11.2. The payment provisions for preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit C** to this Facilities Lease.

12. Construction of Project

- 12.1.1. **Construction of Project.** The Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the General Construction Provisions set forth in **Exhibit D** and the Special Construction Provisions set forth in **Exhibit K**, including those things reasonably inferable in the General Construction Provisions and Special Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Contract Documents.
- 12.1.2. **Contract Time.** The Work shall be commenced on the date stated in the District's Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract.
- 12.1.3. **Liquidated Damages:** Time is of the essence for all work Contractor must perform to obtain Project Completion. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve a Milestone as set forth in the Special Construction Provisions (**Exhibit K**), the Contractor shall be subject to Liquidated Damages in accordance with the Contract.
- 12.1.4. **Guaranteed Project Cost.** Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.
- 12.1.5. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be adjusted as a Change pursuant to the provisions of **Exhibit D**.
- 12.1.6. **State Funding.** Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.
- 12.1.7. **Compliance Monitoring and Enforcement by the Department of Industrial Relations.**

12.1.7.1. District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

12.1.7.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Agreement. Contractor represents to the District that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

12.1.7.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

13. Maintenance. Following delivery of possession of the entirety of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Master Facilities Lease.

14. Utilities. Following delivery of possession of the entirety of the Project by Contractor to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District.

15. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Master Facilities Lease or the Master Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

16. Insurance

16.1. Contractor’s Insurance. The Contractor shall comply with the insurance requirements as set forth in the General Construction Provisions (**Exhibit D**) and the Special Construction Provisions (**Exhibit K**).

17. Indemnification.

17.1. Contractor's Indemnity Obligations. The Contractor's indemnity obligations are set forth in the General Construction Provisions (**Exhibit D**).

17.2. District's Indemnity Obligations.

17.2.1. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Master Facilities Lease, only:

17.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Master Facilities Lease;

17.2.1.2. To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and

17.2.1.3. If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

17.2.2. Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Master Site Lease and/or the Master Facilities Lease.

18. Eminent Domain.

18.1. Total Taking After Project Delivery. If, following delivery of possession of the entirety of the Project by Contractor to District, all of the Project and the Project Site is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** for the remainder of the original Term.

18.1.2. The balance of the award, if any, shall be paid to the District.

18.2. Total Taking Prior to Project Delivery. If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Contractor is still performing the Work of the Project and has not yet delivered possession of the entirety of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the reasonable value of Work Contractor has performed on the Project, including overhead and profit for such Work performed and in place, subject to documentation reasonably satisfactory to the District.

18.3. Partial Taking. If, following delivery of possession of the entirety of the Project by Contractor to District, less than all of the Project and the Project Site is taken permanently, or if all of the Project and the Project Site or any part thereof is taken temporarily, under the power of eminent domain:

18.3.1. This Master Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project

Cost Provisions set forth in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable division of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C**.

19. Damage and Destruction. If, following delivery of possession of the entirety of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** for the remainder of the original Term. The Contractor shall be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

20. Abatement.

20.1. If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E**, the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Contractor have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Master Facilities Lease. The Term shall cease at that time.

20.2. The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

20.3. The District shall as soon as practicable after such event, apply the net proceeds of its insurance policy intended to cover that loss ("Net Proceeds"), either to:

20.3.1. Repair the Project to full use;

20.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Master Facilities Lease by appropriate endorsement; or

20.4. The District shall notify the Contractor of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

21. Access

21.1. By Contractor. Contractor shall have the right at all reasonable times to enter upon the Project Site to construct the Project pursuant to this Master Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.

21.2. By District. The District shall have the right to enter upon the Project Site at all times. District shall comply with all safety precautions and procedures required by Contractor.

22. Assignment, Subleasing

22.1. Assignment and Subleasing by the District. Any assignment or sublease by District shall be subject to all of the following conditions:

- 22.1.1. This Master Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and
- 22.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease.

22.2. Assignment by Contractor. Contractor may assign its right, title and interest in this Master Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Master Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are no additional costs to the District.

23. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

- 23.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.
- 23.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

<p>If to District: Piedmont Unified School District 760 Magnolia Avenue Piedmont CA 94611 510-337-7911 Attention: Michael Brady, Coordinator, Measure H1 Bond Program</p>	<p>If to Contractor: _____, Inc. _____, Avenue _____, CA _____ ATTN: _____</p>
<p>With a copy to: Orbach Huff Suarez & Henderson LLP 1901 Harrison Street, Ste.1630 Oakland, CA 94611 Attention: Glenn Gould, Esq.</p>	

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

24. Binding Effect. This Master Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and the District and their respective successors, transferees and assigns.

25. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Master Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

26. Severability. In the event any provision of this Master Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Facilities Lease or the Master Site Lease.

27. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein and to the provisions of **Exhibit D** General Construction Provisions and **Exhibit K** Special Construction Provisions, this Master Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

28. Net-Net-Net Lease. This Master Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

29. Execution in Counterparts. This Master Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

30. Contractor and District Representatives. Whenever under the provisions of this Master Facilities Lease the approval of Contractor or the District is required, or Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for Contractor by Contractor’s Representative and for the District by the District’s Representative, and any party hereto shall be authorized to rely upon any such approval or request.

31. Applicable Law. This Master Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the Project is located.

32. No Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Master Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys’ fees.

33. Captions. The captions or headings in this Master Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Master Facilities Lease.

34. Prior Agreements. This Master Facilities Lease and the corresponding Master Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

35. Further Assurances. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Facilities Lease.

36. Recitals Incorporated. The Recitals set forth at the beginning of this Master Facilities Lease are hereby incorporated into its terms and provisions by this reference.

37. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Facilities Lease.

38. Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Master Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Master Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017

Dated: _____, 2017

Piedmont Unified School District

[Contractor Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT A
TO
MASTER FACILITIES LEASE

SCHOOL SITE

[Insert screen-shot of School Site]

EXHIBIT B
TO
MASTER FACILITIES LEASE

DESCRIPTION OF PROJECT SITE
AND
DESCRIPTION OF THE PROJECT AT SCHOOL SITE

PROJECT SITE DESCRIPTION:

Attached is a site diagram for the portions of [NAME] School Site that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

[Describe Project Site]

PROJECT DESCRIPTION:

[EXAMPLE]: _____ Project consists of _____ phases. Phase _____ is demolition of _____ . Phase _____ is the Construction of _____

[Describe Project]

**EXHIBIT C
TO
MASTER FACILITIES LEASE**

**GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

1. Preliminary Services Payments

1.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric)** (“**Preliminary Services Payment(s)**”), based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Exhibit H** to the Facilities Lease and as indicated here:

[BY SCOPE]

Item	Amount
General Services	\$ _____
Review of Design Documents	\$ _____
Value Engineering	\$ _____
Constructability Review	\$ _____
Confirm Modifications to Design Drawings	\$ _____
Budget of Project Costs	\$ _____
Construction Schedule and Phasing Plan	\$ _____
Construction Planning and Bidding	\$ _____
Total	\$ _____

[MONTHLY FEE OPTION]

Month	Fee
January	\$ _____
February	\$ _____
March	\$ _____
April	\$ _____
May	\$ _____
June	\$ _____
July	\$ _____
August	\$ _____
September	\$ _____
October	\$ _____
November	\$ _____
December	\$ _____
Etc.	\$ _____

[HOURLY FEE OPTION]

Job Title	Hourly Rate
Principal in Charge	\$ _____
Director	\$ _____
Consultant(s)	\$ _____
Administrative Personnel	\$ _____
Other	\$ _____
Other	\$ _____

1.2. The Preliminary Services Payments include all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

1.3. Each Preliminary Services Payment shall be paid within forth-five (45) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the billed-for tasks.

2. **Site Lease Payments.** As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease.

3. **Guaranteed Project Cost (or Guaranteed Maximum Price).** Pursuant to the Master Facilities Lease, Contractor will cause the Project to be constructed for **[Spell Out] Dollars (\$Numeric)**, (“Guaranteed Project Cost” or “GPC” or “Guaranteed Maximum Price” or “GMP”). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of the Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. **Cost to Perform Work.**

3.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

3.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

3.2. **General Conditions.** The fixed amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees.

3.3. **Fees.** All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

3.4. **Allowances.** **[IDENTIFY SPECIFIC SCOPES AND AMOUNTS.]**

3.5. **Bonds and Insurance.**

3.6. **Overhead and Profit.**

3.7. **Contingency.** **[OPTIONAL. TERMS AND AMOUNT TO BE NEGOTIATED.]** A Contingency of _____ Dollars (\$_____) is included in the Guaranteed Project Cost and may be used in the District’s sole discretion. If the District chooses to utilize all or a portion of the Contingency, the District shall notify the Contractor in writing in accordance with **Exhibit D** to the Master Facilities Lease. The unused portion of the Contingency shall be retained by the District at the end of the Project.

4. **Payment of Guaranteed Project Cost.** District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

4.1. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric)** ("Tenant Improvement Payments"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments and pursuant to the provisions in **Exhibit D** to the Master Facilities Lease.

4.2. Lease Payments Plus Interest. After the Parties execute the Memorandum of Commencement Date, attached to the Master Facilities Lease as **Exhibit E**, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric)** ("Lease Payments") plus interest, as indicated below.

4.2.1. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in equal monthly installments for the duration of the Term, subject to the District's right to purchase the Project pursuant to section 5 herein.

4.2.2. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Master Facilities Lease.

4.2.3. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the Master Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Master Facilities Lease and Master Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

4.2.4. Each Payment Constitutes a Current Expense of the District.

4.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.2.4.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Master Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.2.4.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.

4.2.4.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Master Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Master Facilities Lease agreed to be carried out and performed by the District.

4.2.4.5. The Contractor cannot, under any circumstances, accelerate the District’s payments under the Master Facilities Lease.

4.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **Spell out** Percent (**Numeric**%):

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
Total	\$Numeric Sum	\$__	\$__

4.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless adjusted pursuant to **Exhibit D** to the Master Facilities Lease. The Parties agree that the Lease Payments will be adjusted upon Final Completion of the Project to account for adjustments made to the Guaranteed Project Cost pursuant to the terms and conditions of **Exhibit D** General Construction Provisions.

5. District’s Purchase Option.

5.1. If the District is not then in uncured default hereunder, the District shall have the option to purchase not less than all of the Project and terminate this Master Facilities Lease and Master Site Lease by paying the total remaining unpaid Lease Payments as of the date the option is exercised (“Option Price”).

5.2. District shall provide Contractor no less than fourteen (14) days’ prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date (“Option Date”). If the

District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the Option Date and Contractor shall at that time deliver to District all reasonably necessary documents to terminate this Master Facilities Lease and the Master Site Lease.

5.3. Under no circumstances can the Option Date be on or before thirty-five (35) days after the Contractor achieves Final Completion of the Project.

6. Changes to Guaranteed Project Cost.

6.1. As indicated in the Master Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed, or deducted from the next payment request from the Contractor, as applicable.

6.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications.

6.3. Cost Savings. Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor may be entitled to an extension of Contract Time in accordance with the provisions of Article 7.4 of **Exhibit D** General Construction Provisions, if requested in writing before the approval of the cost savings.

6.4. Insurance and Bond Reimbursements. At Project Final Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

EXHIBIT D
TO
MASTER FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

[TO BE INSERTED WHEN AGREEMENT IS FINAL. SEE STAND ALONE EXHIBIT]

EXHIBIT E
TO
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE

[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE THE LEASE TERM – DO THIS AFTER PROJECT FINAL COMPLETION]

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between **[Contractor Name]** (“Contractor”), as Lessor, and the **Piedmont Unified School District** (“District”), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of _____, 20____, (the “Lease”) for the leasing by Contractor to District of the Project Site and Project in _____, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That the Contractor has achieved Final Completion of the all construction of the Project required to be performed pursuant to the Master Facilities Lease;

B. That District has entered into possession of the Project and now occupies same; and

C. That the term of the Master Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20____

Dated: _____, 20____

Piedmont Unified School District

[Contractor Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

**EXHIBIT F
TO
MASTER FACILITIES LEASE**

PROJECT SCHEDULE

**EXHIBIT G
TO
MASTER FACILITIES LEASE**

SCHEDULE OF VALUES

**EXHIBIT H
TO
MASTER FACILITIES LEASE**

TERMS AND CONDITIONS FOR PRELIMINARY SERVICES

[THE FOLLOWING TERMS ARE DRAFT PROVISIONS; THE PARTIES MUST SPECIFY THE SCOPE OF THE PRELIMINARY SERVICES]

1. **Scope of Contractor's Preliminary Services.** Contractor, as the District's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("Preliminary Services"):

1.1. General Services.

- 1.1.1. Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.
- 1.1.2. Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.
- 1.1.3. Contractor shall assist the Architect with making formal presentations to the governing board of District.
- 1.1.4. Contractor shall prepare and update the preliminary Project schedule.
- 1.1.5. Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.
- 1.1.6. Contractor shall assist District with City land use issues;
- 1.1.7. Contractor shall assist District with DSA review, input, and timeframe for same;
- 1.1.8. Contractor shall provide review and comment upon geotechnical / soils investigation and report;
- 1.1.9. Contractor shall provide review and comment upon survey of the Project site;
- 1.1.10. Contractor shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.

1.2. Review of Design Documents.

- 1.2.1. Contractor shall review Project design and budget with the District and the Architect during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents Phase, and at 100% Construction Documents Phase to:
 - 1.2.1.1. Contractor shall provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;
 - 1.2.1.2. Contractor shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;
 - 1.2.1.3. Contractor shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and
 - 1.2.1.4. Contractor shall provide plan review.
 - 1.2.1.5. **Value-engineering.** Contractor shall prepare a value-engineering report for District review and approval that:
 - 1.2.1.5.1. Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);
 - 1.2.1.5.2. Provides detailed estimate for proposed value-engineering items;
 - 1.2.1.5.3. Defines methodology or approaches that maximize value; and
 - 1.2.1.5.4. Identifies design choices that can be more economically delivered.
 - 1.2.1.6. **Constructability Review.** Contractor shall prepare detailed interdisciplinary constructability review within thirty (30) days of receipt of the plans from the District that:
 - 1.2.1.6.1. Ensures construction documents are well coordinated and reviewed for errors;
 - 1.2.1.6.2. Identifies to the extent known, construction deficiencies and areas of concern;
 - 1.2.1.6.3. Back-checks design drawings for inclusion of modifications;
 - 1.2.1.6.4. Provides the District with written confirmation that:
 - 1.2.1.6.4.1. Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards; and
 - 1.2.1.6.4.2. Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.
- 1.2.2. **Confirm Modifications to Design Drawings.** If the District accepts Contractor's comments, including the value-engineering and/or constructability review comments, Contractor shall review the design documents to confirm that those comments are properly incorporated

into the final design documents.

1.3. Budget of Project Costs.

- 1.3.1. At each stage of plan review indicated above, Contractor shall update and refine the budget of the Guaranteed Project Cost based on the most recent set of design documents. Contractor shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Contractor will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.
- 1.3.2. In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:
 - 1.3.2.1. Overhead and profit;
 - 1.3.2.2. Supervision;
 - 1.3.2.3. General conditions;
 - 1.3.2.4. Layout & Mobilization (not more than 1%)
 - 1.3.2.5. Submittals, samples, shop drawings (not more than 3%);
 - 1.3.2.6. Bonds and insurance (not more than 2%);
 - 1.3.2.7. Close-out documentation (not less than 3%);
 - 1.3.2.8. Demolition;
 - 1.3.2.9. Installation;
 - 1.3.2.10. Rough-in;
 - 1.3.2.11. Finishes;
 - 1.3.2.12. Testing;
 - 1.3.2.13. Punchlist and acceptance.

Contractor shall indicate its willingness and ability to enter into the Lease Agreements to construct the Project for at or below that Guaranteed Project Cost, excluding unforeseen conditions or District-requested changes. This commitment will be a component of the Lease Agreements.

1.4. Construction Schedule and Phasing Plan.

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

1.5. Construction Planning and Bidding.

- 1.5.1. Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor's subcontractors.
- 1.5.2. Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

- 1.5.3. Contractor shall conduct pre-bid conferences. Contractor shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.
 - 1.5.4. Contractor shall prepare appropriate subcontractor bid packages.
2. **Limited Authority.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.
3. **District's Responsibilities.** The District has and shall continue to provide to Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.
4. **Termination**
 - 4.1. **Termination by Contractor.** The services described in this Exhibit may be terminated by Contractor upon fourteen (14) days written notice to District in the event of an uncured substantial failure of performance by District, unless the District has acted to commence cure efforts in any case where a reasonable cure cannot be concluded within the fourteen (14) day notice period.
 - 4.2. **Termination by District.** This Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Contractor. In the event of such a termination by District, the District shall pay Contractor for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Contractor pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process that would best serve the District if a completed product was presented.
 - 4.3. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement (the "Termination Material") which is not Contractor privileged information, as defined by law, or Contractor's personnel information.
5. **Compensation to Contractor**

District shall pay for the Contractor's performance of the preliminary services pursuant to the payment provisions indicated in **Exhibit C** to the Facilities Lease.
6. **Schedule of Preliminary Services**

The Contractor shall perform the Preliminary Services pursuant to the schedule indicated in **Exhibit F** to the Facilities Lease.

**EXHIBIT I
TO
MASTER FACILITIES LEASE**

CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS

NONCOLLUSION DECLARATION
Public Contract Code § 7106

TO BE EXECUTED BY CONTRACTOR

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME]**,

the party making the foregoing Contract.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other contractor to put in a false or sham bid. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham proposal, or to refrain from proposing. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract price of the Contractor or any other contractor, or to fix any overhead, profit, or cost element of the Contract price, or of that of any other contractor. All statements contained in the Contract and Contractor's proposal are true. The Contractor has not, directly or indirectly, submitted his or her Contract price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham proposal or contract, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____

Proper Name of Contractor: _____

City, State: _____

Signature: _____

Print Name: _____

Title: _____

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Contractor shall complete **ONLY ONE** of the following three paragraphs.

1. Contractor's total Guaranteed Project Cost is less than one million dollars (\$1,000,000).

OR

2. Contractor's total Guaranteed Project Cost is one million dollars (\$1,000,000) or more, but Contractor is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code § 2203(b), and Contractor is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

3. Contractor's total Guaranteed Project Cost is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Contractor to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Contract.**

I certify that I am duly authorized to legally bind the Contractor to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- 1 By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

- 2 By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of the Contract.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under the Contract.)

**PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

DISABLED VETERAN BUSINESS ENTERPRISE
PARTICIPATION CERTIFICATION

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.
2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.
5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.
 - a) Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - b) Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - i) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.
 - ii) The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DVBE PARTICIPATION REPORT

Contractor Name: _____ Date: _____

Project Name: _____ Project Number: _____

DVBE Firm Name	Trade / Portion of Work	Subcontract/ Contract Value
Add more sheets as needed to include all information for each DVBE		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Guaranteed Project Cost, as adjusted by all change orders?

YES _____ NO _____

If your response is "NO", please attach to this report a detailed description of the reasons for your firm did not achieve the participation goal of three percent (3%) of the final Guaranteed Project Cost.

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from the Contractor pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

- 1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- 2 Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
- 3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

TOBACCO-FREE ENVIRONMENT CERTIFICATION

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project Site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District’s policy regarding tobacco-free environments at District sites, including the Project Site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm’s employees, agents, subcontractors, or my firm’s subcontractors’ employees or agents to use tobacco and/or smoke on the Project Site.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

HAZARDOUS MATERIALS CERTIFICATION

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material" will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

In addition to the requirement to provide this certification, Contractor agrees that it shall provide all documentation requested by the District to confirm compliance with the requirements herein.

LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

2. Overview of California Law

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;

- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

4. Contractor's Liability

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous

waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any School Site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

The Contractor hereby acknowledges, under penalty of perjury, that it:

1. Has received notification of potential lead-based materials on the District's property;
2. Is knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

The undersigned warrants that he/she has the authority to sign on behalf of and bind the Contractor. The District may require proof of such authority.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

IMPORTED MATERIALS CERTIFICATION

This form shall be executed by Contractor and by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site. All Fill shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and the requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

To the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

Certification of: Delivery Firm/Transporter Supplier Manufacturer
 Wholesaler Broker Retailer
 Distributor Other _____

Type of Entity: Corporation General Partnership
 Limited Partnership Limited Liability Company
 Sole Proprietorship Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

In addition to the requirement to provide this certification, Contractor agrees that it shall provide all documentation requested by the District to confirm compliance with the requirements herein.

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that (1) he/she is a representative of the Contractor, (2) he/she is familiar with the facts herein certified, (3) he/she is authorized and qualified to execute this certificate on behalf of Contractor; and (4) that the following is true and correct:

1. **Education Code.** Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

_____ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is: **Name:** _____
Title: _____

_____ The Work on the Contract is at an unoccupied School Site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project Site and the employees of the Subcontractor(s) that will be on the Project Site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION (Public Contract Code § 3006)

I, _____, _____
Name Name of Contractor

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____, _____
Name Name of Contractor

certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____
Name Name of Contractor

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____

Mailing address: _____

Address of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND (100% of Guaranteed Project Cost)
(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal, and _____ as Surety, are held and firmly bound unto **PIEDMONT UNIFIED SCHOOL DISTRICT** hereinafter the "Obligee", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Education has awarded to the Principal a Contract for the Work described as **Malibu Middle High School Campus Improvements Phase 3 Project**.

WHEREAS, the Principal, has entered into a Contract with the Obligee for performance of the Work; the Contract and all of its terms and conditions set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, stop notices, costs, and fees of every description, whether imposed by law or equity, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract, including all modifications and amendments thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

In the event the Principal is declared by the Obligee to be in breach or default in the performance of the Contract, then, after written notice from the Obligee to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee.

If the Surety does not proceed to cure or remedy the Principal's default(s) of its performance of the Contract with reasonable promptness, the Surety shall be deemed to be in default on this Bond twenty-one (21) calendar days after receipt of a written notice from Obligee to the Surety demanding that the Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to Obligee.

Within twenty-one (21) calendar days of Obligee's written notice to the Surety of the failure of performance of the Contract by the Principal, it shall be the duty of the Surety to give to the Obligee an unequivocal notice in writing of the Surety's election to remedy the default(s) of the Principal promptly, or to promptly arrange for performance of the Contract, time being of essence to this Bond. In arranging for such performance of the Contract, Surety shall not elect to contract with the Principal for the completion of the Work of the Project without the prior written consent of Obligee, which consent will not be unreasonably withheld. In said Notice of Election, the Surety shall state the date of commencement of its cure or remedy of the Principal's default(s) or its performance of the Contract. The Surety's obligations for cure or remedy, include but are not limited to: correction of defective or incomplete work and completion of the Contract, additional legal, design professional and delay costs arising from

Surety's actions or failure to act; and liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance by the Principal. The Surety shall give prompt written notice to the Obligee upon completion of the cure or remedy of the Principal's default(s) of its performance of the Contract.

In the event the Surety shall fail to issue its Notice of Election to Obligee within the time provided for herein above, the Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Guaranteed Project Cost; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, the amount of which shall be increased to include the amount of any Changes to the Work which increase the Guaranteed Project Cost.

The Surety, for value received, hereby consents, stipulates and agrees absolutely and unconditionally that no change, adjustment, alteration, deletion, addition or modification to the terms of the Contract or Contract Documents, including but not limited to Contract Time or Guaranteed Project Cost, or the Work to be performed thereunder, shall in any way release, limit, restrict, or otherwise affect the obligations of the Surety under this Bond. Surety waives notice of any change, adjustment, alteration, deletion, addition or modification to the terms of the Contract or the Contract Documents, including but not limited to the Contract Time or Guaranteed Project Cost, or the Work to be performed thereunder and agrees to automatically adjust the penal sum of this Bond to reflect any adjustments of the Contract Time or Guaranteed Project Cost which increase the Guaranteed Project Cost. The Surety unconditionally and absolutely waives its entitlement, if any, to the benefits of California Civil Code §2845 concerning any security held by the District. The Surety also agrees that it shall not be exonerated or released from the obligations of this Bond, either by total exoneration or pro tanto, by any overpayment or underpayment made by the Obligee under the Contract. The Surety agrees that none of the aforementioned changes, adjustments, alterations, deletions, additions, modifications or actions shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such changes, adjustments, alterations, deletions, additions, modifications or actions.

Principal and Surety agree that if Obligee is required to engage the services of an attorney in connection with enforcement of this Bond, each shall pay Obligee's costs and reasonable attorney's fees incurred, with or without suit, in addition to the above penal sum.

The guarantees contained in this Bond survive Final Completion of the Work called for in the Contract Documents with respect to the obligations and liabilities of the Principal, which survive Final Completion of the Work. The obligations of Surety hereunder shall continue so long as any obligation of the Principal remains. Nothing herein shall limit the Obligee's rights or the Principal's or Surety's obligations under the Contract, law or equity, including without limitation California Code of Civil Procedure section 337.15.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

Attention: _____

Telephone No.: (____) ____-_____

Fax No.: () -

E-mail Address: _____

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ____ day of _____, 20__ by their duly authorized agent or representative.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Guaranteed Project Cost)
(Note: Contractor must use this form, NOT a surety company form.)

Civil Code § 9554

KNOW ALL MEN BY THESE PRESENTS that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto **PIEDMONT UNIFIED SCHOOL DISTRICT** hereinafter "the Obligee", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Education has awarded to the Principal a Contract for the Work described as **Malibu Middle High School Campus Improvements Phase 3 Project**.

WHEREAS, the Principal, has entered into a Contract with the Obligee for performance of the Work; the Contract and all of its terms and conditions set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code section 9100, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event that suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code section 9564.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agent or representative.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

**EXHIBIT J
TO
MASTER FACILITIES LEASE**

DIVISION 1 DOCUMENTS

**EXHIBIT K
TO
MASTER FACILITIES LEASE**

SPECIAL CONSTRUCTION PROVISIONS

1. Contract Time; Liquidated Damages.

1.1 Contract Time. The Contract Time for the Contractor's Substantial Completion of the Work is _____ (____) calendar days after the date for commencement of the Work as set forth in the Notice to Proceed issued by or on behalf of the District to the Contractor.

1.2 Liquidated Damages.

1.2.1 Delayed Substantial Completion. Pursuant to Article 7 of the General Construction Provisions, the Contractor shall be liable to the District for Liquidated Damages for failure to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto in accordance with the Contract Documents. **Liquidated Damages shall be at the rate of _____ Thousand Dollars (\$_____) per day until Substantial Completion of the Work is achieved.**

1.2.2 Delayed Milestone(s). Pursuant to Article 7 of the General Construction Provisions, the Contractor shall be liable to the District for Liquidated Damages for failure to achieve one or more Milestones as specified by the Contract Documents, including adjustments thereto in accordance with the Contract Documents.

[Identify one or more Milestones, e.g., phasing, Final Completion, etc. – duplicate this section for each Milestone and specify amount of LD's for each Milestone]:

Liquidated Damages for delayed Milestone No. ____ shall be at the rate of _____ Thousand Dollars (\$_____) per day until the Work is achieved.

Liquidated Damages for delayed Milestone No. ____ shall be at the rate of _____ Thousand Dollars (\$_____) per day until the Work is achieved.

1.2.3 Cumulative Assessment of Liquidated Damages. If the Contractor fails to achieve a Milestone or fails to achieve Substantial Completion of the Work within the Contract Time, as adjusted pursuant to the Contract, the Contractor shall be subject to assessment and withholding of Liquidated Damages in the amounts set forth above for each such portion of the Work which is not timely delivered or completed within the time allocated for each portion of the Work, such amounts to accrue cumulatively until each such event is achieved in accordance with the Contract Documents.

1.2.4 District Withhold of Liquidated Damages; Performance Bond Surety. If the Contractor is subject to Liquidated Damages for delayed completion of one or more Milestones and/or delayed Substantial Completion, the District may withhold such Liquidated Damages from the Guaranteed Project Cost then or thereafter due the Contractor. If the Liquidated Damages exceed the then remaining balance of the Guaranteed Project Cost, the Contractor and the Surety issuing the Performance Bond shall be jointly and severally liable to the District for such amounts.

2. Mark-Ups on Changes to the Work. In the event of Changes to the Work, pursuant to Article 9 of the General Construction Provisions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of

the Change as set forth below. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%). In addition, the mark-up shall include the actual, direct cost of the bond for such Change, not to exceed One Percent (1.0%) of the direct, actual costs of the performance of the Change. In the event the Change is deductive, the District shall receive a credit equal to the value of the direct actual costs of the Work of the deductive Change plus Ten Percent (10%) of such direct actual costs for all general conditions, overhead (including home and field office overhead), profit and bond, which Ten Percent (10%) is inclusive of all general conditions, overhead (including home and field office overhead), profit and bond for the Contractor and all Subcontractors of every tier.

3. Insurance; Subcontractors' Bonding.

3.1 Contractor's Insurance. Pursuant to Article 6 of the General Construction Provisions, the Contractor shall obtain and maintain the following insurance coverage, with minimum coverage amounts as set forth below:

Comprehensive General Liability Insurance:	
Per Occurrence	\$2,000,000
Aggregate	\$5,000,000
Automobile Liability Insurance:	\$2,000,000
Workers Compensation Insurance	Statutory Limits

3.2 Insurance Primary. Certificates of insurance shall clearly state that the District is named as additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.

3.3 Subcontractors' Insurance. Contractor is required to have all subcontractors insured to the minimum coverage amounts as set forth below:

Comprehensive General Liability Insurance:	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Automobile Liability Insurance:	\$1,000,000
Workers Compensation Insurance	Statutory Limits

3.4 Builder's Risk Insurance.

The District shall provide Builder's Risk coverage for the full insurable value of the Work up to \$50,000,000. The District may or may not include coverage for the perils of earthquakes within the scope of coverage under the Builders Risk Insurance Policy. The Contractor shall be responsible for any deductible or self-insured retention amount for each and every covered loss. The foregoing notwithstanding, the risk of damage to the Work due to the perils covered by the Builder's Risk Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no claims for such damage or hazard shall be recognized by the District (other than to the extent the damage is a covered loss under the Builder's Risk Insurance Policy), nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

3.5 Subcontractors' Bonding. In addition to the Performance and Payment Bonds required of the Contractor per Article 6.10 of the General Construction Provisions, Contractor shall require Performance and Payment Bonds of all subcontractors performing work in excess of \$250,000. Upon request, the Contractor shall furnish

the District with a copy of such bonds.

4. **Security.** In addition to the security requirements set forth elsewhere in the Contract, the Contractor must adhere to the following:

4.1 Keys. The Contractor's site supervisor of the Work will be issued a key for that site at the beginning of the Work. The key must not be duplicated, and the Contractor is responsible for returning the key to the District when the Work at the site is complete. The Contractor may be charged \$1,000.00 per key, for any key not returned to the District at the completion of the Work. If a "Master Key" is issued to the Contractor and not returned, Contractor shall be responsible for the cost to re-key the school.

4.2 Locked Door Policy. No building, room or site gate shall be left unsecured for any period of time when not occupied by the Contractor and/or after the Contractor's daily work hours.

4.3 Security Guard. Contractor shall provide a security guard located on the Project Site during non-working hours.

5. **Hours of work.** All construction and delivery activities shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and from 9:00 a.m. to 5:00 p.m. on Saturdays, or as otherwise modified or amended.

6. **Rain Days.** For purposes of Article 7.4.1. of the General Construction Provisions, _____ (___) Rain Days are expected during the Contract Time. The Contractor's Construction Schedule prepared pursuant to Article 7 of the General Construction Provisions shall incorporate the number of expected Rain Days set forth above and there shall be no adjustments to the Contract Time on account of unusually severe weather conditions resulting from rain until the anticipated number of Rain Days are exceeded. Rain Days shall only be allocated to Contractor's Construction Schedule where such Rain Days directly and adversely impact critical path activities as depicted in the Approved Construction Schedule or the most recent update Approved Construction Schedule relative to the date(s) of such Rain Days.

7. **Project Manager.** The District's Project Manager is _____, attention: _____, whose offices are located at _____. Phone: _____ FAX: _____ email: _____. All project correspondence shall be routed through the Project Manager, unless otherwise directed.

