# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
## BOARD OF EDUCATION

Sacramento
City Unified
School District

**Meeting Date:**     March 6, 2014

**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.

**Documents Attached**:

1.  Grants, Entitlements, and Other Income Agreements
2.  Other Agreements
3.  Approval of Declared Surplus Materials and Equipment
4.  Recommended Bid Awards – Facilities Projects
5.  Notices of Completion – Facilities Projects

| | |
|---|---|
| **Estimated Time of Presentation:**  N/A | |
| **Submitted by:** | Ken A. Forrest, Chief Business Officer |
| | Kimberly Teague, Contract Specialist |
| **Approved by:** | Sara Noguchi, Ed.D, Interim Superintendent |

# GRANTS, ENTITLEMENTS AND OTHER INCOME AGREEMENTS - REVENUE

| Contractor | Description | Amount |
|---|---|---|

## CHILD DEVELOPMENT

| Contractor | Description | Amount |
|---|---|---|
| A14-00085<br>Sacramento<br>Employment & Training<br>Agency (SETA) | 8/1/14 – 7/31/15: Grant funding applications for Head Start and Early Head Start Programs. The Child Development Department enrolls and serves 1,439 children within Head Start, Children's Centers, Infant/Toddler, and Home Based Programs. Children ages 3-5 enrolled in the Head Start Program receive comprehensive services, including mental health and health screenings. Families are encouraged to enter into partnership agreements to set family goals. Goals include completing school, seeking new employment opportunities, nutrition education, and learning child development strategies. Early Head Start serves pregnant teens and children ages 0-3 years. Social workers, registered nurses, and other health professionals provide direct services and referrals to program participants. Upon submission and approval of Child Development's grant funding application for Head Start/Early Head Start, the SCUSD Board of Education authorizes SETA to serve as the grantee, and if awarded, authorizes the Chief Business Officer to execute the sub-grant agreement with reasonable modifications and any other documents required by the funding source. | $8,505,824<br>Head Start<br>Program<br><br>$1,564,606<br>Early Head Start<br>Program |

## INTEGRATED SUPPORT SERVICES

| Contractor | Description | Amount |
|---|---|---|
| A14-00086<br>Target Scholarship<br>America | 1/1/14 – 6/30/14: Target Field Trip Grant to be used by Resource Center at Pacific Elementary School to take 100 5th grade students to tour the UC Davis campus, including classrooms, library, arboretum, and Mondavi Cultural Center. | $700<br>No Match |

## SPECIAL EDUCATION

| Contractor | Description | Amount |
|---|---|---|
| A13-00070<br>California Department<br>of Education | 7/1/12 – 9/30/14: Local Assistance Entitlements Grant per the Individuals with Disabilities Education Act (IDEA). This is a federal entitlement grant that is distributed to our SELPA (Special Education Local Plan Areas) in order to provide a full continuum of services for our students with special needs. Funds are used to support the sites with special education services in terms of allocations to fund certificated and classified positions that support the district's special education programs. | $8,273,967<br>No Match |

# EXPENDITURE AND OTHER AGREEMENTS

| <u>Contractor</u> | <u>Description</u> | <u>Amount</u> |
|---|---|---|

## FACILITIES SUPPORT SERVICES

SA14-00371
Rainforth Grau
Architects

2/1/14 – Completion of Services: Architectural and Engineering Services for design and construction documents related to the gymnasium addition at California Middle School, per Master Agreement.

<u>Strategic Plan</u>: Aligns with Priority III, Organizational Transformation, by improving the facilities in which we teach and learn.

$245,900
Measure R Funds

## JOHN STILL K-8 SCHOOL

SA14-00405
Sacramento Chinese
Community Service
Center

12/2/13 – 6/30/14: Supplemental services for focus school targeted intervention and foundational skill building to support vocabulary, reading, language arts and math during out-of-school time. Targeted support for 225 students. Dynamic indicators of Basic Early Literacy Skills (DIBELS and DIBELS MATH) will be used for pre and post intervention assessment for primary and intermediate grades.

<u>Strategic Plan</u>: Aligns with Pillar I, Career and College Ready Students, by providing relevant, rigorous and well-rounded education and holistic assessments to measure ongoing student progress.

$102,659
Title I Intervention
Funds

## TECHNOLOGY SERVICES

SA14-00385
AMS.Net

1/1/14 – 6/30/14: Software upgrades, licensing, new servers and professional engineering services necessary to maintain infrastructure for centralized District technology services that represents the District's ongoing effort to improve the education provided to every student in every classroom so they can meet the challenges of the 21st century.

<u>Strategic Plan</u>: Aligns with Pillar 1, Career and College Ready Students, by providing students a technology based platform for individualized, engaging and differentiated instruction; and Pillar III, Organizational Transformation, by sustaining a "no excuses" culture that is focused on results, continuous improvement, and support for teaching and learning.

$194,066
Measure Q Funds

# APPROVAL OF DECLARED SURPLUS MATERIALS AND EQUIPMENT

| ITEM | SITE/DEPARTMENT | TOTAL VALUE | DISPOSAL METHOD |
|------|-----------------|-------------|-----------------|
| Computer Equipment | Facilities Support Services<br>John Morse Therapeutic<br>Susan B Anthony Elementary | None | Recycle |
| Office Equipment | Facilities Support Services<br>John Morse Therapeutic | None | Recycle |
| Audio/Visual Equipment | Facilities Support Services<br>John Morse Therapeutic<br>Susan B Anthony Elementary | None | Recycle |

# RECOMMENDED BID AWARDS – FACILITIES PROJECTS

**Bid No. 702-0384**   Lease-Leaseback Agreement for Shade Structure at William Land Elementary School

Recommendation:   Award to Roebbelen Contracting, Inc.

Amount/Funding:   $178,000 / Measure Q Funds

The lease-leaseback project delivery method is authorized by California Education Code §17406, and authorizes the governing board, without advertising for bids, to enter into a lease with a builder for the purpose of construction, including remodeling and permanent improvements, upon property.

| BIDDER | BIDDER LOCATION | AMOUNT |
|--------|-----------------|--------|
| Roebbelen Contracting, Inc. | El Dorado Hills, CA | $178,000 |
| Landmark Construction | Loomis, CA | $182,500 |
| Seward L. Schreder Construction | Redding, CA | $184,590 |

# NOTICES OF COMPLETION – FACILITIES PROJECTS

Contract work is complete and Notices of Completion may be executed.

| Contractor | Project | Completion Date |
|------------|---------|-----------------|
| Landmark Construction | C.K. McClatchy High School Batting Cages | February 20, 2014 |

Sacramento
City Unified
School District

# MASTER AGREEMENT

## For

## ARCHITECTURAL SERVICES

## With

## RAINFORTH GRAU ARCHITECTS

December 19, 2013

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# 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 Rainforth Grau 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 Rainforth Grau 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 attached as Exhibit A, 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.　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 attached hereto as Exhibit A.

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# 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 attached hereto as Exhibit A. 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% |
| | |
| TOTAL BASIC COMPENSATION | 100% |

### 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 (Exhibit A) 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.

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## ARTICLE 5

## BASIC SERVICES TO BE RENDERED BY ARCHITECT

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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 <u>Architect's Consultants.</u> 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 <u>District's Consultants.</u> 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 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 <u>Change orders beyond District or Architect control</u>. 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 wok 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: 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 attached as Exhibit "B" to this Master Agreement.

### 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<br>5735 47<sup>th</sup> Avenue<br>Sacramento CA 95824<br>Attn:  Kimberly Teague, Contracts | Rainforth Grau Architects<br>2407 J Street, Ste 202<br>Sacramento, CA  95816<br>Attn:  Jeffrey Grau |

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:**

By: _____

Ken A. Forrest
Chief Business Officer

Date _____ 1/15/14 _____

**ARCHITECT:**

By: _____

JEFFREY GRAU / PRINCIPAL
Printed Name/Title

Date _____ 12-23-13 _____

# Exhibit A

## Project Authorization No. 703-0415
## Gymnasium Addition at California Middle School
### Fiscal Year 2013/14

Pursuant to the Master Architect Agreement dated December 19, 2013, Architect hereby submits a scope of work upon the terms described below and in the Master Architect Agreement.

Dated: _____

_____
Architect

## TERMS

### A.    Project Description

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

- Addition of approx. 2,550 sf of gym area; rotation of court
- Modifications to gym as required to accommodate basketball, including backstops, etc.
- Modification to existing gym wood flooring system (flooring will be removed and usable material will be integrated into floor)
- Replacement of telescoping bleachers
- Removal of interiors of raised staff offices and toilet rooms, including stairs.  Installation of new slab at ground level with staff offices and toilet rooms
- Replacement/Installation of HVAC in the gymnasium
- Electrical upgrades for new HVAC demand
- Structural modifications as required for new HVAC equipment and addition
- ADA and code modifications as required to support this work including accessible parking, path of travel, doors & hardware, signage, toilet room modifications, drinking fountains, emergency lighting and evacuation systems, assistive listening system
- Repurpose of custodial room to provide additional space to the girl's toilet room
- Fire sprinklers for the gymnasium space only, including new fire service to the building utilizing the existing fire service to the main building
- Site improvements immediately around building to repair surfaces
- New fire hydrant as required by local fire authority

### Exclusions:

- Complete modernization of building; work is limited to the gym, addition, and ADA improvements
- Air conditioning for locker rooms, coaches offices, and ancillary spaces
- Other work not specifically indicated above

**B.**   **Compensation**

☒   **Flat Fee**

Architect shall be compensated Two Hundred Forty Five Thousand, Nine Hundred Dollars ($245,900) for the Basic Services under the Master Agreement and the Scope of Services outlined in the Project Authorization Form.  Architect acknowledges that the flat fee price includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the all services.

**C.**   **Reimbursable Expenses**

Pursuant to Section 4.3, Architect's total reimbursement for Reimbursable Expenses shall not exceed $0, which is Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project. Printing for district reviews, agency reviews, and bidding shall be through District account at Signature Reprographics and not a cost to the Architect.  All plans for Architect and consultant uses shall be at Architect's expense.

**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; 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 below and in Master Agreement.

Dated: _____          _____

                                                                             Ken A. Forrest
                                                                             Chief Business Officer

# SERVICES AGREEMENT

**Date:** February 1, 2014           **Place:** Sacramento, California

**Parties:** Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Sacramento Chinese Community Service Center (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"):

Supplemental services for focus school targeted intervention and foundational skill building to support vocabulary, reading, language arts and math during out-of-school time. Targeted support for 225 students includes low student adult ratio interventions with highly qualified staff. Dynamic indicators of Basic Early Literacy Skills (DIBELS and DIBELS MATH) will be used for pre and post intervention assessment for primary and intermediate grades at John Still K-8 school.

## ARTICLE 2. TERM.

This Agreement shall commence on December 2, 2013, and continue through June 13, 2014, 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:

      <u>Flat Rate:</u>  The total payment to Contractor, including travel and other expenses, shall be One Hundred Two Thousand, Six Hundred Fifty Nine Dollars and 21/100 ($102,659.21).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Reginald Brown, Principal at John Still K-8 School, 2200 John Still Dr., Sacramento, CA  95832.

## 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 contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

## 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 copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than $1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "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: ***Insert Data Here***

Contractor:
Sacramento Chinese Community Svc Ctr.
4201 I Street, Ste 5
Sacramento, CA 95814
Attn: Renee Van Zuydam

## 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 | SACRAMENTO CHINESE COMMUNITY SERVICE CENTER |
|---|---|

By:

By:_____

Ken A. Forrest
Chief Business Officer

Signature

_____
Date

_____
Print Name/Title

_____
Date

# SERVICES AGREEMENT

**Date:**     February 1, 2014                    **Place:** Sacramento, California

**Parties:**     Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and AMS.Net, (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 47<sup>th</sup> 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"):

    Software ugprades, licenses, new servers and professional engineering services per Price Quotes 80779; 80952; 81016; 81019; and 81038 attached hereto as Exhibit A.

## ARTICLE 2.  TERM.

This Agreement shall commence on February 1, 2014, and continue through June 30, 2014, 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:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be One Hundred Ninety Four, Sixty Six Dollars and 34/100 ($194,066.34).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Terry Kritsepis, Asst. Superintendent, Technology Services, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

## 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 contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

## 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:                                                      Contractor:
Sacramento City Unified School District      AMS.Net
PO Box 246870                                        502 Commerce Way
Sacramento CA 95824-6870                      Livermore, CA  94551
Attn:  Kimberly Teague, Contracts Office     Attn:  Jared Bayless, Account Mgr.

## 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

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

**AMS.NET**

By: _____

By:_____

Ken A. Forrest
Chief Business Officer

Signature

_____
Date

_____
Print Name/Title

_____
Date

# EXHIBIT A

**AMS.NET**

visit us at www.ams.net

## Price Quote
### Order #80779

AMS.NET • 502 Commerce Way • Livermore, CA 94551 • phone (925) 245 - 6100 • fax (925) 245 - 6150

| Sacramento City Unified School District | DO - Veeam ONE |
|---|---|
| District Office<br>5735 47th Ave<br>Sacramento, CA 95824<br><br>ATTN: Nick Saechow | |

| Order | Project | Modified | Ship Via | Account Mgr. |
|---|---|---|---|---|
| 80779 | 75817 | 11/6/2013 | | Jared Bayless |

## Products

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 1 | Veeam ONE for VMware - 1 physical CPU Socket<br>Part #V-ONE000-VS-P0000-00<br>Veeam Software Corporation Virtualization Virtualization Software | Y | 16 | $350.00 | $5,600.00 |
| | | **Products Total** | | | **$5,600.00** |

## Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|

Order #80779 - 11/12/2013 11:10am

# Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 1 | **Professional Services - Veeam ONE**<br>The AMS.NET Engineer(s) will install and configure the Veeam ONE solution in the following steps:<br><br>1.Install Veeam ONE Server and set up a database.<br><br>2.Install the Veeam ONE Web UI and associate it with the database.<br><br>3.Install and configure Veeam ONE Monitor Client.<br><br>4.Configure Veeam ONE Reporting and Dashboard.<br><br>Installing Veeam ONE Server<br>The AMS.NET Engineer(s) will create a virtual machine running Microsoft Windows Server 2012. The Veeam ONE .iso image will be loaded and installed onto the virtual machine. During the installation process, the AMS.NET Engineer(s) will be creating a service account for the Veeam ONE SQL Database. This service account will be based on the customer's existing SQL implementation and adhere to the customer's account policies.<br><br>Install the Veeam ONE Web UI and associate it with the database<br>The AMS.NET Engineer(s) will create a virtual machine running Microsoft Windows Server 2012. The Veeam ONE .iso image will be loaded and installed onto the virtual machine. During this installation, the Veeam ONE software will be setup as a Web UI server only and will connect to the SQL database created on the database server. During this installation, the AMS.NET Engineer will choose the customer's existing VMware vCenter infrastructure to interface the Veeam ONE solution with the VMware environment.<br><br>Install and Configure Veeam ONE Monitor Client<br>The AMS.NET Engineer(s) will create a virtual machine running Microsoft Windows Server 2012. The Veeam ONE Monitor .iso will be installed and configured. Security Groups will be configured so that specified users have appropriate access to the Veeam ONE solution.<br><br>Configure Veeam ONE Reporting and Dashboard<br>As the last piece of the solution, the AMS.NET Engineer(s) will customize the reporting function and dashboard for the customer. AMS.NET will build up to 5 customized reports as well as customize the Web based Dashboard to provide a real time view of the VMware infrastructure. | n/a | 30 | $160.00 | $4,800.00 |

| | | |
|---|---|---|
| **Labor Total** | | **$4,800.00** |

Sacramento
City Unified
School District

Terms and Conditions Below

**Order Summary**

| Products Total | $ 5,600.00 |
|---|---|
| Taxable Total | $ 5,600.00 |
| Shipping/Handling | $ 0.00 |
| Taxes (8.50%) | $ 476.00 |
| Labor Total | $ 4,800.00 |
| Total | $ 10,876.00 |

1. AMS.NET will require a Purchase Order referencing this Quote # or if a Purchase order is not provided, an authorized representative must sign this quote.

2. Payment terms are Net 30. Payment made beyond 30 days are subject to a finance charger of 1.5% per month. Customer agrees to pay all collections costs and attorney fees or late payments if applicable. Customer agrees to accept multiple invoices for projects that cover multiple sales. In the event that a site's readiness is delayed by the customer, customer agrees to accept and pay invoices that reflect equipment and services already received.

3. Shipping charges and sales tax will be added to this order when invoiced and the customer agrees to pay these charges.

4. All companies with tax exemption must present a valid Tax Exempt form. If Customer is tax exempt or if tax exempt form is not provided then customer agrees to pay all applicable taxes.

5. All shipments are FOB Origin or Pre-paid and shipped to Dock. Any Special shipping requirements must be clearly stated on all PO's (i.e. inside delivery). If inside Delivery or Lift-gate is required it must be specified and additional fees will incur. Shipping charges that appear on this quote are an estimate, AMS.NET will invoice and the customer will pay the actual shipping charge when identified.

6. Upon delivery of equipment, customer agrees to open all shipments and visually inspect equipment for physical damages. All damages must be reported to AMS.NET within 24 hours of delivery.

7. Returns will be accepted at AMS.NET discretion and only if merchandise is in an unopened box and the customer agrees to pay a restocking fee of 25% of the purchase price. All returns must have a valid RMA number from AMS.NET before returning.

Please fax signed Quotation or Purchase Order to your AMS.NET account manager or to 925.245.6150. Full terms and conditions can be viewed on our website at www.ams.net/services/procurement_financing/

AMS.NET Tax ID: 94-3291629

C7 License: 763508

8. The laws of the State of California will apply to this sale.

9. The term "installation date" means the first business day on which installation of the system is complete. Minor omissions or variances in performance of the System that do not materially or adversely affect the operation of the system, shall not be deemed to have postponed the Installation Date. Seller shall use its best efforts to make timely delivery and installation. However, all stated delivery and installation dates are approximate and except as expressly provided in this agreement, Seller shall, under no circumstance, be deemed to be in default hereunder or be liable for consequential, incidental or special damages or commercial loss resulting from delays in delivery or installation.

10. Warranties. AMS warrants to Customer that it has good title to the equipment being sold to Customer under this Agreement, and the right to sell such equipment to Customer free of liens or encumbrances. AMS further warrants to Customer that the equipment being sold to Customer hereunder shall be free from defects in workmanship for a warranty period of thirty (30) days commencing on the later date the equipment is delivered to Customer or the date upon which AMS completes performance of the services to be performed under this agreement (this warranty being hereinafter referred to as an "Installation Warranty"). Except as expressly set forth in this paragraph, AMS does not make, and hereby disclaims, any and all representations or warranties, express or implied, with respect to the equipment or services being provided under this agreement, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, against infringement, or arising from a course of dealing, usage or trade practice. AMS shall reasonably cooperate and assist Customer in enforcing any manufacturer warranties with respect to the equipment being sold to Customer under this Agreement. AMS hereby advises Customer, and Customer acknowledges that in the event Customer desires to procure from AMS any warranty protection beyond the warranty of title and the Installation Warranty provided under this Paragraph, Customer may do so by entering into a separate Service Agreement with AMS.

Manufacturer's warranty that is guaranteed is whatever is published by the manufacturer at the time of purchase.

# Price Quote
### Order #80952

visit us at www.ams.net

AMS.NET • 502 Commerce Way • Livermore, CA 94551 • phone (925) 245 - 6100 • fax (925) 245 - 6150

| Sacramento City Unified School District | DO - Antivirus Solution |
|---|---|
| District Office<br>5735 47th Ave<br>Sacramento, CA  95824<br><br>ATTN: Nick Saechow | |

| Order | Project | Modified | Ship Via | Account Mgr. |
|---|---|---|---|---|
| 80952 | 75227 | 11/18/2013 | | Jared Bayless |

## Products

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| | One (1)  Year Subscription - McAfee Antivirus Solution | | | | |
| 1 | McAfee GHE Endpoint Protect PRXTN P:I GL P<br>Part #EPSCDE-BA-H<br>McAfee Active Mail Virus Protection Software | N | 22000 | $3.52 | $77,440.00 |
| 2 | MCAFEE SYSSECURITY GHE<br>Part #MOVCKE-AB-BI<br>McAfee VirusScan Virus Protection Software | N | 13 | $112.25 | $1,459.25 |
| | | Products Total | | | $78,899.25 |

## Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|

Sacramento
City Unified
School District

# Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 1 | **Professional Services - McAfee Enterprise Solutions**<br>The AMS.NET Engineer(s) will install and configure the Veeam ONE solution in the following steps:<br><br>1.Install McAfee ePolicy Orchestrator and set up a database.<br><br>2.Install the McAfee MOVE virtual machines (1 per VMware host) and connect to VMware Infrastructure<br><br>3.Configure McAfee ePolicy Orchestrator to push Virascan agents to the desktops/laptops.<br><br>4.Rollout McAfee agents to desktops/laptops on appropriate schedule.<br><br>Installing McAfee ePolicy Orchestrator Server<br><br>The AMS.NET Engineer(s) will create a virtual machine running Microsoft Windows Server 2012. The McAfee ePolicy Orchestrator application will be loaded and installed onto the virtual machine. During the installation process, the AMS.NET Engineer(s) will be creating a service account for the McAfee ePolicy Orchestrator SQL Database. This service account will be based on the customer's existing SQL implementation and adhere to the customer's account policies. In addition, the McAfee ePO application will include the following:<br><br>•Configuration to utilize the customer's Microsoft Active Directory for authentication.<br><br>•Configuration of a Master Repository as a central location for all McAfee updates and signatures residing on the ePO server.<br><br>•Location of any Distributed Repositories to place strategically throughout the environment to provide managed systems access to receive signatures, product updates, and product installations.<br><br>•Installation of the McAfee Agent – A vehicle of information and enforcement between the ePO server and each managed system.<br><br>•Installation of Remote Agent Handlers – A server that can be installed in various network locations to help manage agent communication, load balancing, and product updates.<br><br>NOTE: Depending on the needs of the organization and the complexity of the network, all of these components may not be used.<br><br>Installing McAfee MOVE virtual machines<br><br>The AMS.NET Engineer(s) will install and configure the McAfee MOVE anti-virus solution for the customer's existing VMware infrastructure. During the installation and configuration the AMS.NET Engineer(s) will:<br><br>•Install the McAfee MOVE anti-virus client and Offload Scan Server in the ePolicy Orchestrator.<br><br>•Check in the MOVE anti-virus Multi-Platform Offload Scan Server to the Master Repository so that ePO can deploy it.<br><br>•Create a virtual machine running Microsoft Windows Server 2012 on each Vmware server host in the VMware virtual infrastructure for use as the McAfee MOVE Offload Scan Servers.<br><br>•Deploy the McAfee MOVE anti-virus Offload Scan Server to the Virtual Machines created above using McAfee ePO.<br><br>•Deploy the McAfee MOVE anti-virus client to the existing virtual servers using McAfee ePO.<br><br>Deploying McAfee VirusScan to Desktops/Laptops<br><br>The AMS.NET Engineer(s) will deploy the McAfee VirusScan Enterprise to the existing desktops and laptops in the organization. As part of the deployment, the AMS.NET Engineer(s) will:<br><br>•Install the VirusScan Enterprise extension .ZIP files on the McAfee ePO.<br><br>•Create tasks to deploy McAfee VirusScan to a test set of devices.<br><br>•Deploy to the test set of devices and verify VirusScan functionality.<br><br>•Create Deployment schedule for enterprise rollout of McAfee VirusScan.<br><br>•Follow the deployment schedule for rollout of McAfee VirusScan.<br><br>•Troubleshoot any desktops/laptops that do not install as a result of the ePO automated | n/a | 160 | $160.00 | $25,600.00 |

Page 2 of 4

Order #80952 - 11/18/2013 10:17am

# Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 1 | **Professional Services - Microsoft Active Directory Upgrade**<br>The AMS.NET Engineer(s) will install and configure the Mcafee solutions in the following steps:<br><br>1.Prepare the Microsoft Active Directory for upgrade<br><br>2.Install Microsoft Windows 2012 virtual servers<br><br>3.Promote the new Microsoft Windows 2012 servers to Active Directory Domain Controllers<br><br>4.Delete the Microsoft Windows 2008 servers from Active Directory<br><br>5.Modify Backup Routine to include the new Microsoft Windows 2012 servers<br><br><br>Prepare the Microsoft Active Directory for upgrade<br><br>To prepare the existing Microsoft Windows 2008 Acitve Directory for the upgrade to 2012, the AMS.NET Engineer(s) will run the Active Directory Preparation (ADPrep) Tool on the Microsoft Windows 2008 server that is holds the Schema Operations Master FSMO role. Adprep is a tool used to prepare a Microsoft Windows 2008 forest or a Windows 208 domain for the installation of Windows Server 2012 domain controllers.<br><br>Install Microsoft Windows 2012 virtual servers<br><br>The AMS.NET Engineer(s) will install and configure the new Microsoft Windows 2012 servers using the customer's existing VMware infrastructure.  During the installation and configuration the AMS.NET Engineer(s) will:<br><br>•Assign the appropriate virtual resources (CPU/Memory/Storage) to each Windows 2012 virtual server instance.<br><br>•Install the Windows 2012 server operating system.<br><br>•Name the Windows 2012 servers according to the agreed upon naming convention.<br><br>•Assign static TCP/IP addresses to the Windows 2012 servers<br><br>•Join the Windows 2012 servers to the existing domain<br><br>•Install Active Directory Domain Services to the new Windows 2012 servers<br><br>Promote the new Microsoft Windows 2012 servers to Active Directory Domain Controllers<br><br>Once joined to the domain, the AMS.NET Engineer(s) will promote the new Windows 2012 servers making them Active Directory Domain Controllers. This will also include assigning the appropriate Flexible Single Master Operations (FSMO) roles to the servers.<br><br>Delete the Microsoft Windows 2008 servers from Active Directory<br><br>With the new Microsoft Windows 2012 Domain Controllers active with the appropriate FSMO roles, Active Directory 2012 is now installed.  The AMS.NET Engineer(s) will verify functionality and remove the Windows 2008 Domain Controllers from Active Directory.<br><br>Modify Backup Routine<br><br>The AMS.NET Engineer(s) will modify the backup routine to now perform backups of the new Microsoft Windows 2012 Domain Controllers in place of the Windows 2008 Domain Controllers.  This will allow for new backups to backup Microsoft Active Directory as well as the Microsoft Windows 2012 servers. | n/a | 80 | $160.00 | $12,800.00 |

# Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 1 | **Professional Services - Microsoft Exchange 2013 Upgrade**<br>The AMS.NET Engineer(s) will install and configure the Microsoft Exchange 2013 in the following steps:<br><br>1.Prepare the Microsoft Active Directory for upgrade<br><br>2.Install Microsoft Windows 2012 virtual servers<br><br>3.Install Microsoft Exchange 2013 on the virtual servers<br><br>4.Migrate Mailboxes from Exchange 2010 to Exchange 2013<br><br>5.Remove Exchange 2010 from Active Directory<br><br>6.Modify Backup Routine to include the new Microsoft Exchange 2013 servers<br><br><br>Prepare the Microsoft Active Directory for upgrade<br><br>To prepare the existing Microsoft Windows 2012 Active Directory for the upgrade to Microsoft Exchange 2013, the AMS.NET Engineer(s) will run the Active Directory Preparation (ADPrep) Tool on the Microsoft Windows 2008 server that is holds the Schema Operations Master FSMO role. Adprep is a tool used to prepare a Microsoft Windows 2012 forest or a Windows 2012 domain for the installation of Exchange 2013.<br><br>Install Microsoft Windows 2012 virtual servers<br><br>The AMS.NET Engineer(s) will install and configure the new Microsoft Windows 2012 servers using the customer's existing VMware infrastructure. During the installation and configuration the AMS.NET Engineer(s) will:<br><br>•Assign the appropriate virtual resources (CPU/Memory/Storage) to each Windows 2012 virtual server instance.<br><br>•Install the Windows 2012 server operating system.<br><br>•Name the Windows 2012 servers according to the agreed upon naming convention.<br><br>•Assign static TCP/IP addresses to the Windows 2012 servers<br><br>•Join the Windows 2012 servers to the existing domain<br><br>Install Microsoft Exchange 2013 into the existing Exchange Organization<br><br>Once joined to the domain, the AMS.NET Engineer(s) will install Microsoft Exchange 2013 onto each virtual server and designate either the Client Access Server or Mailbox Server role (per the deployment scenario above). As well, during the installation, the Microsoft Exchange 2013 servers will be installed into the existing Exchange 2010 organization.<br><br>Migrate Mailboxes from Exchange 2010 to Exchange 2013<br><br>With the new Microsoft Exchange 2013 servers installed and configured with the appropriate roles and functions, the AMS.NET Engineer(s) will migrate user mailboxes based upon the agreed upon schedule. This process can vary in time based on the size of the mailboxes moved.<br><br>Remove Exchange 2010 from Active Directory<br><br>Once the mailbox migration above is completed, the AMS.NET Engineer(s) will remove the Microsoft Exchange 2010 servers from Active Directory.<br><br>Modify Backup Routine<br><br>The AMS.NET Engineer(s) will modify the backup routine to now perform backups of the new Microsoft Exchange 2013 servers in place of the Microsoft Exchange 2010 servers. This will allow for new backups to backup Microsoft Exchange 2013 as well as the Microsoft Windows 2012 servers. | n/a | 120 | $160.00 | $19,200.00 |

Sacramento
City Unified
School District

# Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 2 | **Professional Services - Citrix Load Balancers**<br>Professional Services to Implement the Citrix Netscaler MPX11500.<br><br>The AMS.NET engineer(s) will configure the Citrix Netscaler MPX11500 appliances to load balance traffic destined for the Microsoft Exchange 2013 CAS Array, including requests from internal Microsoft Outlook users, internal Outlook Web App users, external Outlook Web App users and external inbound and outbound mail delivery. The Citrix Netscaler MPX11500 appliances will be configured as a single load balancing cluster, providing failover and load balancing of the Citrix Netscaler MPX11500 appliances.<br><br>Once configured, the Citrix Netscaler MPX11500 appliances will be physically installed into the existing datacenter and connected to the network infrastructure utilizing the 10Gb and 1Gb ports on both the Citrix Netscaler appliances and the core Cisco network infrastructure.<br><br>Once installed into the current datacenter, the Citrix Netscaler MPX11500 appliances will be tested to verify requests stated previously are being load balanced. Testing is recommended to be performed after normal business hours to minimize impact across the user community.<br><br>Please note that the Citrix Netscaler MPX11500 provides additional physical connections as well as throughput and can be used in other areas of the existing network environment. Services to configure additional features and functions outside of those called out in this proposal can be provided at an additional cost. | n/a | 65 | $160.00 | $10,400.00 |

# Price Quote
### Order #81038

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| Sacramento City Unified School District |
| --- |
| District Office<br>5735 47th Ave<br>Sacramento, CA 95824<br><br>ATTN: Nick Saechow |

| UCS Upgrades |
| --- |
| |

| Order | Project | Modified | Ship Via | Account Mgr. |
| --- | --- | --- | --- | --- |
| 81038 | | 11/15/2013 | | Jared Bayless |

## Products

| | Item Description | Taxable | Qty | Unit Price | Total |
| --- | --- | --- | --- | --- | --- |
| | **New B230 Blade Servers** | | | | |
| 1 | UCS B230 M2 Blade Server w/o CPU, Mem, Mezza,<br>Part #B230-BASE-M2UPG<br>Cisco Systems Inc. Unified Compute None | Y | 2 | $3,099.60 | $6,199.20 |
| 2 | 2 GHz E7-2850 130W 10C /24M Cache<br>Part #UCS-CPU-E72850<br>Cisco Systems Inc. Unified Compute None | Y | 4 | $2,663.07 | $10,652.28 |
| 3 | 2X8GB DDR3-1333-MHz RDIMM/PC3-10600/dual rank<br>Part #UCS-MR-2X082RX-C<br>Cisco Systems Inc. Cisco UCS Cisco UCS | Y | 16 | $274.66 | $4,394.56 |
| 4 | Cisco UCS VIC 1280 dual 40GB Interface Cad<br>Part #UCS-VIC-M82-8P<br>Cisco Systems Inc. Unified Compute None | Y | 2 | $731.42 | $1,462.84 |
| | **VMware Licensing** | | | | |
| 5 | VMware vSphere 5 Enterprise Plus for 1 proc.<br>Part #VS5-ENT-PL-A<br>VMWARE, INC. vSphere 5 None | N | 4 | $2,010.67 | $8,042.68 |
| 6 | ACAD BASIC SNS V5 ENTERPRISE PLUS FOR 1Y<br>Part #VS5-ENT-PL-G-SSS-A<br>VMWARE, INC. VI4 None | N | 4 | $422.32 | $1,689.28 |
| | | **Products Total** | | | **$32,440.84** |

Sacramento
City Unified
School District

# Labor

| | Item Description | Taxable | Qty | Unit Price | Total |
|---|---|---|---|---|---|
| 1 | **Professional Services - New Cisco UCS B230 Blade Servers**<br>Professional Services to install the new Cisco UCS B230 Blade Servers into the existing Cisco UCS Chassis and add the resources to the existing VMware Resource Cluster.<br><br>The AMS.NET Engineer(s) will perform the following:<br><br>*Install the new Cisco UCS B230 Blade Servers into the existing Cisco UCS Chassis.<br><br>*Utilizing the Cisco UCS Manager, verify the new Blades are visible.<br><br>*Upgrade the Firmware (if necessary) to match the firmware of the existing Cisco UCS B230 Blade Servers.<br><br>*Configure the new Cisco UCS B230 Blade Servers to SAN boot.<br><br>*Utilizing VMware vCenter, install VMware ESXi on each Cisco UCS B230 Blade Server.<br><br>*Configure VMware ESXi on each Cisco UCS B230 Blade Server with IP Address, DNS and hostname information.<br><br>*Utilizing VMware vCenter, add the new Cisco UCS B230 Blade Servers to the existing VMware Resource Pool Cluster.<br><br>*Utilizing VMware vMotion and Distributed Resource Scheduler, migrate appropriate Virtual Machines to the new Cisco UCS B230 Blade Servers.<br><br>Each new Cisco UCS B230 Blade Server will be configured with:<br><br>*2 Intel B7-2850 2Ghz 10core CPU<br><br>*512GB Memory<br><br>*Cisco Virtual Interface Card (VIC) 1280 | n/a | 12 | $160.00 | $1,920.00 |
| | **Labor Total** | | | | **$1,920.00** |

Order #81038 - 11/22/2013 2:25pm

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Terms and Conditions Below

### Order Summary

| | |
|---|---|
| Products Total | $ 32,440.84 |
| Taxable Total | $ 22,708.88 |
| Shipping/Handling | $ 0.00 |
| Taxes (8.50%) | $ 1,930.25 |
| Labor Total | $ 1,920.00 |
| Total | $ 36,291.09 |

1. AMS.NET will require a Purchase Order referencing this Quote # or if a Purchase order is not provided, an authorized representative must sign this quote.

2. Payment terms are Net 30. Payment made beyond 30 days are subject to a finance charger of 1.5% per month. Customer agrees to pay all collections costs and attorney fees or late payments if applicable. Customer agrees to accept multiple invoices for projects that cover multiple sales. In the event that a site's readiness is delayed by the customer, customer agrees to accept and pay invoices that reflect equipment and services already received.

3. Shipping charges and sales tax will be added to this order when invoiced and the customer agrees to pay these charges.

4. All companies with tax exemption must present a valid Tax Exempt form. If Customer is tax exempt or if tax exempt form is not provided then customer agrees to pay all applicable taxes.

5. All shipments are FOB Origin or Pre-paid and shipped to Dock. Any Special shipping requirements must be clearly stated on all PO's (i.e. inside delivery). If inside Delivery or Lift-gate is required it must be specified and additional fees will incur. Shipping charges that appear on this quote are an estimate, AMS.NET will invoice and the customer will pay the actual shipping charge when identified.

6. Upon delivery of equipment, customer agrees to open all shipments and visually inspect equipment for physical damages. All damages must be reported to AMS.NET within 24 hours of delivery.

7. Returns will be accepted at AMS.NET discretion and only if merchandise is in an unopened box and the customer agrees to pay a restocking fee of 25% of the purchase price. All returns must have a valid RMA number from AMS.NET before returning.

Please fax signed Quotation or Purchase Order to your AMS.NET account manager or to 925.245.6150. Full terms and conditions can be viewed on our website at www.ams.net/services/procurement_financing/

AMS.NET Tax ID: 94-3291629

C7 License: 763508

8. The laws of the State of California will apply to this sale.

9. The term "installation date" means the first business day on which installation of the system is complete. Minor omissions or variances in performance of the System that do not materially or adversely affect the operation of the system, shall not be deemed to have postponed the Installation Date. Seller shall use its best efforts to make timely delivery and installation. However, all stated delivery and installation dates are approximate and except as expressly provided in this agreement, Seller shall, under no circumstance, be deemed to be in default hereunder or be liable for consequential, incidental or special damages or commercial loss resulting from delays in delivery or installation.

10. Warranties. AMS warrants to Customer that it has good title to the equipment being sold to Customer under this Agreement, and the right to sell such equipment to Customer free of liens or encumbrances. AMS further warrants to Customer that the equipment being sold to Customer hereunder shall be free from defects in workmanship for a warranty period of thirty (30) days commencing on the later date the equipment is delivered to Customer or the date upon which AMS completes performance of the services to be performed under this agreement (this warranty being hereinafter referred to as an "Installation Warranty"). Except as expressly set forth in this paragraph, AMS does not make, and hereby disclaims, any and all representations or warranties, express or implied, with respect to the equipment or services being provided under this agreement, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, against infringement, or arising from a course of dealing, usage or trade practice. AMS shall reasonably cooperate and assist Customer in enforcing any manufacturer warranties with respect to the equipment being sold to Customer under this Agreement. AMS hereby advises Customer, and Customer acknowledges that in the event Customer desires to procure from AMS any warranty protection beyond the warranty of title and the Installation Warranty provided under this Paragraph, Customer may do so by entering into a separate Service Agreement with AMS.

Manufacturer's warranty that is guaranteed is whatever is published by the manufacturer at the time of purchase.