



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 9.1a

Meeting Date: February 5, 2015

Subject: Approval of Grants, Entitlements, and Other Income Agreements
Ratification of Other Agreements
Approval of Bid Awards
Approval of Declared Surplus Materials and Equipment
Change Notices
Notices of Completion

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Business Services

Recommendation: Recommend approval of items submitted.

Background/Rationale:

Financial Considerations: See attached.

LCAP Goal(s): Safe, Clean and Healthy Schools; College and Career Ready Students

Documents Attached:

1. Expenditure and Other Agreements
2. Recommended Bid Awards – Facilities Projects

<p>Estimated Time of Presentation: N/A</p> <p>Submitted by: Gerardo Castillo, CPA, Interim Chief Business Officer Kimberly Teague, Contract Specialist</p> <p>Approved by: José L. Banda, Superintendent</p>

EXPENDITURE AND OTHER AGREEMENTS

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>FACILITIES SUPPORT SERVICES</u>		
SA15-00292 HMR Architects	1/14/15 – Completion of Services. Architectural and engineering services as needed to replace existing, outmoded irrigation system at C.B. Wire Elementary School playfields with a modern system, including electronic controller and backflow preventer (Emergency Repair Program “ERP” Project).	\$132,526 ERP Funds
SA15-00330 Lionakis Architects	1/15/15 – Completion of Services. Architectural and engineering services as needed for new construction and renovation work at Kit Carson Middle School.	\$343,500 Measure I Funds
SA15-00413 Hancock Park & Delong, Inc.	1/1/15 – 12/31/16. Consultant services to assist District in seeking reimbursement or to obtain grants from the State Allocation Board through the Emergency Repair Program. Receiving funds for emergency repairs at various school sites will provide reimbursements for work previously funded by the District and/or will provide funding for future repairs needed to assure that sites are safe and healthy for students and staff.	\$118,321 ERP Funds
<u>STATE AND FEDERAL PROGRAMS</u>		
SA15-00366 Elevate Learning, LLC	9/5/14 – 5/29/15: Supplemental Educational Services. Additional academic instruction designed to increase the academic achievement of students in low-performing schools.	\$391,099 Title I Funds
SA15-00375 Learn it Online	9/5/14 – 5/29/15: Supplemental Educational Services. Additional academic instruction designed to increase the academic achievement of students in low-performing schools.	\$211,615 Title I Funds
SA15-00379 One-on-One Learning	9/5/14 – 5/29/15: Supplemental Educational Services. Additional academic instruction designed to increase the academic achievement of students in low-performing schools.	\$144,031 Title I Funds
SA15-00385 Sullivan Learning Systems	9/5/14 – 5/29/15: Supplemental Educational Services. Additional academic instruction designed to increase the academic achievement of students in low-performing schools.	\$138,491 Title I Funds
SA15-00343 Computadora Gratis Para, Inc.	9/5/14 – 5/29/15: Supplemental Educational Services. Additional academic instruction designed to increase the academic achievement of students in low-performing schools.	\$93,066 Title I Funds

EXPENDITURE AND OTHER AGREEMENTS

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>TRANSPORTATION SERVICES</u>		
SA15-00415 Michael's Transportation Service	1/1/15 – 7/30/15: Provide trained and licensed Class B CDL and/or Class B Drivers with School Bus / SPAB certificates on a temporary basis to fill vacancies in Transportation Services.	\$272,800 Transportation Funds

RECOMMENDED BID AWARDS – FACILITIES PROJECTS

Bid No. 703-0415 Gymnasium Addition at California Middle School

Bids received: January 15, 2015

Recommendation: Award to Landmark Construction

Amount: \$2,726,790

Funding Source: Bond Funds, Measure R

BIDDER	BIDDER LOCATION	AMOUNT
Landmark Construction Lic. #807981	Loomis, CA	\$2,726,790
BRCO Construction Lic. #511602	Loomis, CA	\$2,801,700
Clark & Sullivan Construction Lic. #796486	Roseville, CA	\$2,758,800
Roebbelen Contracting Lic. #734124	El Dorado Hills, CA	\$2,813,525
Seward L. Schreder Constr. Lic. #746525	Redding, CA	\$2,922,700
Younger General Contractors Lic. #648535	Rancho Cordova, CA	\$3,082,200

RECOMMENDED BID AWARDS – FACILITIES PROJECTS

Bid No.: 407-1 E-Rate 18 Wiring Infrastructure Upgrade at 24 School Sites

Bids received: January 21, 2015
Recommendation: Award to Walker Telecomm, Inc.
Amount: \$4,131,820.28
Funding Source: Bond Funds, Measure Q (Reimbursed with E-Rate Funds)

BIDDER	BIDDER LOCATION	AMOUNT
Walker Telecomm, Inc. Lic. #953866	Wheatland, CA	\$4,131,820.28
3D Datacom Lic. #757157	Rancho Cordova, CA	\$4,715,991.10
AMS.Net Lic. #763508	Livermore, CA	\$6,991,587.40

Bid No. 407-2: E-Rate 18 Network Equipment Upgrade at 24 School Sites

Bids received: January 21, 2015
Recommendation: Award to AMS.Net
Amount: \$3,875,034.53
Funding Source: Bond Funds, Measure Q (Reimbursed with E-Rate Funds)

BIDDER	BIDDER LOCATION	AMOUNT
AMS.Net Lic. #763508	Livermore, CA	\$3,875,034.53
Decotech Systems, Inc. Lic. #862234	Sacramento, CA	\$4,890,720.40
AT & T Lic. #Did Not Provide	Sacramento, CA	\$5,211,196.54



PROJECT AUTHORIZATION FORM

Drainage Improvement at C.B. Wire Elementary School

Date: January 14, 2015

Pursuant to the Master Architect Agreement dated February 25, 2014 between HMR Architects and Sacramento City Unified School District, Architect hereby submits a scope of work upon the terms described below and in the Master Architect Agreement.

TERMS

A. Project Description

“Project” shall mean the work of improvement and the construction thereof, including the Architect's services as follows:

Emergency Repair Program: Replace existing, outmoded irrigation system at C.B. Wire Elementary School playfields, with a modern system, including electronic controller and backflow preventer. Includes elimination of rough ground and areas of chronic ponding as well as replace existing turf with sod.

Excluded work: Soils Geotechnical Investigation, Boundary Surveys, Environmental Impact Reports, Fire Protection Documents, Civil, Plumbing & Mechanical Engineering, Landscape Architects, and Hazardous Material Investigation and Mitigation.

B. Compensation

For the Basic Services provided pursuant to the Master Agreement and this Project Authorization, Architect shall be compensated in the manner identified below:

Flat Fee

Architect shall be compensated One Hundred Thirty Two Thousand, Five Hundred Twenty Five and 84/100 Dollars (\$132,525.84) for the Basic Services under this Master Agreement. Architect acknowledges that the flat fee price for the Basic Services includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

C. Reimbursable Expenses

Pursuant to Section 4.3, Architect's total reimbursement for Reimbursable Expenses shall not exceed \$ N/A, which is Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project.

D. Asbestos

The language identified in Section 5.7.15 is is not applicable to this Project.

E. Section 8.2

Consistent with Section 8.2, the following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "occurrence" basis, with specific limits set forth: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than \$1,000,000 general aggregate; Personal and advertising injury aggregate, with a per occurrence limit of \$1,000,000; Automobile liability insurance covering motor vehicles shall be in an amount not less than \$1,000,000 combined single limit.

District hereby authorizes Architect to proceed with the work upon the terms described herein and in Master Agreement.

HMR ARCHITECTS

Dated: _____

Scott Pullen, Principal

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Dated: _____

Gerardo Castillo, CPA
Interim Chief Business Officer



**Business Services
Contracts Office**

5735 47th Avenue • Sacramento, CA 95824
(916) 643-2464

*José L. Banda, Superintendent
Gerardo Castillo, Interim Chief Business Officer*

MASTER AGREEMENT

For

ARCHITECTURAL SERVICES

With

LIONAKIS ARCHITECTS

January 15, 2015

TABLE OF CONTENTS

DEFINITIONS.....	1
RETENTION OF ARCHITECT: STANDARD OF CARE.....	2
DESCRIPTION OF PROJECT.....	2
COMPENSATION	3
BASIC SERVICES TO BE RENDERED BY ARCHITECT	5
ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT	16
RESPONSIBILITIES OF DISTRICT	17
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE	18
ERRORS AND OMISSIONS INSURANCE.....	20
COMPLIANCE WITH LAWS.....	20
TERMINATION OF AGREEMENT	20
ARCHITECT AN INDEPENDENT CONTRACTOR	22
STANDARDIZED MANUFACTURED ITEMS	22
OWNERSHIP OF DOCUMENTS	22
LICENSING OF INTELLECTUAL PROPERTY	23
ACCOUNTING RECORDS OF ARCHITECT	23
INDEMNITY	24
TIME SCHEDULE.....	24
MISCELLANEOUS PROVISIONS.....	25

MASTER AGREEMENT FOR ARCHITECTURAL SERVICES

This Master Agreement for Architectural Services (“Agreement”) is made and entered into by and between the Sacramento City Unified School District, a school district duly organized and existing under the laws of the State of California (the “District”), and Lionakis Architects (the “Architect”), with respect to the following recitals:

A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.

B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school(s).

C. The parties have negotiated the terms pursuant to which Architect will provide such services and reduce such terms to writing by this Master Agreement.

In consideration of the covenants and conditions contained in this Master Agreement, the parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **Additional Services.** “Additional Services” shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by the District, and as further defined in Article 6 herein.

1.2 **Agreement.** “Agreement” shall mean this Master Agreement for Architectural Services.

1.3 **Architect.** “Architect” shall mean Lionakis Architects, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.4 **Basic Services.** Architect’s Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.

1.5 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between Owner and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

1.6 **Contractor.** “Contractor” shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.7 **District.** “District” shall mean the Sacramento City Unified School District, and its governing board members, employees, agents and authorized representatives.

1.8 **Project.** “Project” shall mean the work of improvement described in Article 3 and the amendments to this Agreement set forth in the “Project Authorization Form”, and construction thereof, including the Architect's services thereon, as described in this Master Agreement.

1.9 **Project Construction Cost.** “Project Construction Cost” shall mean the estimate of total construction costs to the District as initially submitted by the Architect pursuant to this Master Agreement and accepted by the District, and as subsequently revised in these manners: (a) Revised by changes to the Project Construction Cost under Article 5 of this Master Agreement; (b) revised at the time the District enters a construction contract, to equal the construction contract amount, (c) increased by the dollar amounts of all approved additive contract change order items, with the exception of (i) items resulting from Wrongful Acts or Omissions on the part of the Architect, including but not limited to those items covered by Section 5.7.19.2, below, (ii) payments to Architect or consultants for costs of inspections, surveys, tests and sites and landscaping not included in the Project, and (iii) items where Architect and District agreed to compensate the Architect for its services on an hourly basis, pursuant to Section 5.7.19.1, below; and (d) decreased by the dollar amounts of all approved deductive contract change order items.

1.10 **Wrongful Acts or Omissions.** “Wrongful Acts or Omissions” shall mean Architect’s acts, errors, or omissions in breach of this Master Agreement, the applicable standard of care, or law.

ARTICLE 2

RETENTION OF ARCHITECT: STANDARD OF CARE

District retains Architect to perform, and Architect agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Master Agreement and related incidental services. The Architect agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, and in accordance with a mutually acceptable project schedule as set forth in Attachment One to each Project Authorization Form. The schedule shall include reasonable allowances for review and approval of deliverables under the Master Agreement by the District and governmental entities having jurisdiction over the Project. The schedule may be adjusted by the Parties, in writing, as the Project progresses, to address circumstances beyond the Architect’s reasonable control.

All services performed by the Architect under and required by this Master Agreement shall be performed (a) in compliance with this Master Agreement and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are licensed and qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”) that are in effect as of the date of this Master Agreement. Architect shall be responsible for the completeness and accuracy of the plans and specifications.

ARTICLE 3

DESCRIPTION OF PROJECT

The Project concerning which such architectural services shall be provided is described in the Project Authorization Form.

ARTICLE 4

COMPENSATION

4.1 Basic Services

4.1.1 For all “Basic Services” satisfactorily performed as defined in Articles 1 and 5 of this Master Agreement, the total compensation paid to the Architect for the Project is set forth in the Project Authorization Form. This compensation shall be paid pursuant to the following schedule:

Initial Payment	0%
Upon Completion of:	
Schematic Design	10%
Design Development Phase (50%)	10%
Design Development Phase (100%)	10%
Contract Documents Phase (50%)	10%
Contract Documents Phase (100%)	10%
DSA Back Check	10%
Bidding Phase	10%
Construction Phase	25%
Close Out Phase	5%
<hr/>	
TOTAL BASIC COMPENSATION	100%

4.1.2. **PLEASE NOTE:** Beginning with the 2014/15 school year, the District is utilizing construction program management software, e-Builder™. All project stakeholders (Architects, Inspectors, Contractors, etc.) are now required to use this software for all project-related documents, questions, etc. If you have not already registered with e-Builder™, please contact their technical support at (888) 288-5717, or support@e-builder.net. You may also call the Planning & Construction Office for assistance, (916) 264-4075 x1020 or x1025.

4.2 Additional Services

4.2.1 For all “Additional Services,” as defined in Articles 1 and 6 of this Master Agreement, compensation shall be a fee to be agreed upon by the parties in writing prior to performance of such services by Architect. Unless expressly stated in the written authorization to proceed with the additional services, the fee for such additional services shall be an amount computed by multiplying the hours to be worked by Architect's staff or Architect's consultants by their standard billing rates as shown in Attachment Two of the Project Authorization Form or as otherwise specifically approved in writing in advance by District.

4.2.2 Architect shall keep complete records showing all hours worked and all costs and charges applicable to work not covered by the basic fee. Architect will be responsible for Architect's consultants keeping similar records. District shall be given reasonable access to those records for audit purposes.

4.3 **Reimbursable Expenses**

Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the expenses listed below:

4.3.1 If authorized in advance, expense of transportation in connection with the Project; living expenses in connection with out-of-town travel; and long distance communications.

4.3.2 Expense of reproductions; fax, postage and messenger for transmission of drawings, specifications and other documents (excluding reproductions for the office use of the Architect and the Architect's consultants).

4.3.3 Expense of data processing and photographic production techniques when used in connection with Additional Services.

4.3.4 If authorized in advance by the District, expense of overtime work requiring higher than regular rates.

4.3.5 Expense of renderings, models and mock-ups requested by the District; expense of publishing pursuant to section 5.6.5.

Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Architect must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions. Architect may not charge a mark-up on Reimbursable Expenses. Payment for all Reimbursable Expenses incurred in connection with either Basic or Additional Services shall be made on a monthly basis. Invoices, receipts or other documentation to establish the validity of all reimbursable expenses shall be a prerequisite to District payment of such expenses.

4.4 Each payment to Architect for Basic and Additional Services satisfactorily performed, and Reimbursable Expenses reasonably incurred, shall be made in the usual course of District business after presentation by Architect of a properly documented and submitted monthly invoice approved by District's authorized representative designating the services performed, or Reimbursable Expenses incurred, the method of computation of the amount payable, and the amount payable. District shall pay approved invoices within sixty (60) days after proper submission by Architect, and Architect otherwise waives all rights and remedies under law related to receipt of payment. To be properly submitted, an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed and specify to which phase of the Architect's work listed in Section 4.1.1 it relates, and for each activity performed list the person performing it and the person's rate of compensation. Architect's invoice shall be submitted within ten (10) days of the end of the monthly billing period. If District disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's written request, arrange for a meeting to confer about, and potentially resolve the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Master Agreement and law until the end of the Project, even if District and Architect cannot resolve all such disputes.

4.5 The Architect's compensation shall be paid at the time and in the amount noted, where the amount due to the Architect is not disputed, notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor; and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20.

4.6 Should District cancel the Project pursuant to section 12.1 of this Master Agreement at any time during the performance of this Master Agreement, Architect shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Architect's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 Architect shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

ARTICLE 5

BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The District shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Master Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the estimate described more fully hereinafter at each phase of Architect's services, also as defined hereinafter. If such estimates are in excess of the project budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the District of Project Construction Cost, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions. However, any such contingency for change orders shall not affect Architect's compensation.

5.1.4 The Architect shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index. Any such adjustments shall not affect Architect's compensation until bids are received and accepted.

5.1.5 At the District's request, the Architect and Architect's consultants shall cooperate with District and the District's consultants in verifying that Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

5.1.6 The Architect shall investigate existing conditions of facilities and thoroughly account for and list in the construction documents any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Master Agreement. Architect's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Architect shall provide a list of employees who will be dedicated to delivering the project on time and within budget. All personnel provided by Architect shall be qualified to perform the services for which they are hired. Architect shall obtain District's approval of each employee of Architect who provides services under this Master Agreement, and approval of each change of employees who are providing such services. District may, upon 24 hours written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Master Agreement and/or to avoid delay, Architect shall provide them immediately.

5.1.8 Architect is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.9 Architect shall be fully licensed as required by law at all times when providing services under this Master Agreement.

5.2 **Consultants**

5.2.1 Architect's Consultants. The Architect shall employ or retain at Architect's own expense, engineers and other consultants necessary to Architect's performance of this Master Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants employed by Architect for this Project shall be approved by District prior to their commencement of work. The Architect's consultants shall be employed to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Architect's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Architect must disclose to District all such consultants retained, and the compensation paid to them.

5.2.2 District's Consultants. Architect shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Architect shall assist the District in procuring a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The

cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Master Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Architect shall assist the District in procuring chemical, mechanical or other tests required for proper design. Tests for hazardous materials and borings or test pits necessary for determining subsoil conditions will be the responsibility of the District, and the District shall own and, upon termination of this Master Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Architect shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Architect shall be responsible for all submittals required of the Architect by the Division of the State Architect ("DSA"), Office of Public School Construction ("OPSC") and California Department of Education in connection therewith, including but not limited to: New Construction Program, Modernization Program, Career Technical Education, Critically Overcrowded Schools, Emergency Repair Program, Facility Hardship Program, High Performance Incentive, Joint-Use Program, Overcrowding Relief Grant and the Seismic Mitigation Program.

5.3 **Schematic Design Phase**

5.3.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule and construction budget requirements, each in terms of the other.

5.3.3 The Architect shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Architect shall prepare for the District's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written time schedule for the performance of the work that itemizes constraints and critical path issues. The schematic design documents shall represent a 15% complete design. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District's total construction cost budget, or by altering the District's completion deadlines. If District incorporates any recommended changes, then Architect shall revise the schematic design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until the District approves them in writing. If requested by the District, Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain written approval of the schematic design documents.

5.3.5 The Architect shall submit to the District a preliminary Project Construction Cost based on current area, volume and other unit costs.

5.4 **Design Development Phase**

5.4.1 Following District's written approval of the schematic design documents, including the estimate of Project Construction Cost and schedule, Architect shall provide all necessary architectural and engineering services to prepare design development documents for the District's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the District. The design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Construction Cost, and a revised construction schedule. The revised Project Construction Cost shall be based on current area, volume and other unit costs. The revised Project Construction Cost shall conform to District's total construction cost budget and shall include reasonable contingencies for all construction and construction management work, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by altering the District's total construction cost budget or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District approves them in writing. If requested by the District, Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain written approval of the design development documents.

5.4.2 The Architect shall assist the District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall provide necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the California Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the District.

5.4.4 The Architect shall advise the District of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to the District one complete set of preliminary plans for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5.5 Contract Documents Phase

5.5.1 Following the District's written approval of the design development documents, including the Project Construction Cost and construction schedule, the Architect shall prepare Contract Documents consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall ensure that the drawings and specifications are, among other things, complete, accurate, and coordinated so as to eliminate errors, omissions and conflicts, especially between the work of a subconsultant and other subconsultants or the Architect; and Architect may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Architect shall also update the construction schedule and the Project Construction Cost for District approval. The Contract Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). As part of the Contract Documents, Architect shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages. If the project is intended to be split into multiple prime contracts, then the Contract Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 Architect shall consult with and involve the District in development of the bid documents and bid package, and shall forward them to the District for written approval prior to their use. If the District is using a multiple prime delivery method for the Project with multiple bid packages, then Architect shall consult with and involve the District in identification and development of the bid documents and bid packages, and shall forward them to the District for written approval prior to their use.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, the Architect shall submit the Contract Documents to the District for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work. However, such review by District is not required. In addition, and prior to submission of the Contract Documents to DSA for plan check, Architect shall advise the District of all elements of the design applicable to the Project or lawfully imposed upon the Project by the Americans with Disabilities Act ("ADA").

5.5.4 After approval by the District and any constructability review, the Architect shall submit the Contract Documents to DSA for plan check, and make the reasonably necessary corrections to secure DSA approval.

5.5.5 The Architect shall give the District, at the time of DSA approval of the final form of the Contract Documents, Architect's final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by the District along with the Contract Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for the Contract Documents, the Architect shall consult with and involve the District in the process to maximize accuracy and completeness. If the District is intending to enter multiple prime contracts, the Project Construction Cost shall include separate bid estimates for each bid package, plus a reasonable contingency; and the

construction schedule shall reflect the fact that multiple contractors will be performing separate bid packages, including a general conditions bid package. The revised Project Construction Cost estimate shall conform to District's total Project budget, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. If requested by the District, Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain written approval of the Contract Documents.

5.6 **Bidding and Negotiations Phase**

5.6.1 Following DSA's and District's written approval of Contract Documents and the District's written acceptance of Architect's final estimate of Project Construction Cost and Construction schedule, Architect shall continue to work with the District in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Architect shall reproduce the bid documents as requested by the District and shall assist the District in evaluating contract proposals or bids, as well as substitutions proposed by contractors, and in awarding the bids. All sets of Contract Documents requested by the District, which does not include those for the use of the Architect or its consultants, shall be reproduced at District's expense.

5.6.2 Architect's estimate of Project Construction Cost at the time of DSA approval of the Contract Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the Architect's total construction cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.

5.6.3 Should the lowest responsible and responsive bid received on a bid package exceed Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Architect may, as an alternative, include in the Contract Documents one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Architect's Project Construction Cost.

5.6.4 If requested by the District, Architect shall assist in the review of the qualifications of all bidders for the construction of the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, a bidder meets the minimum requirements.

5.6.5 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall also assist in the preparation and submittal of the appropriate documentation to the OPSC.

5.7 **Construction Phase**

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed and, solely for purposes of payment of the Architect, shall be deemed complete upon District's

written approval of Architect's final certificate for payment to Contractor, provided that such certification and payment shall not constitute an admission by Architect or District that the Project has been completed in accordance with Contract Documents or in conformance with this Master Agreement.

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the District. The Architect shall advise and consult with the District in the general administration of the Project. The Architect will have authority to act on behalf of the District only to the extent provided in the Contract Documents, unless the District grants additional authority in writing.

5.7.3 The Architect shall timely provide District with copies of all of its correspondence with the Contractors.

5.7.4 The Architect shall provide prompt and timely direction to the District's Project inspectors and/or contractors as to the interpretation of Contract Documents. Architect shall respond to all requests for information ("RFI's") from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the project and is causing, or may cause, delay, in which case the Architect shall respond as soon as reasonably possible, if not immediately. If the Architect is not able to take action within the time required due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it), Architect shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project in both DWG and PDF formats. Architect will also provide the District with revised "1A's" as part of the Close Out Phase.

While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions. Except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify the District in writing. Architect shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractors.

5.7.6 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations pursuant to Government Code section 4216, *et seq.* The Architect may delegate this responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Architect shall remain responsible for supervising such Contractor to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

5.7.7 The Architect shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the

District shall provide such access so that the Architect may perform its functions under the Master Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Architect shall require Contractors to comply with the Contract Documents, and shall guard the District against defects and deficiencies in the work of the Contractor. The Architect shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

Architect has the primary responsibility for the Project to coordinate the compliance of the DSA Construction Oversight Process ("DSA Oversight Process"). The Architect must comply with the applicable requirements of the DSA Construction Oversight Process, including but not limited to (a) Submitting the inspection card request, DSA Form 102-IC); (b) Providing a verified report (DSA 6-AE) at the completion of each block and section of each inspection card; (c) Directing and monitoring the IOR and the laboratory of record; and (d) Coordinating with the Owner, Contractor, Construction Manager, and laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

Architect shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent required under Section 5.7.20.2.

5.7.9 The Architect shall visit the site enough times to adequately perform its professional duties and comply with DSA requirements, but under no circumstances less than one time per week (unless fewer visits are authorized by the District), to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project Inspector unless Architect has agreed in writing to serve as the District's Project Inspector.

5.7.10 The Architect shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Architect will exercise reasonable care in the discharge of Architect's obligation to discover significant defects and faults.

5.7.11 The Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Architect will have the authority to reject work and materials which do not conform to the Contract Documents. The Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Architect's reasonable judgment, it is considered necessary or

advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Architect shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Architect shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Architect, unless due to Wrongful Acts or Omissions.

5.7.14 The Architect shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

When the Project Authorization Form identifies this language as applicable to the Project, with respect to asbestos and asbestos containing materials, the parties acknowledge that the Architect has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Master Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Architect shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances to the District.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will estimate the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect's estimation of the amount of work completed by Contractor shall constitute representations by the Architect to the District that the quality of the completed work is in accordance with the Contract

Documents based upon Architect's observations of the completed work and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Master Agreement, as a part of its Basic Services, the Architect shall assist the District in evaluating and responding to claims, disputes and other matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District. Architect agrees to toll all statutory periods of limitations for District's claims, lawsuits or other proceedings against Architect which arise out of, or related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, District may terminate the tolling period effective ten (10) days after written notice to Architect, and after such termination, District may pursue claims, lawsuits or other proceedings against Architect.

5.7.18 The Architect will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Architect's fee for such change order shall be calculated on a percentage or hourly basis as agreed in writing by the District and the Architect prior to commencement of work on the change order. If a change order is solicited by the District but not subsequently authorized by the District, the Architect shall be paid for time spent on the proposed change order as an Additional Service.

5.7.19.2 Change orders due to Architect. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Architect's fees shall not be calculated by reference to the cost of any change order work which would not have been necessary in the absence of such Wrongful Acts or Omissions.

5.7.19.3 Change orders beyond District or Architect control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

5.7.20 Notwithstanding any other provision of this Master Agreement, in the event a change order is caused by, or necessitated as a result of Wrongful Acts or Omissions, or the District otherwise incurs costs or damages as a result of Wrongful Acts or Omissions, the Architect shall be responsible for the cost of the following:

5.7.20.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the contractor would have added to its original bid for the Project if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Architect's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the District

should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Architect shall be responsible for any other costs or damages which the District incurs as a result of Wrongful Acts or Omissions including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may backcharge, and withhold payment from the Architect for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so backcharges and withholds, upon Architect's request, District and Architect shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Architect as described above. If District and Architect do not reach agreement on all four of these items when meeting and conferring, then District and Architect shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Architect can initiate a court action to resolve the dispute.

5.7.21 The Architect shall assist the District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Architect shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.22 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Master Agreement.

5.7.23 The Architect shall provide a color schedule of all finish materials in the Project for the District's review and approval.

5.7.24 Architect shall make reasonable professional efforts to ensure that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access and applicable to the Project. The Architect's final detailed on-site review of the finished project conducted pursuant to Section 5.7.22 shall include a field inspection to ensure compliance with such requirements. If a court, administrative agency or other trier of fact later determines that Architect has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Architect shall work with the District to remedy the violation at Architect's own cost. **Architect shall indemnify, defend and hold the District harmless pursuant to Article 18.1 of this Master Agreement for any breach of this paragraph due to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Architect's design is reviewed by DSA. In the event that the Architect is or becomes aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Close Out Phase

5.8.1 Architect will assist the District with securing and submitting all documents from the Contractor and any third parties necessary to achieve DSA certification and formal close out of project.

5.8.2 Architect shall submit a written checklist to the District identifying any work completed on the Project that satisfies work required under the District's ADA Transition Plan.

5.9 Use of Previously Prepared Materials

In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect, whether supplied by District or by Architect, which are relied upon, altered or otherwise utilized by Architect, Architect shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Architect pursuant to this Master Agreement.

ARTICLE 6

ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

6.1 "Additional Services" shall be provided by Architect if authorized in writing by District. No additional compensation shall be paid to Architect for performing these Additional Services unless the District and the Architect agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be computed as set forth in Article 4.2.1 and as otherwise set forth in this Master Agreement. Any work performed by Architect without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following list of services are not included in the Basic Services to be provided under this Master Agreement, and they will be performed only in accordance with Article 6.1, above:

6.2.1 Providing financial feasibility or other special studies;

6.2.2 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 Providing coordination of Project performed by separate contractors or by the District's own forces;

6.2.4 Providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Architect;

6.2.6 Providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 Providing services made necessary by the default of the Contractor;

6.2.8 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Architect's or its consultants' alleged Wrongful Acts or Omissions;

6.2.9 Providing services of consultants for other than the normal architectural, civil, soils, structural, mechanical and electrical engineering services for the Project;

6.2.10 At the District's request, selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

6.2.11 Providing services related to change orders requested by the District but which are not subsequently authorized (see the second sentence of Section 5.7.19.1, above); and

6.2.12 Providing any other services not otherwise included in the Master Agreement and not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 7

RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

7.1 Pay all fees required by any reviewing or licensing agency;

7.2 Designate a representative authorized to act as a liaison between the Architect and the District in the administration of this Master Agreement and the Contract Documents;

7.3 Furnish, at the District's expense, the services of a Project Inspector;

7.4 Review all documents submitted by the Architect and advise the Architect of decisions thereon within a reasonable time after submission;

7.5 Issue appropriate orders to Contractors through the Architect;

7.6 Furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Master Agreement or completion of the Project, shall have returned to it by Architect;

7.7 Furnish the services of a hydrologist or other consultants not routinely provided by the Architect when such services are reasonably required by the scope of the Project and are requested by the Architect;

7.8 Provide asbestos review and abatement, identifying materials which may qualify for same;

7.9 Furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Master Agreement or completion of the Project, shall have returned to it by the Architect. The District will also provide information regarding programmatic needs and specific equipment selection data;

7.10 Furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Master Agreement or completion of the Project, shall have returned to it by the Architect; and

7.11 Furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware (however, the District's failure to do so shall not relieve the Architect of Architect's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this agreement).

ARTICLE 8

GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

8.1 Prior to the commencement of services under this Master Agreement, the Architect shall furnish to the District a Certificate of Insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Master Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Architect and District against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Master Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission or omission by the Architect, or otherwise resulting directly or indirectly from the Architect's operations in the performance of this Master Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Master Agreement, including any extensions, and shall be written on an "occurrence" basis, with specific limits set forth in the Project Authorization Form: Commercial general liability insurance, excluding coverage for motor vehicles, personal and advertising injury aggregate, Automobile liability insurance covering motor vehicles. Such insurance or liability coverage shall at least include "broad form" commercial general liability, errors and omissions (exclusive of design professional liability), and automobile liability (owned, non-owned, and hired) coverages. Each party, and their respective directors, officers and employees, shall be listed as "additional insureds" under such coverages, as evidenced by an Additional Insured Endorsement. Each party also represents that for the period of this agreement, they will also purchase and maintain insurance or liability coverage as required by law or regulation, including worker's compensation and employers' liability coverage (coverages A and B).

8.3 The Architect's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Architect shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent

basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Architect shall not commence work under this Master Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Architect shall produce a certified copy of any insurance policy required under this section upon written request of the District.

8.4 At the time of making application for any extension of time, Architect shall submit evidence that insurance policies will be in effect during the requested additional period of time.

8.5 If the Architect fails to maintain such insurance, the District may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable on account of the Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Architect under this Master Agreement.

8.6 Nothing contained in this Master Agreement shall be construed as limiting, in any way, the extent to which the Architect may be held responsible for the payment of damages resulting from the Architect's operations.

8.7 Each of Architect's consultants shall comply with this Article, and Architect shall include such provisions in its contracts with them.

ARTICLE 9

WORKER'S COMPENSATION INSURANCE

Prior to the commencement of services under this Master Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out, for the period covered by this Master Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Master Agreement in accordance with the Workers' Compensation Laws of the State of California.

If the Architect employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Master Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

Prior to the commencement of services under this Master Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Architect's services, if Architect ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Architect shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Master Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

ARTICLE 10

PROFESSIONAL LIABILITY INSURANCE

10.1 Prior to the commencement of services under this Master Agreement, the Architect shall furnish to the District satisfactory proof that the Architect has purchased professional liability coverage, on a claims made basis, extending protection to Architect in an amount no less than Two Million Dollars (\$2,000,000) per claim, and Two Million Dollars (\$2,000,000) in the annual aggregate, with a deductible of no more than Seventy Five Thousand Dollars (\$75,000). Such coverage shall be in effect, as evidenced by a valid Certificate of Insurance, no later than (i) the date any plans and specifications for a specific project are submitted to any required regulatory agency for review and approval, and/or (ii) the date the Architect agrees that the plans may be submitted for bid or bid consideration to any general contractor or group of contractors. Coverage for alleged wrongful acts, errors or omissions will remain in effect until three (3) years after the Notice of Completion has been filed and the project has been accepted by the District. At all other times, the Architect shall purchase professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) shall comply with this Article, and Architect shall include such provisions in its contracts with them. The District may, at its discretion and according to the circumstances, approve a variation in the foregoing insurance requirement, upon a determination that the coverage, scope, limits, and/or forms of such insurance are not commercially available.

ARTICLE 11

COMPLIANCE WITH LAWS

Architect shall be familiar with, and Architect and Architect's design shall comply with all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA") in effect at the time of this Master Agreement.

ARTICLE 12

TERMINATION OF AGREEMENT

12.1 **Termination by District.** This Master Agreement may be terminated or the Project may be canceled by the District for the District's convenience and without cause at any time immediately upon written notice to the Architect. In such event, the Architect shall be compensated for (a) all Basic and Additional services completed, and Reimbursable Expenses incurred, pursuant to this Master Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Master Agreement. Upon the District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Architect, the District may also terminate the Master Agreement for cause by delivering written Notice of Intent to Terminate to the Architect. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not less than

fourteen days (14) after delivery of the notice by which the Architect must cure such breach. In response to such Notice, if the Architect fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the District may terminate the Master Agreement by written notice delivered to the Architect, which shall be effective upon such delivery. In such event, the Architect shall be compensated for all services completed pursuant to this Master Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the District, but less any amounts the District is entitled to withhold under law or this Master Agreement. Upon the District's request and authorization, Architect shall perform any and all services necessary to complete the work in progress as of the date of the termination.

12.2 Termination by Architect. For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Master Agreement, the Architect may terminate the Master Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Architect may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Architect, Architect shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, pursuant to this Master Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District. Upon the District's request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Provisions

12.3.1 Following the termination of this Master Agreement for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Master Agreement by the Architect, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including, but not limited to, any repair, maintenance, renovation, modernization or other alterations/revisions to this Project) under Education Code Section 17316. Architect shall promptly make any such documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Master Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect or any of its agents pursuant to this Master Agreement shall immediately upon request by the District be delivered to the District. Architect may not refuse to provide

such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Architect may have against the District or a claim by the Architect to an ownership interest in the intellectual property embodied in the documents or materials.

ARTICLE 13

ARCHITECT AN INDEPENDENT CONTRACTOR

It is specifically agreed that in the making and performance of this Master Agreement, the Architect is an independent contractor and is not and shall not be construed to be an officer or employee of the District.

ARTICLE 14

STANDARDIZED MANUFACTURED ITEMS

The Architect shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15

OWNERSHIP OF DOCUMENTS

All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Master Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

The Architect will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks in formats including both DWG and PDF, or other writings prepared or caused to be prepared by the Architect pursuant to this Master Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Architect's files for a period of no less than fifteen (15) years. Architect shall promptly make available to District any original documents it has retained pursuant to this Master Agreement upon request by the District.

ARTICLE 16

LICENSING OF INTELLECTUAL PROPERTY

This Master Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Master Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Architect shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Master Agreement.

The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District re-uses the plans prepared by the Architect and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Architect and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared pursuant to this Master Agreement. **Architect shall indemnify, defend and hold the District harmless pursuant to Article 18.1 of this Master Agreement for any breach of Article 16 due to Architect's negligence, recklessness or willful misconduct.** The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the District.

ARTICLE 17

ACCOUNTING RECORDS OF ARCHITECT

Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times.

ARTICLE 18

INDEMNITY

18.1 Architect Indemnification

The Architect shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees against claims to the extent caused by the negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Master Agreement. For purposes of this Article 18.1 only, "claims" means any and all claims, demands, actions and suits brought by third parties for any and all losses, liabilities, costs, expenses, damages and obligations, and the defense obligation shall include but not be limited to payment of the District's attorneys' fees, experts' fees, and litigation costs incurred in defense of a claim.

18.2 District Indemnification for Use of Third Party Materials

The District shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Architect's completion, use or re-use of that former design professional's designs or contract documents in performing this Master Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that the Architect utilize the designs or contract documents in question. By providing this or any other indemnification in this Master Agreement, District does not waive any immunities.

ARTICLE 19

TIME SCHEDULE

19.1 Time for Completion

Time is of the essence of this Master Agreement. The Architect shall timely complete its Basic and Additional Services as expeditiously as possible and according to the schedule approved by the District.

19.2 Delays

The District recognizes that circumstances may occur beyond the control of either the District or the Architect and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Architect is delayed in the Architect's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Architect. District shall not be liable for damages to the Architect on account of any such delay.

ARTICLE 20

MISCELLANEOUS PROVISIONS

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

20.2 The Architect shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Master Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District	Architect
Sacramento City Unified School District 5735 47 th Avenue Sacramento CA 95824 Attn: Kimberly Teague, Contracts	Lionakis Architects 1919 Nineteenth St. Sacramento, CA 95811 Attn: Laura Knauss, Principal

20.4 This Master Agreement shall inure to the benefit of and shall be binding upon the Architect and the District and their respective successors and assigns.

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

20.6 The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20.7 Nothing contained in this Master Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Architect.

20.8 This Master Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Master Agreement. The Architect, by the execution of this Master Agreement, acknowledges that the Architect has read this Master Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's professional materials. The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary.

20.10 Prior to executing this agreement, the Architect shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first written above.

DISTRICT

ARCHITECT

By: _____
Gerardo Castillo
Interim Chief Business Officer

By: _____
Laura Knauss, Principal

Date

Date



PROJECT AUTHORIZATION FORM

Kit Carson Middle School Renovation

Date: January 15, 2015

Pursuant to the Master Architect Agreement dated January 15, 2015 between Lionakis Architects and Sacramento City Unified School District, Architect hereby submits a scope of work upon the terms described below and in the Master Architect Agreement.

TERMS

A. Project Description

“Project” shall mean the work of improvement and the construction thereof, including the Architect's services as defined in the programming phase to meet the District budget of \$2.8 million, and may include:

New Construction: Portable replacement, providing permanent teaching stations to replace existing portable buildings as budget allows (approximately four-five). Site development includes path of travel; utility adjustments and potential outdoor learning areas.

OR:

Renovation:

Building F: Reclaim 4,820 SF Vocational Lab and Art Classroom for Administrative Space/Campus Entry. Provide minor renovation (as required) for balance of Building F.

Building B: Renovate 3,311 SF of Science Labs into lab space suitable for high school science program. Provide minor renovation (as required) for balance of Building B.

Building G: Provide access to student restrooms from Quad space; minor renovation of restrooms as required, including removal of showers, relocation of lockers, etc. Paint existing gymnasium.

Outdoor Space: Create Outdoor Learning Space north of Building B. Create entry plaza, staff dining, student safety/security fencing west of Building F. Define path of travel from city bus stop to new campus entry. Remove Portable Building P1; create connection to outdoor play areas.

B. Compensation

For the Basic Services provided pursuant to the Master Agreement and this Project Authorization, Architect shall be compensated in the manner identified below:

Flat Fee

Architect shall be compensated Three Hundred, Thirty Six Thousand Dollars (\$336,000) for the Basic Services under this Master Agreement. Architect acknowledges that the flat fee price for the Basic Services includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

C. Reimbursable Expenses

Pursuant to Section 4.3, Architect's total reimbursement for Reimbursable Expenses shall not exceed \$7,500, which is Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project.

D. Asbestos

The language identified in Section 5.7.15 is is not applicable to this Project.

E. Section 8.2

Consistent with Section 8.2, the following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "occurrence" basis, with specific limits set forth: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than \$1,000,000 general aggregate; Personal and advertising injury aggregate, with a per occurrence limit of \$1,000,000; Automobile liability insurance covering motor vehicles shall be in an amount not less than \$1,000,000 combined single limit.

District hereby authorizes Architect to proceed with the work upon the terms described herein and in Master Agreement.

LIONAKIS ARCHITECTS

Dated: _____

Laura Knauss, Principal

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Dated: _____

Gerardo Castillo, CPA
Interim Chief Business Officer

Attachment One to Project Authorization**PRELIMINARY PROJECT SCHEDULE**

Contract Approval	January, 2015
Conceptual Design/Programming	February 15, 2015 – April 1, 2015
Design Phase/Construction Docs	April 15, 2015 – August 1, 2015
DSA Submittal/Review/Approval	August 1, 2015 – February 1, 2016
Bid / Award	February 15, 2016 – April 1, 2016
Construction	April 15, 2016 – TBD (based on scope)



SERVICES AGREEMENT

Date: January 23, 2015 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Hancock Park & DeLong, Inc. (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Consultant services to assist District in seeking reimbursement or to obtain grants from the State Allocation Board through the Emergency Repair Program (ERP). Receiving funds for emergency repairs at various school sites will provide reimbursements for work previously funded by the District and/or will provide funding for future repairs needed to assure that sites are safe and healthy for students and staff. Services include:

1. Prepare application packages to be submitted to the Office of Public School Construction (OPSC) for State Allocation Board (SAB) funding, including gathering, coordinating, and presenting all District-provided back-up information in support of the applications;
2. Provide technical assistance;

-
3. Coordinate with the District's assigned Architect/Engineer to assist in the development of cost estimates that support the District's request for ERP grant funding;
 4. Organize and participate in meetings with OPSC representatives as necessary;
 5. Assist District in making a case to OPSC that repairs were necessary or will be necessary for the health and safety of its students and staff;
 6. Monitor the ERP application requests through OPSC and SAB;
 7. Monitor ERP fund releases;
 8. Assist District throughout the process to ensure compliance with final audit requirements; and
 9. Assist District with retaining appropriate documentation for the close out (audit) of the projects.

ARTICLE 2. TERM.

This Agreement shall commence on January 1, 2015, and continue through December 31, 2016 unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Fee Rate: 2% of the construction cost of the repair/replacement (excluding soft costs) of each ERP application approved and funded by the SAB. District shall not pay travel and other expenses. Total fee shall not exceed One Hundred Eighteen Thousand, Three Hundred Twenty One and 19/100 Dollars (\$118,321.19)

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Jim Dobson, Director of Facilities Management & Operations, Sacramento City Unified School District, 425 1st Avenue, Sacramento, California 95818.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more

than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in limited contact with pupils. Contractor is required to comply with the conditions listed in Exhibit A, Contractor's Certification of Compliance. If the Contractor is unwilling to comply with these requirements, the Contractor's employees may not enter any school site until the Contractor provides the certification of fingerprinting clearance by the DOJ for employees providing services. These requirements apply to self-employed contractors.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a certificate of insurance reflecting its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence naming District as an additional insured. Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory. If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.



Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870
Attn: Kimberly Teague, Contracts

Contractor:
Hancock Park & Delong, Inc.
1451 River Park Dr, Ste 285
Sacramento, CA 95815
Attn: Bruce Hancock

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in

connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 17. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 18. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 19. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.



Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

HANCOCK PARK & DELONG

By: _____

Gerardo Castillo, CPA
Interim Chief Business Officer

Date

By:

Signature

Print Name/Title

Date



EXHIBIT A

CONTRACTOR CERTIFICATION of COMPLIANCE

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that employees who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice (DOJ) must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Contractor cannot adhere to the conditions stated above, the Contractor shall immediately so inform the District and shall assign only employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title



**MASTER CONTRACT AGREEMENT BETWEEN
SACRAMENTO UNIFIED SCHOOL DISTRICT
AND
SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDER**

SES Master Contracts SA15-00366;
SA15-00375; SA15-00379; SA15-
00385; and SA15-00343 are
identical in language. Only vendor
and dollar amounts are different.

**I.
AUTHORIZATION AND GENERAL PROVISIONS**

A. MASTER CONTRACT

This Master Contract ("Master Contract" or "Contract") is entered into this (DATE) 9/5/2014 between the Sacramento Unified School District (hereinafter referred to as "SCUSD" or the "District") and Elevate Learning (hereinafter referred to as "CONTRACTOR") for the purpose of providing Supplemental Educational Services (hereinafter referred to as "SES" or "Supplemental Educational Services" and defined in Section (I)(F)(1)) to all eligible SCUSD students whose parent selects CONTRACTOR under the No Child Left Behind (hereinafter referred to as "NCLB") Act. It is understood that this Master Contract does not commit SCUSD to pay for SES provided to any SCUSD student, or CONTRACTOR to provide such Supplemental Educational Services, unless and until an authorized representative of SCUSD's State and Federal Programs Department approves the provision of Supplemental Educational Services by CONTRACTOR.

Upon acceptance of a SCUSD student, CONTRACTOR shall submit to SCUSD in the CAYEN Management System, a completed Student Learning Plan (hereinafter referred to as "SLP") as specified by the State and Federal Programs Department for each SCUSD student served by CONTRACTOR. The original signature page with the parent signature must be submitted by mail or in person to the SCUSD State and Federal Program office (address on page 4). Unless otherwise agreed in writing, this form shall acknowledge CONTRACTOR'S agreement to provide all services specified in the student's SLP.

SCUSD and CONTRACTOR shall also enter into an Individual Services Agreement (hereinafter referred to as "ISA"), attached hereto as Attachment 1, and made a part hereof, that generally describes CONTRACTOR'S program.

B. CERTIFICATION/APPROVAL

CONTRACTOR shall be certified or otherwise approved by the California Department of Education (hereinafter referred to as "CDE") as an SES provider. A copy of CONTRACTOR'S current approved SES Request for Application (RFA) must be provided to SCUSD on or before September 8, 2014, the date determined by the District's State and Federal Programs Department. This Master Contract shall be null and void if such certification or approval expires, or is revoked, rescinded, or otherwise nullified during the Term of this Master Contract.

C. COMPLIANCE WITH LAWS, STATUTES, REGULATIONS

During the Term of this Master Contract unless otherwise agreed. CONTRACTOR shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules, policies, and regulations, as well as SCUSD policies and procedures. No modifications can be made to this document by the CONTRACTOR.

D. TERMS OF MASTER CONTRACT

The Term of this Master Contract shall begin upon the approval of the Sacramento City Unified School District Board of Education and end on May 29, 2015. ("Term").

E. INTEGRATION

This Master Contract and all attachments and amendments thereto including the ISA, attached hereto as Attachment 1, each SLP, and the District's policies and procedures constitute the agreement between SCUSD and CONTRACTOR. This Master Contract supersedes any prior or contemporaneous written or oral understanding or agreement. This Master Contract may be amended only by written amendment executed by both parties. Notwithstanding the foregoing sentence, SCUSD may modify or amend this Master Contract without CONTRACTOR'S consent to conform to federal and state laws and regulations.

F. DEFINITIONS

The following definitions shall apply for purposes of this Master Contract:

1. The term "**Supplemental Educational Services**," or "**SES**," means "additional academic instruction designed to increase the academic achievement of students in low-performing schools." These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the District and are aligned with the State of California academic content standards. Supplemental Educational Services must be provided outside of the regular school day, does not exclude the duty-free lunch or preparation time (refer to SCTA and SCUSD as described in contract sections: SCTA Contract, Article 5.3.1 and Article 5.6.1) Supplemental Educational Services must be high quality, research-based, and specifically designed to increase student academic achievement. [NCLB, Title I, Part A, Section (1116)(e)(12)(C)]
2. The term "**authorized SCUSD representative**" means an SCUSD SES State and Federal Programs Department administrator.
3. The term "**credential**" means a valid teaching credential or permit in single or multiple subjects, special education or student personnel services issued by, or under the jurisdiction of, the State Board of Education if issued prior to 1970 or the California Commission on Teacher Credentialing, which entitles the holder thereof to perform services for which certification qualifications are required as defined in Title 5 of the California Code of Regulations section 3001(j).
4. The term "**qualified**" means that a person has met federal and state certification, licensing, registration, or other comparable requirements (e.g., professional development, coursework completed, etc.) which apply to the area in which he or she is providing SES, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation.

5. The term “**license**” means a valid non-expired document issued by a licensing agency within the Department of Consumer Affairs or other state licensing office authorized to grant licenses and authorizing the bearer of the document to provide certain professional services or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national or state level which has standards established for the certificate that are equivalent to a license shall be deemed to be a license as defined in Title 5 of the California Code of Regulations section (3001)(r).
6. The term “**parent**” means the natural parent, adoptive parent, parent surrogate, legal guardian, or any other adult granted educational decision-making rights by the natural or adoptive parent, a court of competent jurisdiction, or pursuant to state law.
7. The term “**days**” means calendar days unless otherwise specified.
8. The phrase “**billable day**” means a service day meeting the requirements for payment under this Master Contract.
9. The phrase “**billable day of attendance**” shall have the meaning set forth in Section (III)(E) of this Master Contract.
10. The term “**incentive**” means any free services offered to parents or students in addition to those tutorial hours authorized by the State and Federal Programs Department. Incentives shall be limited to educational materials that support program delivery and shall not exceed \$50.00 per student per fiscal year. The limitation of the \$50.00 value shall not apply to computers or other technical equipment used as the primary instructional tool for the delivery of SES and given to a student after he/she completes the basic program. (As defined in Title 5 of the California Code of Regulations section 13075.9.)

II. ADMINISTRATION

A. NOTICES

All notices, demands, or other communications given under this Master Contract shall be in writing and shall be deemed to have been duly given as of the date delivered if made by email, personal delivery, or if mailed as of the second business day after mailing by United States mail, postage pre-paid, addressed to the parties whose signatures appear on this document, or to other such address or to such other person as any party hereto shall designate to the other for such purposes in the manner hereinabove set forth. Delivery of such notice, demand, or communication may be made to the below-described addresses, shall be deemed given as of the date(s) of such delivery as provided herein, and shall be served either by United States mail or personal delivery:

All notices provided for by this contract shall be in writing.

Notices emailed or mailed to SCUSD shall be addressed to:

Notices mailed to CONTRACTOR shall be addressed to:

DISTRICT: SCUSD	PROVIDER:
Lisa Hayes Director, State and Federal Programs Department	Name: Miriam Landaverde
Sacramento Unified School District	Company: Elevate Learning
5735 47 th Avenue Box 725	Address: P.O. Box 241647
Sacramento, CA 95824	City Los Angeles State CA Zip 90024
(916) 643-9051	Phone: 310-568-8365 Email: Info@elevatelearningusa.com
Attn: Director, State and Federal Programs Department ses@scusd.edu	Attn: Miriam Landaverde Manager, SES

B. MAINTENANCE OF RECORDS/CONFIDENTIALITY

1. CONTRACTOR will comply with all federal, state and local laws, rules and regulations regarding personally identifiable information concerning District students, employees and agents over which CONTRACTOR has control or to which CONTRACTOR has access, as well as any other student or District employee data provided or made available to CONTRACTOR in connection with this MASTER Contract (including, without limitation, all applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA) and the Children’s Internet Protection Act (CIPA)), and will observe all District security procedures related to the foregoing, as in effect from time to time, including (without limitation) those set forth in SCUSD Board Policies and Administrative Regulations 5125 “Student Records” and 5125.1 “Release of Directory Information.”

2. CONTRACTOR shall maintain all records as required by state and federal laws and regulations. Notwithstanding the foregoing sentence, CONTRACTOR shall maintain all records for at least five (5) years after the termination of this Master Contract. For purposes of this Master Contract, “records” shall include, but not be limited to: pupil records as defined by California Education Code sections 49061(b); registers and roll books of teachers and/or daily service providers; daily service logs and notes and other documents used to record the provision of services including SLPs; staff lists specifying

credentials held and documents evidencing other staff qualifications, social security numbers, dates of hire and termination; clearance certifications referenced in Section (IV)(A); staff time sheets; non-paid staff and volunteer sign-in sheets; transportation and other related services subcontracts; liability and workers' compensation insurance policies; SES agency certifications; statements of income and expenses; general journals; cash receipts and disbursement books; general ledgers and supporting documents; federal/state payroll quarterly reports (IRS Form 941/CA Form De3Dp); bank statements and canceled checks.

3. All information developed by CONTRACTOR under this Master Contract including without limitation all pupil records and the identity of SCUSD students being served by CONTRACTOR, are confidential. Except as provided in Sections (II)(B)(4) and (II)(B)(7), without prior written consent of an authorized District representative, CONTRACTOR shall neither divulge to, nor discuss with, any third party either the work and services provided hereunder, or any communication or information in connection with such services or work, except as required by law. Prior to any disclosure of such matters, whether as required by law or otherwise, CONTRACTOR shall inform District, in writing, of the nature and reasons for such disclosure. CONTRACTOR shall not use any communications or information obtained from District for any purpose other than the performance of this Master Contract, without District's written consent.
4. CONTRACTOR may disclose to any subcontractor, or other District-approved third parties, any information otherwise subject to Section (II)(B) that is reasonably required for the performance of the subcontractor's work. Prior to any such disclosure, CONTRACTOR shall obtain the subcontractor's written agreement to the requirements of Section (II)(B) and shall provide a copy of such agreement to District.
5. CONTRACTOR represents that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information which is related to this Master Contract or the services provided hereunder without prior written approval of District.
6. CONTRACTOR shall maintain SCUSD pupil records in a secure location to ensure confidentiality and prevent unauthorized access. CONTRACTOR shall maintain a current list of the names and positions of CONTRACTOR'S employees who have access to confidential records. CONTRACTOR shall maintain an access log for each SCUSD student's record that lists all persons, agencies, or organizations requesting or receiving information from the record. Such log shall be maintained as required by California Education Code section 49064 and include the name, title, agency/organization affiliation, and date/time of access for each individual requesting or receiving information from the SCUSD student's record.
 - a. Such log may not record access to the SCUSD student's records by: the SCUSD student's parent; an individual to whom written consent has been executed by the SCUSD student's parent; and employees of SCUSD or CONTRACTOR having a legitimate educational interest in requesting or receiving information from the pupil

record. For purposes of this agreement, "employees of SCUSD or CONTRACTOR" do not include subcontractors.

7. CONTRACTOR shall grant access to pupil records, and comply with all requests for copies of pupil records, as required by state and federal laws and regulations.
8. CONTRACTOR'S obligation of confidence under this Section (II)(B) shall survive cancellation, termination, or expiration of this Master Contract.

C. SEVERABILITY CLAUSE

If any provision of this Master Contract is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Master Contract shall be severable and remain in effect.

D. SUCCESSORS IN INTEREST

This Master Contract binds CONTRACTOR'S successors and assignees. CONTRACTOR may not assign nor transfer any duties under this Master Contract without the prior written consent of District.

E. VENUE AND GOVERNING LAW

The laws of the State of California shall govern the terms and conditions of this Master Contract with venue in Sacramento County, California.

F. TERMINATION FOR CONVENIENCE

1. Notwithstanding any other provision of this Master Contract, SCUSD may, by written notice to the CONTRACTOR, terminate this Master Contract in whole or in part at any time, for SCUSD's convenience with thirty (30) days written notice to CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall:
 - a. Immediately discontinue all services under this Master Contract (unless the notice directs otherwise); and
 - b. Deliver to SCUSD all information and material as may have been involved in the provision of services whether provided by SCUSD or generated by the CONTRACTOR in the performance of this Master Contract, whether completed or in process (unless otherwise directed by SCUSD). Such notice shall be deemed to have been served as of the date delivered if made by personal delivery, or if mailed, as of the date of mailing by United States mail, postage pre-paid.
2. If the termination is for the convenience of District, CONTRACTOR shall submit a final invoice within thirty (30) days of termination, and SCUSD shall pay the CONTRACTOR the sums earned for the services actually performed prior to the effective date of termination and other costs reasonably incurred by CONTRACTOR to implement the termination in accordance with the provisions of this Master Contract.

3. The CONTRACTOR shall not be entitled to anticipatory, lost profits, or consequential damages as a result of any termination under this section. Payment to CONTRACTOR in accordance with this section shall constitute CONTRACTOR'S exclusive remedy for any termination hereunder.

G. TERMINATION FOR DEFAULT

1. SCUSD may, by written notice to the CONTRACTOR, terminate this Master Contract in whole or in part at any time because of the failure of CONTRACTOR to fulfill its contractual obligations and District may, in its sole discretion, provide CONTRACTOR with a 10 day period within which to cure the default. Upon receipt of such notice, the CONTRACTOR shall:
 - a. Immediately discontinue all services under this Master Contract (unless otherwise directed by SCUSD); and
 - b. Deliver to SCUSD all information and material as may have been involved in the provision of services whether provided by SCUSD or generated by CONTRACTOR in the performance of this Master Contract, whether completed or in process (unless otherwise directed by SCUSD). Termination of this Master Contract shall be as of the date of service to CONTRACTOR of such notice. Such notice shall be deemed to have served as of the date delivered if made by personal delivery, or if mailed, as of the second business day after mailing by United States mail, postage pre-paid.
2. If the termination is due to the failure of CONTRACTOR to fulfill its contractual obligations, SCUSD may assume responsibility for the delivery of Supplemental Educational Services, and complete the services by contract or otherwise. CONTRACTOR shall be liable for the reasonable costs and expenses related to the transfer of SCUSD students to another SES provider. The expense of completing the Supplemental Educational Services, or any other costs or damages otherwise resulting from the failure of the CONTRACTOR to fulfill its obligations, will be charged to the CONTRACTOR and will be deducted by the District out of such payments as may be due or may at any time thereafter become due to the CONTRACTOR. If such costs and expenses are in excess of the sum which otherwise would have been payable to the CONTRACTOR, then the CONTRACTOR shall promptly pay the amount of such excess to the SCUSD upon notice of the excess so due.
3. If, after the notice of termination for failure to fulfill contract obligations, it is determined that CONTRACTOR has not so failed, the termination shall be deemed to have been effected for the convenience of SCUSD. In such event, adjustment shall be made as provided in Section (II)(F), Termination for Convenience.
4. CONTRACTOR shall not be entitled to anticipatory, lost profits, or consequential damages as a result of any termination under this section. Payment to CONTRACTOR in accordance with this section shall constitute CONTRACTOR'S exclusive remedy for any termination hereunder. The rights and remedies of SCUSD provided in this section are in addition to any other rights and remedies provided by law or under this Master Contract.

5. If, the CONTRACTOR is terminated by the California Department of Education (CDE) due to non-compliance, it is the responsibility of the CONTRACTOR to notify the District in writing. Any services rendered to the students will not be paid by the district as of the notification date of termination by CDE.

H. TERMINATION FOR CHANGE OF CONTROL

In the event that CONTRACTOR undergoes a change in control where voting or other control of CONTRACTOR is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of CONTRACTOR'S assets are acquired, by any entity (other than an affiliate of CONTRACTOR) to form a new entity, then, at any time SCUSD may terminate this Master Contract by (a) giving CONTRACTOR thirty (30) calendar days' prior written notice and (b) designating a date upon which the termination(s) will be effective.

I. TERMINATION FOR INSOLVENCY

SCUSD may terminate this Master Contract in its entirety if CONTRACTOR (a) becomes insolvent or is unable to meet its debts as they mature, (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors, (c) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy, arrangement or reorganization, (d) is adjudicated a bankrupt or makes an assignment for the benefit of its creditors generally, (e) applies for, consents to or acquiesces in the appointment of any receiver or trustee for all or a substantial part its property, or (f) any such receiver or trustee is appointed and not discharged within thirty (30) calendar days after the date of such appointment, or (g) files or petitions voluntary or involuntary dissolution.

J. INSURANCE

CONTRACTOR shall, at its sole cost and expense, maintain in full force and effect, during the term of this Master Contract, the following insurance coverage from a California licensed insurer with an A minus (A-), VII, or better rating from A.M. Best, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorneys' fees) arising out of or in connection with CONTRACTOR'S fulfillment of any of its obligations under this Master Contract:

1. Commercial Form General Liability Insurance, including both bodily injury and property damage, with limits as follows:
 - a. \$1,000,000 per occurrence. Any policy with an aggregate limit shall have a \$1,000,000 aggregate dedicated to this contract or \$3,000,000 general aggregate limits. If CONTRACTOR provides services solely over the Internet or some other means that does not require physical contact between CONTRACTOR'S employees, agents, or subcontractors and SCUSD students, CONTRACTOR shall maintain at least \$1,000,000 per occurrence and \$1,000,000 general aggregate for all damages arising from each accident or occurrence.
 - b. \$100,000 fire damage

- c. \$5,000 medical expenses
 - d. \$1,000,000 personal and advertising injury
 - e. \$1,000,000/occurrence products/completed operation. Any policy with an aggregate limit shall have a \$1,000,000 aggregate dedicated to this contract or \$3,000,000 general aggregate limits.
2. Business Auto Liability Insurance for owned scheduled, non-owned or hired automobiles with a combined single limit of no less than \$1,000,000 per occurrence (required only if CONTRACTOR and/or its employees have physical contact with SCUSD students or visit District sites).
3. Workers' Compensation and Employers' Liability Insurance in a form and amount covering CONTRACTOR'S full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws.
- a. Part A – Statutory Limits
 - b. Part B - \$1,000,000/\$1,000,000/\$1,000,000 Employers' Liability
4. Errors and Omissions (Professional Liability) coverage, \$1,000,000 per occurrence/\$1,000,000 aggregate
5. Not later than the date CONTRACTOR signs this Master Contract, and periodically thereafter upon request, CONTRACTOR shall furnish SCUSD with certificates of insurance and endorsements evidencing coverage specified in Sections (II)(J)(1) through (II)(J)(4) above. Satisfactory evidence of insurance shall be equivalent to the standard insurance company Certificate of Liability Insurance form ACORD 25-S. The certificate of insurance shall include a thirty (30) day non-renewal notice provision. The policies of insurance providing the coverages referred to in Sections (II)(J)(1) and (II)(J)(2) shall name SCUSD and the SCUSD Board of Education as additional insured with respect to any potential tort liability, irrespective of whether such potential liability might be predicated on theories of negligence, strict liability or products liability. Premiums on all insurance policies shall be paid by CONTRACTOR and shall be deemed included in CONTRACTOR'S obligations under this contract. Failure to maintain the insurance coverage specified in Section (II)(J)(1) through Section (II)(J)(4) above shall be cause for termination of this Master Contract.
6. If CONTRACTOR is self-insured, CONTRACTOR shall submit to SCUSD a description of the self-insurance plan and excess insurance coverages, evidence that the plan is adequately funded to provide:
- a. At least \$1,000,000 per occurrence and \$3,000,000 general aggregate (or if CONTRACTOR provides services solely over the Internet or some other means that does not require face to face contact between CONTRACTOR'S employees, agents, or subcontractors and SCUSD students, CONTRACTOR shall have at

least \$1,000,000 per occurrence and general aggregate for all damages arising from each accident or occurrence) general liability and,

- b. \$1,000,000 per occurrence and \$1,000,000 general aggregate professional liability coverage for all damages arising from each accident or occurrence.
 - c. A statement by CONTRACTOR's Plan Administrator that written notice of discontinuance or material change in coverage or provision of the plan will be sent to SCUSD at least thirty (30) days before such discontinuance or material change.
 - d. Any deductibles or self-insured retentions shall be declared in writing to SCUSD. SCUSD approval is required for any amounts over \$25,000.
 - e. Upon approval in writing by SCUSD, this self-insurance will satisfy the liability insurance requirement of this Section (II)(J) of this Master Contract.
7. For the provision of transportation services by CONTRACTOR, subject to the written consent of SCUSD and as specified in the ISA, CONTRACTOR shall keep in effect a liability insurance policy providing at least \$5,000,000 per occurrence and \$5,000,000 in aggregate coverage. CONTRACTOR shall ensure that CONTRACTOR'S insurance provider submits written notice of cancellation to SCUSD at least thirty (30) days prior to cancellation or material change in coverage or terms of policy. CONTRACTOR shall provide proof of insurance to SCUSD before the start of transportation services and upon renewal of coverage thereafter. Certificates of insurance are acceptable proof of insurance.
8. In the event that CONTRACTOR enters into subcontracts for the provision of transportation services, the insurance requirements with respect to such subcontractor are set forth in Section (II)(M) of this Master Contract.
9. If SCUSD determines that change in insurance coverage obligations under Section (II)(J) is necessary, SCUSD may reopen negotiations to modify the insurance requirements.

K. INDEMNIFICATION AND HOLD HARMLESS

The CONTRACTOR shall defend, hold harmless and indemnify the SCUSD, its Board Members, administrators, employees, agents, attorneys, volunteers, and subcontractors (collectively, SCUSD Indemnitees) against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this Master Contract or its performance, to the extent that such loss, expense, damage or liability was proximately caused by an act or omission of CONTRACTOR, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it (excluding SCUSD and SCUSD Indemnitees) and from every claim or demand which may be made by reason of:

- 1. Any injury to person or property sustained by the CONTRACTOR or by any person, firm, or corporation, employed directly or indirectly by them upon or in connection with his performance under the Master Contract, however caused, unless such injury is caused by the negligence or willful misconduct of the District.

2. Any injury to person or property sustained by any person firm or corporation, caused by any act, neglect, default, or omission of the CONTRACTOR or of any person, firm, or corporation, indirectly employed by them upon or in connection with his performance under the Master Contract.
3. Any liability that may arise from the CONTRACTOR or any of its employees, agents or subcontractors furnishing or use of any copyrighted composition, or patented invention, under this Master Contract.

L. INDEPENDENT CONTRACTOR

1. CONTRACTOR shall provide all services under this Master Contract as an independent CONTRACTOR, and neither party shall have the authority to bind or make any commitment on behalf of the other. Nothing herein contained will be construed to imply a joint venture, partnership or principal-agent relationship between SCUSD and CONTRACTOR. CONTRACTOR shall provide all services under this Master Contract as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. Nothing contained in this Master Contract shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the parties or any affiliates of the parties, or between SCUSD and any individual assigned by CONTRACTOR, upon the prior written consent of SCUSD, to perform any services for SCUSD. If SCUSD is held to be a partner, joint venturer, co-principal, employer or co-employer of CONTRACTOR, CONTRACTOR shall defend, indemnify and hold harmless SCUSD from and against any and all claims for loss, liability, or damages arising from that holding, as well as any expenses, costs, taxes, penalties and interest charges incurred by SCUSD as a result of that holding.
2. If the CONTRACTOR employs SCUSD employees, CONTRACTOR must ensure that these staff members understand they are working as contractors of CONTRACTOR and must look solely to the CONTRACTOR for background clearance, wages and benefits, if any. If the CONTRACTOR employs SCUSD employees, CONTRACTOR must notify its employees that the CONTRACTOR has the responsibility to receive and process complaints regarding their employment relationships with the CONTRACTOR. The CONTRACTOR must notify the SCUSD employees to review the District Employee Rights Handbook to avoid any conflict of interests. The CONTRACTOR must ensure that SCUSD employees' hours of employment with the CONTRACTOR must be beyond SCUSD contractual hours.

M. SUBCONTRACTING

1. CONTRACTOR shall provide written notification to SCUSD before subcontracting for SES pursuant to this Master Contract. CONTRACTOR shall subcontract only with SES providers that have received state certification or approval or independent contractors paid under IRS 1099 rules and only after receiving SCUSD's prior written consent. CONTRACTOR shall incorporate all of the provisions of this Master Contract in all

subcontracts, to the fullest extent reasonably possible. Furthermore, when CONTRACTOR enters into subcontracts for the provision of SES for SCUSD students, CONTRACTOR shall ensure that such subcontract shall require the subcontractor to keep in effect appropriate policies of liability insurance including, but not limited to, general liability, professional liability, and automobile liability policies acceptable to SCUSD with the limits specified in Section (II)(J). CONTRACTOR shall ensure that such subcontract shall require the subcontractor's insurance provider to submit written notice of cancellation to SCUSD at least thirty (30) days prior to cancellation or material change in coverage or terms of policy.

2. If CONTRACTOR hires independent contractors paid under IRS 1099 rules to perform services under this Master Contract, CONTRACTOR must demonstrate compliance with the insurance requirements of Section (II)(J) with respect to each such independent contractor by either:
 - a. Covering each such independent contractor under CONTRACTOR'S own insurance, as evidenced by submitting complete copies of all relevant insurance policies of CONTRACTOR; or
 - b. Submitting insurance certificates evidencing that each such independent contractor has its own insurance with coverage that complies with the insurance requirements of Section (II)(J).
3. If CONTRACTOR enters into subcontracts for the provision of transportation services, subject to the written consent of SCUSD and as specified in the ISA, CONTRACTOR shall ensure that such subcontract requires the subcontractor to keep in effect a liability insurance policy providing at least \$5,000,000 per occurrence and \$5,000,000 in aggregate coverage. CONTRACTOR shall ensure that such subcontract shall require the subCONTRACTOR'S insurance provider to submit written notice of cancellation to SCUSD at least thirty (30) days prior to cancellation or material change in coverage or terms of policy. CONTRACTOR shall ensure that such subcontract shall require the transportation subcontractor to provide proof of insurance to SCUSD before the start of transportation services and upon renewal of coverage thereafter. Certificates of insurance are acceptable proof of insurance. CONTRACTOR shall ensure that such subcontract shall require the transportation subcontractor to provide copies of its insurance policies upon request of SCUSD.
4. If CONTRACTOR hires independent contractors paid under IRS 1099 rules to perform services under this Master Contract, independent contractors shall adhere to MONITORING (expectations/rules/procedures) set forth in Section (II)(K) of this Master Contract.
5. Failure of the CONTRACTOR to require its subcontractor(s) to obtain and maintain the same minimum limits and coverages and to provide the required certificates, endorsements and policies as described in Section (II)(J) shall also constitute a material breach of, and may result in, termination of the Master Contract.

N. CONFLICTS OF INTEREST & CODE OF ETHICS

1. CONTRACTOR shall provide to SCUSD a copy of its current bylaws and a current list of its Board of Directors (or Trustees), if it is incorporated. CONTRACTOR and any member of its Board of Directors (or Trustees) shall avoid any relationship with SCUSD that constitutes or may constitute a conflict of interest.
2. CONTRACTOR represents that CONTRACTOR has no existing financial interest and will not acquire any such interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Master Contract and that no person having any such interest shall be subcontracted in connection with this agreement, or employed by CONTRACTOR. CONTRACTOR shall not conduct or solicit any non-District business while on District property or time.
3. CONTRACTOR will also take all necessary steps to avoid the appearance of a conflict of interest and shall have a duty to disclose to the District prior to entering into this agreement any and all circumstances existing at such time which pose a potential conflict of interest.
4. CONTRACTOR warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of District any cash or non-cash gratuity or payment with view toward securing any business from District or influencing such person with respect to the conditions, or performance of any contracts with or orders from District, including without limitation this Master Contract. Any breach of this warranty shall be a material breach of each and every contract between District and CONTRACTOR.
5. Should a conflict of interest issue arise, CONTRACTOR agrees to fully cooperate in any inquiry and to provide the District with all documents or other information reasonably necessary to enable the District to determine whether or not a conflict of interest existed or exists.
6. CONTRACTOR shall comply with the Code of Ethics described in Attachment 6. Failure to comply with the provision of this section or Attachment 6 shall constitute grounds for immediate termination of this agreement, in addition to whatever other remedies the District may have.

O. NON-DISCRIMINATION

CONTRACTOR shall not unlawfully discriminate in the performance of any activities pursuant to this Master Contract on the basis of race, creed, color, national origin, religion, sex, sexual orientation, handicap, age, veteran's status, medical condition, physical or mental disability, marital status or citizenship, or any other characteristic protected by law.

P. COMPLAINT PROCEDURES

CONTRACTOR shall maintain and adhere to its own written procedures for responding to parent complaints. These procedures shall include annually notifying and providing parents of SCUSD students with appropriate information including complaint forms. Parents may use the Uniform Complaint Procedures found on the SCUSD website to file a complaint.

III. EDUCATIONAL PROGRAM

A. APPROPRIATE EDUCATIONAL SERVICES

All instruction provided by CONTRACTOR shall be secular, neutral, and non-ideological. Unless otherwise agreed between CONTRACTOR and SCUSD, CONTRACTOR shall be responsible for the provision of all appropriate supplies, equipment, assessments, and/or facilities for SCUSD students, as specified in the SCUSD student's SLP and the ISA. CONTRACTOR shall make no charge of any kind to parents for SES as specified in the SCUSD student's SLP (including, but not limited to, screenings, SCUSD-designated and other assessments, or interviews that occur prior to or as a condition of the SCUSD student's enrollment under the terms of this Master Contract).

B. STUDENT LEARNING PLAN (SLP)

1. CONTRACTOR shall develop an SLP for each SCUSD student to whom CONTRACTOR is to provide SES services **within 4 weeks of assignment of student**. Failure to complete the SLP with this period may result in a change of student assignment. An SLP shall only be prepared for SCUSD students enrolled in CONTRACTOR'S program with the approval of the State and Federal Programs Department and submitted through the Cayen SES Management Program. A completed and word-processed SLP must be submitted and approved by SCUSD for each student **before** tutoring can begin for that student. The SLP form developed by SCUSD may not be altered, revised or substituted.
2. Any and all changes to an SCUSD student's educational program shall be made solely on the basis of a revision to the SCUSD student's SLP. At any time during the Term of this Master Contract, an SCUSD student's parent or SCUSD may request a review of an SCUSD student's SLP.

C. GENERAL PROGRAM OF INSTRUCTION

CONTRACTOR'S general program of instruction shall be described in writing within the ISA and approved by SCUSD and shall be a part of this Master Contract. CONTRACTOR'S general program of instruction shall be consistent with SCUSD and State of California standards, as well as the description of SES for which CONTRACTOR obtained CDE approval.

D. INSTRUCTIONAL MINUTES

The total number of instructional minutes per day provided by CONTRACTOR shall be specified on the ISA and on each SCUSD student's SLP, Progress/Attendance Report and all instruction shall be provided outside of the normal school day.

E. BILLABLE DAYS OF ATTENDANCE

CONTRACTOR shall provide services as specified in the ISA and the SCUSD student's SLP. CONTRACTOR shall bill only for services provided on billable days of attendance as included in the ISA and the SCUSD student's SLP. **The first bill for services provided must be received by SCUSD, no later than January 30, 2015 and the last bill must be submitted to SCUSD by June 30, 2015.**

F. SCUSD STUDENT PROGRESS/ATTENDANCE REPORTS AND ASSESSMENTS

1. CONTRACTOR shall provide to parents, school and the State and Federal Programs Department written progress/attendance reports pursuant to the requirements specified by the State and Federal Programs Department and as described on the ISA. A copy of the progress/attendance reports shall be maintained at the CONTRACTOR'S place of business and made available upon request of SCUSD and/or the SCUSD student's parent.
2. CONTRACTOR shall administer pre-test assessments at the beginning of service to each SCUSD student and administer post-test assessments to each SCUSD student before the end of the term of the relevant student's SLP. CONTRACTOR shall not charge the SCUSD student's parent or SCUSD for the provision of progress/attendance reports, and/or any assessments including the pre/post-test assessments, any interviews, or meetings. CONTRACTOR shall be responsible for purchase of the assessment tools necessary to comply with the above. CONTRACTOR shall provide SCUSD with sample pre- and post-test assessments no later than the date that CONTRACTOR signs this Master Contract.

G. SCUSD STUDENT CHANGE OF ENROLLMENT

If an SCUSD student changes enrollment to a school outside of SCUSD's service boundaries or an SCUSD school whose students are not eligible for SES under the NCLB Act, SCUSD shall not be responsible for the costs of services delivered after the SCUSD student's change of enrollment.

H. WITHDRAWAL OR DISMISSAL OF SCUSD STUDENT FROM PROGRAM

CONTRACTOR shall immediately report to the State and Federal Programs Department when a parent of an SCUSD student has requested a withdrawal from services with stated reasons, or an SCUSD student is dismissed from services for nonuse, or lack of attendance for ten (10) consecutive billable days. CONTRACTOR must follow the policies and procedures described in Attachment 10 when unable to contact the parent/guardian to schedule an appointment. CONTRACTOR shall submit a written statement for all withdrawal or dismissal of SCUSD student from the program, in addition to the Attachment 11.

I. PARENT ACCESS

CONTRACTOR shall provide reasonable parental access to SCUSD students and all facilities including, but not limited to, the instructional setting, recreational activity areas, and meeting rooms. CONTRACTOR shall comply with any known court orders regarding parental visits and access to SCUSD students.

J. SERVICES AND SUPERVISION ON PUBLIC SCHOOL CAMPUSES

1. A CONTRACTOR that desires to use SCUSD facilities must submit a SES Facility Use Application to the State and Federal Programs Department. *All Facilities Use Permit requests will be reviewed by the State and Federal Programs Department before approval is granted. Upon approval of the Facilities Use Permit, monthly usage fees will need to be paid at the beginning of each month by the provider. Invoices will be sent to the providers from the Facility Use Department.*
2. If CONTRACTOR is permitted access to public school campuses, CONTRACTOR shall comply with Penal Code Section 627.1 *et. seq.*, and shall comply with all SCUSD procedures regarding visitors to school campuses specified by the SCUSD, as well as the procedures of the campus being visited.

K. SUPPLIES AND EQUIPMENT

CONTRACTOR shall be solely responsible for the provision of all appropriate supplies, equipment, assessments, and facilities for a pupil as required in his/her SLP.

L. MONITORING

1. CONTRACTOR shall allow access by SCUSD to its facilities for periodic monitoring of each SCUSD student's instructional program and shall invite SCUSD to participate in the review of each student's progress. SCUSD shall have access to observe each SCUSD student at work, observe the instructional setting, interview CONTRACTOR, and review each SCUSD student's records and progress. Such access may include unannounced monitoring visits. When making site visits, SCUSD shall initially report to CONTRACTOR'S site administrative office. CONTRACTORS who provide on-line Internet tutorial services, before services are provided under this Master Contract, shall provide to SCUSD all website addresses, passwords, and any other information necessary to permit SCUSD to access CONTRACTOR'S online services.
2. CONTRACTOR shall participate in person for an annual review process as deemed appropriate by SCUSD. This review will include, but is not limited to, programmatic aspects, compliance with relevant state and federal regulations, assessments of SCUSD students, SCUSD student achievement growth, and Master Contract compliance.
3. CONTRACTOR shall participate in any reviews, including without limitation, self reviews as required by law.
4. CONTRACTOR understands that SCUSD reserves the right to institute a program audit with or without cause. The program audit may include, but is not limited to, a review of

core compliance areas of attendance; health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance.

5. CONTRACTOR shall ensure that the on-the-job performance of all personnel is regularly monitored.

IV. PERSONNEL

A. CLEARANCE REQUIREMENTS

1. CONTRACTOR shall comply with the requirements of California Education Code sections 44237, 35021.1, and 35021.2, including, but not limited to: obtaining clearance from the California Department of Justice (hereinafter referred to as "CDOJ") and tuberculosis ("TB") clearance for CONTRACTOR'S employees, volunteers, and independent contractors prior to providing service to any SCUSD student, unless CONTRACTOR determines that the employees, volunteers, and independent contractors will not be onsite and thus unable to have contact with SCUSD students. Such CDOJ and FBI clearance shall include a determination that any such person has not been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237(h), unless despite such person's conviction of a violent or serious felony, he or she has met the criteria to be eligible for employment pursuant to California Education Code section 44237 (i) or (j). In addition, CONTRACTOR shall make a request for subsequent arrest service from the CDOJ as required by California Penal Code section 11105.2 with respect to each such person. CONTRACTOR shall certify in writing to SCUSD that CONTRACTOR has at all times complied with this section of the Master Contract. CONTRACTORS employing or staffing current SCUSD or other school district's employees must obtain clearance from the CDOJ verified with CONTRACTOR'S ORI (Originating Reporting Agency Identification) number.
2. CONTRACTORS with employees who are residents of other states in the United States shall comply with the above identified statutory requirements by obtaining criminal record histories for their employees through the employee's state of residence equivalent to the CDOJ including subsequent arrest information or by obtaining annual FBI criminal records histories for their employees.
3. If CONTRACTOR'S services, as specified in the ISA, are limited to online services, contact with SCUSD students shall also include electronic contact, and CONTRACTOR shall comply with the requirements for CDOJ and FBI clearance described in this section. In such cases, employees having electronic or telephone contact only with any SCUSD student shall not be required to obtain TB clearance.
4. Administrative staff for CONTRACTOR not in contact with students but having access to confidential student information shall comply with the requirements for CDOJ clearance described in this section. In such cases, employees only having access to any confidential SCUSD student information shall not be required to obtain TB clearance.

5. Obtaining clearance for tuberculosis (TB). CONTRACTOR shall certify in writing by completing Attachment 5 to this Master Contract, that CONTRACTOR'S employees and volunteers and subcontractors have received clearance for TB.
6. Representatives for CONTRACTOR attending the Provider Fair where students may be attending, shall comply with all of the clearance requirements described herein.
7. Clearance certifications shall be uploaded to the Provider Documents section in CAYEN for access by State and Federal Programs Department pursuant to its requirements.
8. The CONTRACTOR shall provide each tutor, site director, and any other employee(s) in contact with SCUSD students with an identification badge that exhibits the CONTRACTOR'S company name, employee name, and a picture of the employee.

B. STAFF QUALIFICATIONS

1. CONTRACTOR shall ensure that all individuals employed, contracted, and/or otherwise hired by CONTRACTOR to provide classroom, on-line, home, and/or individualized instruction or related services are qualified in the area in which the individuals are providing Supplemental Educational Services.
2. CONTRACTOR shall comply with all laws and regulations governing the licensed professions, including but not limited to, the provisions with respect to supervision. CONTRACTOR shall deliver designated instruction and services utilizing personnel who possess a license issued by an appropriate licensing agency authorizing the licensee to provide the specific service, or possess a credential authorizing the service, or are otherwise qualified and trained to provide the service.

C. VERIFICATION OF LICENSES, CREDENTIALS, AND OTHER DOCUMENTS

1. Before the start of service, CONTRACTOR shall enter into the CAYEN system for access by SCUSD, a staff list, and all current licenses, credentials, permits and/or other documents (e.g., proof of professional development or coursework completed, etc.) which entitle the holder to provide Supplemental Educational Services held by individuals employed, contracted, and/or otherwise hired or utilized by CONTRACTOR to provide Services under this Master Contract. CONTRACTOR shall ensure that all credentials are on file at the office of the County Superintendent of Schools. CONTRACTOR shall, in a manner specified by the State and Federal Programs Department, notify SCUSD each month with the submission of the invoices when personnel changes occur which may affect the provision of Supplemental Educational Services to SCUSD students.
2. CONTRACTOR shall monitor the status of licenses, credentials, permits and/or other documents for all individuals employed, contracted, and/or otherwise hired or utilized by CONTRACTOR to provide Services under this Master Contract. CONTRACTOR shall provide to SCUSD updated information regarding the status of licenses, credentials, permits and/or other documents each month during the Term of this Master Contract.

D. STAFF ABSENCES

1. If CONTRACTOR'S service provider is absent, CONTRACTOR shall provide a qualified substitute, as defined in Section (I)(F)(4) of this Master Contract and as determined by SCUSD. SCUSD will not pay for services unless a qualified substitute is provided and/or CONTRACTOR provides documentation evidencing the provision of "make-up" services by a qualified service provider.
2. The CONTRACTOR shall notify the student's parent regarding staff absences and provision of "make-up" services by a qualified service provider.
3. The CONTRACTOR shall notify its employees who are SCUSD employees that an absence from their regular duties for SCUSD work prohibits them from working for a CONTRACTOR on that same day of absence if the absence was for illness.

V. HEALTH AND SAFETY MANDATES

A. HEALTH AND SAFETY

CONTRACTOR shall comply with all applicable federal, state, and local laws, regulations, and ordinances, and SCUSD policies and procedures regarding student health and safety.

B. FACILITIES AND FACILITIES MODIFICATIONS

CONTRACTOR shall provide Supplemental Educational Services to SCUSD students in facilities that comply with all applicable federal, state, and local laws, regulations, and ordinances related, but not limited to: disability access; fire, health, sanitation, and building standards and safety; fire warning systems; zoning permits; and occupancy capacity. CONTRACTOR shall be responsible for any structural changes and/or modifications to CONTRACTOR'S facilities as required to comply with applicable federal, state, and local laws, regulations, and ordinances. CONTRACTOR may only provide SES at facilities or locations outlined in the ISA; any changes to such facilities or locations require the prior written consent of SCUSD's State and Federal Programs Department administrator. Use of SCUSD facilities require a submitted and approved Facilities Use Permit from the SCUSD Civic Permits office. Fees for facilities use may be required.

C. TRANSPORTATION

CONTRACTOR shall neither provide transportation nor subcontract for transportation services for SCUSD students unless SCUSD and CONTRACTOR agree otherwise in writing, as specified in the ISA. If agreed, in the event CONTRACTOR provides transportation services CONTRACTOR will keep in effect appropriate policies of liability insurance with the limits specified in Section (II)(J) or enters into a subcontract for the

provision of transportation services, such subcontract shall require the subcontractor to keep in effect appropriate policies of liability insurance with the limits specified in Section (II)(M).

D. ADMINISTRATION OF MEDICATION

CONTRACTOR shall comply with the requirements of California Education Code section 49423 when CONTRACTOR serves an SCUSD student that is required to take prescription and/or over-the-counter medication during the session. CONTRACTOR shall maintain a written log for each SCUSD student to whom medication is administered. Such written log shall specify the SCUSD student's name; the type of medication; the date, time, and amount of each administration; and the name of CONTRACTOR'S employee who administered the medication.

E. INCIDENT/ACCIDENT REPORTING

CONTRACTOR shall submit within 24 hours, by mail, any accident or incident report relating to SCUSD students to the State and Federal Programs Department. CONTRACTOR shall submit accident or incident reports pursuant to the procedures specified by the State and Federal Programs Department.

F. CHILD ABUSE REPORTING

CONTRACTOR must develop and maintain a written child abuse reporting procedure. CONTRACTOR hereby agrees that all staff members, including volunteers, are familiar with, and agree to adhere to child abuse reporting obligations and procedures as specified in California Penal Code section 11166. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be submitted to the State and Federal Programs Department.

G. REPORTING OF MISSING CHILDREN

CONTRACTOR assures SCUSD that all staff members, including volunteers, are familiar with, and agree to adhere to requirements for reporting missing children as specified in California Education Code section 49370. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be submitted to the State and Federal Programs Department. CONTRACTOR must develop and maintain a written missing children reporting procedure.

VI. DOCUMENTATION AND TRAINING

A. REQUIRED DOCUMENTS, FORMS, AND ATTACHMENTS

1. CONTRACTOR agrees to utilize the SES documents and forms developed by SCUSD and CAYEN systems without modifications, including but not limited to: obtaining the list of students whose parent/guardian(s) have selected CONTRACTOR as their SES provider; creating student activity rosters and sign-in/out sheets; tracking attendance; creating invoices for reimbursement of services; creating SLPs; recording pre- and post-assessments; reporting student progress; recording student notes; and requesting student

withdrawals. If any modifications are made to the SCUSD documents and forms, delays for invoice payments or termination by default may be applied.

2. CONTRACTOR shall provide its own computer(s) when necessary to complete the required SES documents and forms, as District will not provide computer(s) to CONTRACTOR.
3. Attachments 1 through 5 are hereby incorporated by reference and are deemed a part of this Master Contract:

Attachment 1 – Individual Services Agreement

Attachment 2 – Certification of Compliance with Enrollment Procedures

Attachment 3 – Certificate of Compliance with SES Provider Fair Procedures

Attachment 4 – Certification of Compliance with District Ethics and Professional Conduct Standards

Attachment 5 – Personnel Criminal Background, Tuberculosis Clearance, and Originating Reporting Agency Identifier (ORI) Code Statement

4. The following documents are included in the on-line CAYEN SES Management System and are deemed a part of the Master Contract:
 - Pre & Post Student Assessment Information and Data
 - Staff Information, Educational Background, Background Check
 - Student Learning Plan
 - Attendance Reports
 - Student Roster, Tutoring Schedule, Tutoring Location
 - Student Assessment & Progress Reports
 - Parent Contact Log
 - Invoices

B. TRAINING SESSIONS

CONTRACTOR shall attend any training sessions hosted by SCUSD on the date and at the time training is scheduled, at CONTRACTOR'S expense. Attendance is highly recommended at technical assistance sessions scheduled during the duration of the contact year, though optional.

VII. FINANCIAL

A. ENROLLMENT, CONTRACTING, ATTENDANCE REPORTING, AND BILLING PROCEDURES

1. CONTRACTOR shall comply with all procedures concerning enrollment, contracting, attendance reporting, and billing as specified by the State and Federal Programs Department.
 - a. CONTRACTOR and its representatives may distribute and collect SES enrollment forms only between October 10, 2014 and October 12, 2014. No part of the

enrollment form can be altered. All provider collected enrollment forms must be submitted to the State and Federal Office by 4:00pm, Monday, October 13, 2014.

- b. CONTRACTOR and its representatives shall not enter any SCUSD campus, SCUSD sponsored activity, or contact school employees for SES recruitment purposes at any time except when participating in a SCUSD hosted SES Provider Fair.
 - c. If CONTRACTOR is not able to commence services to students on its list within thirty (30) days of receiving their student list, then SCUSD may reassign students not being serviced to another provider.
2. CONTRACTOR shall maintain separate registers that describe the services provided for each SCUSD student. Original attendance forms (i.e., daily service logs and notes) shall be completed by the actual service provider whose signature shall appear on such forms and shall be available for review, inspection, or audit by SCUSD during the Term of this Master Contract and for a period of five (5) years thereafter. CONTRACTOR shall verify the accuracy of minutes of reported attendance that are the basis of services being billed for payment. CONTRACTOR must begin providing service to students according to the terms and as of the date specified in the ISA, and must provide at least 80% of their services to 90% of the enrolled students by May 8, 2015. CONTRACTOR must begin providing service to ALL students by the date that allows each student sufficient time to receive the total number of hours of service to be provided to each students as indicated in the SLP unless otherwise agreed to in writing between the CONTRACTOR and the SCUSD. **The first bill for services provided must be received by SCUSD, no later than January 30, 2015.** All services for the students by the CONTRACTOR shall end by May 15, 2015. Under, special circumstances, if there is a need to extend the service period beyond May 15, 2015, the CONTRACTOR shall submit a written request for extension of the service period to SCUSD, and upon written approval by SCUSD, the service may continue. All invoices shall be submitted to SCUSD by May 29, 2015. .
3. CONTRACTOR shall receive compensation only for sessions attended by qualified SCUSD students whose names have been provided to CONTRACTOR by the State and Federal Programs Department and for SES actually provided to SCUSD students. CONTRACTOR shall not receive compensation for SCUSD student absences. CONTRACTOR shall submit invoices and related documents to SCUSD for CAYEN systems for payment, **each calendar month** that education or related services were provided. Invoices and related documents shall be submitted on a form and in the manner prescribed by SCUSD in the State and Federal Programs Department. Invoices shall be submitted **no later than thirty (30) days** after the end of the attendance accounting period in which the services were rendered. Students withdrawn from a CONTRACTOR'S SES Program must have all attendance entered within **seven (7) days** and invoices submitted within thirty (30) days of the withdrawal approval date. SCUSD shall make payment to CONTRACTOR based on the number of billable days of attendance and hours of service at the rate specified on the ISA. Payment shall be made within **forty-five (45) days** after SCUSD receipt of an invoice prepared and submitted as specified by the State and Federal Programs Department. CONTRACTOR shall correct any discrepancy and

resubmit invoices no later than thirty (30) days after the invoice is returned by SCUSD. SCUSD shall pay properly resubmitted invoices no later than forty-five (45) days after the date a completely corrected invoice is received by SCUSD.

4. SCUSD is not obligated to pay for unsatisfactory services, provided that SCUSD shall give the CONTRACTOR at least 30 days written notice of its dissatisfaction and offer the CONTRACTOR the opportunity to improve. If the CONTRACTOR alters its service to SCUSD's satisfaction within that 30-day period, there will be no interruption in payment. SCUSD's SES Observation/Monitoring tool will be utilized to monitor implementation and progress of the services.

B. ASSIGNMENT/FINANCING

The CONTRACTOR shall not assign this Master Contract, or assign any of its rights hereunder, and shall not delegate any of its obligations hereunder, in whole or in part, without the prior written consent of the District, which may be granted or withheld in the District's sole and absolute discretion. Without limiting the generality of the foregoing, the CONTRACTOR shall not place any burden or lien, and shall not factor, or otherwise encumber any right to receive payment hereunder. Assignment of this Master Contract by operation of law or the merger or acquisition of CONTRACTOR shall be deemed to be an assignment requiring the consent of the District. Any assignment in contravention of this section shall be void and no assignment shall relieve the assignor of any obligations under this Master Contract.

C. RIGHT TO WITHHOLD PAYMENT

1. SCUSD may withhold payment to CONTRACTOR when:
 - a. CONTRACTOR has failed to perform, in whole or in part, any of the terms of this Master Contract, ISA, and/or SLP;
 - b. CONTRACTOR was overpaid by SCUSD as determined by inspection, review, and/or audit of CONTRACTOR'S program, work, and/or records;
 - c. Education and/or related services were provided to SCUSD students by personnel who are not appropriately identified to SCUSD as credentialed, licensed, or otherwise qualified;
 - d. SCUSD has not received prior to the end of the Master Contract Term, all documents concerning one or more SCUSD students enrolled in CONTRACTOR'S educational program; and/or
 - e. CONTRACTOR receives payment from another agency or funding source for a service provided to a SCUSD student.
2. If the basis for the withholding is section (VII)(C)(1)(d) above, SCUSD may only withhold the proportionate amount of the invoice related to that pupil for the time period after the violation occurred and until it is cured.

3. If the basis for the withholding is Section (VII)(C)(1)(a) and/or Section (VII)(C)(1)(b) above, SCUSD may only withhold the value of the service CONTRACTOR failed to perform or the amount of any overpayment.
4. If the basis for the withholding is Section (VII)(C)(1)(c) above, SCUSD may only withhold payment for services provided by the applicable individual.
5. If the basis for the withholding is Section (VII)(C)(1)(e) above, SCUSD may only withhold the amount paid to CONTRACTOR by the agency or funding source for the service provided to the SCUSD student.
6. If SCUSD determines that cause exists to withhold payment to CONTRACTOR, SCUSD shall, within fifteen (15) days of this determination, provide CONTRACTOR written notice that SCUSD is withholding payment. The notice shall describe the reasons for the withholding. Such notice shall specify the basis or bases for SCUSD's withholding payment and the amount to be withheld. Within thirty (30) days from the date of receipt of such notice, CONTRACTOR shall take all necessary and appropriate action to correct the discrepancy that form the basis for SCUSD's withholding payment or submit a written request for extension to correct the discrepancy. Upon receipt of CONTRACTOR'S written request showing good cause, SCUSD shall extend CONTRACTOR'S time to correct discrepancy (usually an additional thirty [30] days), otherwise payment will be denied.

D. PAYMENT FOR ABSENCES

1. STUDENT ABSENCE: SCUSD shall not be responsible for the payment of services when a student is absent.

E. INCENTIVES

1. CONTRACTOR shall not provide any up-front incentive valued at over \$2.00 per student to parents or students to encourage enrollment in CONTRACTOR'S program or to encourage any other student or parent to enroll in CONTRACTOR'S program. Acceptable items are pencils, pens, magnets, etc. In any marketing information or other explanation, either verbally or in writing, and in the delivery of services, CONTRACTOR may not offer to parents and/or students incentives valued at more than \$5.00 each or \$50.00 in the aggregate per student as achievement and/or attendance incentives once the student has enrolled in CONTRACTOR'S program.
2. CONTRACTOR'S policy as to how students earn achievement and/or attendance incentives and the specific incentives with their specific costs must be fully explained in the ISA.
4. CONTRACTOR may not offer any incentive/payment of any amount to any SCUSD personnel for assisting CONTRACTOR in the recruitment of parents and/or students to enroll in CONTRACTOR'S program.

F. BUDGET REDUCTIONS

In the event that during the Term of this Master Contract, the State of California Department of Education or the Board of Education of the District fails to appropriate sufficient funds to fund the Master Contract, reduces or terminates funding with respect to the relevant program, or otherwise directs budget cutbacks, District may either (a) terminate the Master Contract, without further liability to District, or (b) propose an amendment to the Contract for a reduced scope of Services and/or at a lower price, which may be retroactive to the beginning of the term hereof. Any such amendment shall require the mutual agreement of the parties. Further, if the Board of Education suspends payments to contractors due to budget cutbacks by the State of California, District shall have the option to suspend performance of the Master Contract and suspend payments to the CONTRACTOR until the State of California rescinds the suspension. In any event, the Contractor shall be paid in accordance with the Master Contract for Services performed through the date of termination, amendment (as more particularly set forth in the amendment) or suspension of payments. In no event shall the District be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits arising out of or in connection with any termination, amendment or suspension of payments pursuant to this Section.

G. INSPECTION AND AUDIT

1. CONTRACTOR shall maintain and SCUSD shall have the right to examine and audit all of the books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Master Contract.
2. CONTRACTOR shall provide access to all records including, but not limited to: pupil records as defined by California Education Code section 49061(b); registers and roll books of teachers; daily service logs and notes and other documents, including SLPs, used to record provision of services; staff lists specifying credentials held, business licenses held, documents evidencing other qualifications, social security numbers, clearance documentation specified in Section (IV)(A); dates of hire and termination; staff timesheets; non-paid staff and volunteer sign-in sheets; transportation and other related service subcontracts; tutoring schedules; liability and workers' compensation insurance policies; certifications; statements of income and expenses; general journals; cash receipts and disbursement books; general ledgers and supporting documents; federal/state payroll quarterly reports (Form 941/DE3DP); bank statements and canceled checks. Such access may include unannounced inspections by SCUSD. CONTRACTOR shall make available to SCUSD all budgetary information including operating budgets submitted by CONTRACTOR to SCUSD for the relevant contract period being audited.
3. CONTRACTOR shall make said evidence/documents available at SCUSD or CONTRACTOR'S office (to be specified by SCUSD) at all reasonable times and without charge. Said evidence/documents shall be provided to SCUSD within five (5) days of receipt of a written request from SCUSD. CONTRACTOR shall, at no cost to SCUSD, provide assistance in such examination or audit. SCUSD's rights under this section shall also include access to CONTRACTOR'S offices for purposes of interviewing CONTRACTOR'S employees. If any evidence/document is stored in electronic form, it

shall be provided in a format that is accessible and readable by current software utilized by SCUSD.

5. CONTRACTOR shall obtain from its subcontractors and suppliers written agreements to the requirements of this section and shall provide a copy of such agreements to SCUSD upon request.
6. If an inspection, review, or audit by SCUSD, a state agency, a federal agency, and/or an independent agency/firm determines that CONTRACTOR owes SCUSD monies as a result of CONTRACTOR'S over billing or failure to perform, in whole or in part, any of its obligations under this Master Contract, SCUSD shall provide CONTRACTOR written notice demanding payment from CONTRACTOR and specifying the basis or bases for such demand. Unless CONTRACTOR and SCUSD otherwise agree in writing, CONTRACTOR shall pay SCUSD the full amount owed. CONTRACTOR shall make such payment to SCUSD within thirty (30) days of receipt of written demand for payment.

**H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD
(34 C.F.R. 85)**

1. By signing this document, the CONTRACTOR certifies that it and its principals: and/or subcontractors
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - b. Have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in section (VII)(H)(2)(b) above; and
 - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

I. BOARD APPROVAL

The parties understand that this Agreement is subject to and contingent upon approval by SCUSD's Board of Education.

J. MODIFICATIONS AND AMENDMENTS

This Master Contract may be modified or amended only by a written document signed by authorized representatives of both parties. No change in this Master Contract or in the ISA shall result in SCUSD's financial obligation to CONTRACTOR in excess of the State/Federal reimbursement rate per student per year to the SCUSD.

K. NOTICES

Notices required under this Master Contract shall be valid when mailed first class postage or personally delivered to the following representatives, as indicated below:

For the LEA:

Sacramento City Unified School District
 5735 47th Avenue, Box 725
 Sacramento, CA 95824
 Attn: State and Federal Programs Department

For PROVIDER:

Name / Title: Miriam Landaverde/ Manager SES
 Address: P.O. Box 241647
 City/St./Zip: Los Angeles, CA 90024

CONTRACTOR	LEA
Elevate Learning Supplemental Educational Services Provider	Sacramento City Unified School District
By: <u>M Landaverde</u> Signature (Blue or Black Ink)	By: <u>G</u> Signature
Date: <u>9/5/14</u>	Date: <u>9/12/14</u>
<u>Miriam Landaverde, Manager SES</u> Print Name and Title of Authorized Representative	<u>Gerardo Castillo</u> Interim Chief Business Officer



Michael's Transportation Service

140 Yolano Dr. - Vallejo, CA 94589 - 707-643-2099 - Fax 707-643-1906

Agreement for Temporary Driver Services

This Agreement to Provide Temporary Staffing Services is entered into by and between Michael's Transportation Service, Inc. ("MTS") and Sacramento City Unified School District SCUSD each of which may also be referred to individually as a "Party," or collectively as the "Parties."

Whereas, MTS is a full service transportation provider, also offering Temporary Staffing services to employers in need of trained and licensed Class B CDL and/or Class B drivers with School Bus/SPAB certificates; and

Whereas, SCUSD is an employer of Class B CDL and/or School Bus/SPAB certified drivers, and periodically requires additional drivers to fill temporary employment openings; and

Whereas, MTS agrees to provide qualified candidates to SCUSD in order to fill their temporary job vacancies for Class B CDL or School Bus/SPAB certified Class B CDL drivers; and

Whereas, both parties agree that the relationship created by this MOU for the operation of SCUSD vehicles by the MTS temporary drivers is not a joint venture, and no joint venture has been entered into; and

This MOU shall commence upon signature of the assigned representatives of all parties. Either party may terminate this MOU upon thirty (30) days advance written notice. Either party may also terminate this MOU upon ten (10) days written notice for any material breach of this agreement, which is not cured within the ten-day notice period. The parties agree that the initial period of this MOU and its terms herein as set forth in this MOU will be January 1, 2015 - July 30, 2015; or as otherwise agreed to by the Parties in writing as stated above.

NOW, therefore, in consideration for the mutual promises and covenants set forth herein, and intending to be legally bound, the Parties hereto agree as follows:

MTS agrees to:

1. Have a minimum of 1 temporary driver(s) available for SCUSD provided 48 hour notice is provided. (See also paragraph 1 in SCUSD's section, below, in the event that 48 hours' notice is not provided and a temporary driver is available.)
2. Make additional temporary drivers available to SCUSD based upon availability,



Michael's Transportation Service

140 Yolano Dr. – Vallejo, CA 94589 – 707-643-2099 – Fax 707-643-1906

provided 48 hour notice is provided, or under the terms set forth at Paragraph 1, above and below.

3. Undertake all normal, usual and customary employer legal responsibilities for each temporary driver MTS provides to SCUSD. These employer responsibilities include, but are not limited to, all matters related to the payment of federal, state and local payroll taxes, workers' compensation insurance, employee compensation and fringe benefits for its employees. MTS agrees to compensate its employees in compliance with the local, state and federal laws, including but not limited to the provision of the minimum wage and/or overtime wages, as applicable. Under no circumstances shall SCUSD be considered the employer or agree to undertake the responsibilities of the employer.
4. Establish and maintain pre-employment drug testing, pull notice, and random drug testing, and TB testing records of temporary driver employee(s) during the period of employment each works with SCUSD. This information will be made readily available to SCUSD for purposes of adding the temporary driver(s) to SCUSD insurance policy(ies), or other purposes as deemed necessary to determine the acceptability of any temporary driver provided by MTS.
5. MTS shall ensure that its employees and volunteers working within Michael's Transportation Service are successfully screened for tuberculosis and fingerprinted and free of any convictions for violence, sex, or drug offenses prior to working for the Sacramento City Unified School District.
6. MTS agrees to adhere to the District's NON-Discrimination policy as stated herein: There shall be no discrimination against any pupil, employee, or contractor because of race, color, ancestry, national origin handicap, religious creed, sex, sexual orientation, age or marital status. MTS agrees to comply with all applicable state and federal laws in this regard.
7. MTS agrees to the Successors and Assigns policy as stated herein: All provisions of this MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, if any, successors, and assigns. MTS shall not assign any of their rights under this Agreement, or delegate the performance of any of their duties hereunder, without prior written consent of the District.
8. MTS agrees to the Entire Agreement/Modifications policy as stated herein: This MOU contains the entire agreement between the parties and supersedes all prior understandings between them. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this MOU except as stated



Michael's Transportation Service

140 Yolano Dr. – Vallejo, CA 94589 – 707-643-2099 – Fax 707-643-1906

herein. This MOU may not be modified, changed, supplemented or terminated, nor may any obligations under this MOU be waived, except by written instrument signed by the party to be otherwise expressly permitted in this MOU.

9. MTS agrees to the Standard Arbitration Agreement as stated herein: Any dispute, controversy or claim arising out of or relating in any way to the MOU including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach, shall be exclusively resolved by binding arbitration upon a Party's submission of the dispute to arbitration. The complaining Party shall notify the other Party in writing thereof. Within thirty (30) days of such notice, management level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and no event shall it be made after 6 months from when the aggrieved party knew or should have known of the controversy, claim, dispute or breach.

Sacramento City Unified School District agrees to:

1. Accept a minimum of 1 temporary school bus driver from MTS, or additional drivers as agreed upon by the Parties as requested by SCUSD and that are available from MTS, who are to be available with a minimum advance notice of 48 hours. In the event that a minimum of 24 hours advance notice is not provided and a driver is available, SCUSD agrees to pay a rush fee of \$50.00 for the driver or drivers provided by MTS.
2. Pay MTS an hourly rate of \$55.00 per hour, for a minimum of 7 hours on duty, per temporary driver; per day.
3. Pay MTS a Daily Commute Fee rate of \$20.00 per day, per driver.
4. Pay MTS a one-time Proficiency Training/Route Dry Run Fee rate of \$35.00 per driver hour; per driver. (Required by law)
5. Pay MTS a driver cancellation fee of 50% if notification of cancellation is given less than 24 hours in advance of the appearance time, or if driver shows up, but is not needed for any reason. (Rate will be determined based upon a 7 hour minimum schedule.
6. Acknowledge that rates are subject to change at any time.



Michael's Transportation Service

140 Yolano Dr. – Vallejo, CA 94589 – 707-643-2099 – Fax 707-643-1906

7. SCUSD will provide any temporary driver with all legally required meal and rest breaks in compliance with applicable laws, and will not include in its timekeeping records as compensable time.
8. Add temporary driver and MTS as an additional insured to SCUSD's vehicle policy; limited to SCUSD exposure only while MTS temporary drivers are operating SCUSD vehicles.
9. Add temporary driver(s) to company EPN program as recommended by CHP & DOE. Temporary driver are on MTS EPN (pull notice) program and copies will be provided upon request to SCUSD.
10. Provide MTS with copy of SCUSD's Certificate of Insurance.
11. Verify and sign each temporary driver's weekly timesheet and transmit to MTS designee at the end of each shift to ensure MTS has information so it can properly pay wages to the temporary driver(s).
12. Comply with DOT limits on hours worked by temporary drivers and all labor code statutes regarding the temporary drivers' right to have a work place free from discrimination, harassment and work place violence. All other statutes are the responsibility of MTS as an employer.
13. Report any personnel issues, accidents, or other disciplinary actions to MTS designee immediately.
14. Make no offer of direct employment to temporary employee(s) without first contacting and gaining prior approval and authorization of MTS' designee during or within 365 days of termination of temporary employee's assignment to SCUSD. If SCUSD hires any such temporary employee, instructors and/or maintenance personnel, associated with this contract, within 365 days of the termination of that temporary employee's assignment, SCUSD will owe and pay MTS \$15,000.00 (per incident)
15. SCUSD agrees to maintain MTS as the primary and first choice employer of temporary driver. SCUSD acknowledges and agrees that, due to the nature of the transportation industry, there may be occasional interruptions of temporary driver services requiring the immediate return of the temporary driver to MTS. In the event such a scheduling conflict should arise, SCUSD agrees to "release" the temporary employee to MTS immediately. MTS will make a "good faith" effort to replace the temporary driver with another temporary driver as soon as possible.
16. Acknowledge and agree that the operation of SCUSD's vehicles by the temporary drivers is not a joint venture, and that no joint venture has been entered into.



Michael's Transportation Service

140 Yolano Dr. – Vallejo, CA 94589 – 707-643-2099 – Fax 707-643-1906

17. Recognizes all invoices as due and payable upon receipt.

INDEMNIFICATION

The Parties hereto expressly acknowledge and agree that under the terms of this Agreement, MTS shall only provide temporary drivers to SCUSD, and will not be supplying vehicles, equipment or transportation services. All temporary drivers provided to SCUSD pursuant to the terms of this Agreement will thereafter be solely under the direction, control and supervision of SCUSD management during all work shifts, and shall operate SCUSD's vehicles and equipment as instructed by management. As such, to the fullest extent allowed by law, and as a material inducement to MTS to enter into this Agreement, SCUSD agrees to hold harmless and indemnify MTS, its Board of Directors, owners, shareholders, officers, agents, administrators, employees, insurers, predecessors, successors and assigns, from and against any and all losses, expenses, claims, demands, injuries, damages, obligations, liabilities, lawsuits, actions, causes of action, judgments, liens and costs, including reasonable attorneys' fees and costs, arising out of or in connection with, either directly or indirectly, any act or omission of MTS, its employees, subcontractors and/or agents, and specifically the MTS temporary drivers, in all matters related to the performance of any Services under this Agreement.

IN WITNESS WHEREOF, the Parties hereto acknowledge and agree to the terms and conditions contained herein and have executed this Agreement to Provide Temporary Staffing Services as of January 9, 2015.

Michael's Transportation Service, Inc.

Sacramento City Unified School District

By: 

By: 

Print Name: MICHAEL BROWN

Print Name: Chuck Ernst

Title: PRESIDENT

Title: Director III, Distribution Services

Date: 1-9-15

Date: January 9th, 2015

Billing Address:

3101 Redding Ave. Sacramento CA 95820

Billing Contact

Chuck Ernst or Deanana Hazen

Address

Same as above

City, State, Zip Code