MASTER SITE LEASE

This master site lease ("Master Site Lease") dated as of _____, 2014 ("Effective Date"), is made and entered into by and between the **San Leandro Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and **Strawn Construction, Inc.,** a California company duly organized and existing under the laws of the State of California, as lessee ("Contractor") (together, the "Parties").

WHEREAS, the District currently owns a parcel or parcels of land located at:

School Site	Address
1. McKinley Elementary School	2150 E. 14th St., San Leandro, CA 94577
2. Monroe Elementary School	3750 Monterey Blvd., San Leandro, CA 94578
3. Roosevelt Elementary School	951 Dowling Blvd., San Leandro, CA 94577
4. Washington Elementary School	250 Dutton Ave., San Leandro, CA 94577
5. Bancroft Middle School	1150 Bancroft Ave., San Leandro, CA 94577
6. Jefferson Elementary School	14300 Bancroft Ave., San Leandro, CA 94578

and as more particularly described in **Exhibits A-1 through A-6** attached hereto and incorporated herein by this reference ("School Site(s)"); and

WHEREAS, the District desires to provide for the **modernization and voluntary seismic upgrades of the facilities and appurtenant structures to be performed on portions of the School Sites;** ("Project"); and

WHEREAS, the District determines that a portion of the School Sites are adequate to accommodate the Project, as more particularly described in **Exhibits B-1 through B-6** ("Project Site(s)") attached hereto and incorporated herein by this reference; and

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

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

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

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

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

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

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

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.

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

   2.1. Exhibits A-1 through A-6: Descriptions of the School Site(s)

   2.2. Exhibits B-1 through B-6: Descriptions of the Project Site(s)

3. **Lease of the Project Sites.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Sites, subject only to Permitted Encumbrances, in accordance with the provisions of this Master Site Lease, to have and to hold for the term of this Master Site Lease. This Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Master Site Lease.

   3.1. Work in Phases. If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Master Facilities Lease are:

   3.1.1. As indicated to be within specific phases of the Project and

   3.1.2. For which portions of the Lease Payments are still owing,

4. **Leaseback of the Project Sites.** The Parties agree that the Project Sites will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.

5. **Term**. The term of this Master Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.

6. **Payment**. In consideration for the lease of the Project Sites by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay <u>One Dollar ($1.00)</u> to the District upon execution of this Master Site Lease.

7. **Termination**

   7.1. Termination Upon Purchase of Project. If the District exercises its option to purchase the Project pursuant to the Master Facilities Lease, then this Master Site Lease shall terminate concurrently with the District's buy out and termination of the Master Facilities Lease.

   7.2. Termination Due to Default by Contractor. If Contractor defaults pursuant to the provision(s) of the

Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provision(s) allowing termination, then the Contractor shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate at the same time as the Master Facilities Lease.

7.3. Termination Due to Default by District. If District defaults pursuant to the provision(s) of the Master Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Master Site Lease, to:

7.3.1. Take possession of the Project Sites;

7.3.2. If it deems it appropriate, cause appraisal of the Project Sites and a study of the then reasonable uses thereof; and

7.3.3. Relet the Project Sites.

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

9. **Improvements.** Title to all improvements made on the Project Sites during the term hereof shall be held, vest and transfer pursuant to the terms of the Master Facilities Lease.

10. **No Merger.** The leaseback of the Project Sites by the Contractor to the District pursuant to the Master Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Sites, and the Contractor shall continue to have a leasehold estate in the Project Sites pursuant to this Master Site Lease throughout the term hereof.

11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Sites at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.

12. **Quiet Enjoyment.** Subject to any rights the District may have under the Master Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Sites, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Sites during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

13. **Waste**. The Contractor agrees that at all times that it is in possession of the Project Sites, it will not commit, suffer or permit any waste on the Project Sites, and that it will not willfully or knowingly use or permit the use of the Project Sites for any illegal purpose or act.

14. **Further Assurances and Corrective Instruments**. The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Sites hereby leased or intended so to be or for carrying out the expressed intention of this Master Site Lease and the Master Facilities Lease.

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

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

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

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

15.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("CEQA") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

15.5. No Litigation. To the best of the District's actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Site Lease.

15.6. Condemnation Proceedings.

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

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Contractor shall be as indicated in the Master Facilities Lease.

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

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

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

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

16.1. Due Organization and Existence. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has

power to enter into this Master Site Lease and the Master Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

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

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

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

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

18. **Assignment and Subleasing**. This Master Site Lease may be assigned and/or the Project Sites subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. **Restrictions on District**. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Sites or any portion thereof during the term of this Master Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Master Site Lease.

20. **Liens and Further Encumbrances**. Contractor agrees to keep the Project Sites and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Sites or the Project. Pursuant to the Master Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

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

21.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

21.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

21.3. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

21.4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for:

If to District:	**If to Contractor:**
San Leandro Unified School District 14735 Juniper Street San Leandro, CA 94579 Attention: Bond Director Telephone: (510) 667-3500 Facsimile: (510) 667-3569	Strawn Construction, Inc. 1140 Pedro Street, Suite 1 San Jose, CA 95126 Attention: _____ Telephone: (408) 286-1299 Facsimile: (408) 286-1288
With a copy to: Orbach Huff Suarez & Henderson 1 Kaiser Plaza, Ste. 1458 Oakland, CA 94612 Attention: Philip J. Henderson Telephone: (510) 999-7908 Facsimile: (510) 999-7918	

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

22. Binding Effect. This Master Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

23. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Master Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

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

25. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated in the Master Facilities Lease, this Master Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

26. Obligations Absolute. The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

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

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

29. **Applicable Law.** This Master Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Sites is located.

30. **Attorney's Fees**. If either party brings an action or proceeding involving the School Sites or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

31. **Captions.** The captions or headings in this Master Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Site Lease.

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

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

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

35. **Time of the Essence**. Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.

36. **Force Majeure**. A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Site Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2014

San Leandro Unified School District

By: _____

Print Name: _____

Print Title: _____

Dated: _____, 2014

Strawn Construction, Inc.

By: _____

Print Name: _____

Print Title: _____

MASTER FACILITIES LEASE

This master facilities lease ("Master Facilities Lease"), dated as of _____, 2014 ("Effective Date"), is made and entered into by and between **Strawn Construction, Inc.** ("Contractor"), a California company duly organized and existing under the laws of the State of California, as sublessor, and **San Leandro Unified School District,** a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

WHEREAS, the District currently owns a parcel or parcels of land located at:

School Site	Address
1. McKinley Elementary School	2150 E. 14th St., San Leandro, CA 94577
2. Monroe Elementary School	3750 Monterey Blvd., San Leandro, CA 94578
3. Roosevelt Elementary School	951 Dowling Blvd., San Leandro, CA 94577
4. Washington Elementary School	250 Dutton Ave., San Leandro, CA 94577
5. Bancroft Middle School	1150 Bancroft Ave., San Leandro, CA 94577
6. Jefferson Elementary School	14300 Bancroft Ave., San Leandro, CA 94578

and as more particularly described in **Exhibits A-1 through A-6** attached hereto and incorporated herein by this reference ("School Site(s)"); and

WHEREAS, the District desires to provide for the **modernization and voluntary seismic upgrades of the facilities and appurtenant structures to be performed on portions of the School Sites;** ("Project"); and

WHEREAS, the District has determined that a portion of the School Sites are adequate to accommodate the Project, as more particularly described in **Exhibits B-1 through B-6** ("Project Site(s)") attached hereto and incorporated herein by reference; and

WHEREAS, the Project is divided into two (2) following components:

- McKinley Elementary School Modernization and Voluntary Seismic Upgrade; Monroe Elementary School Modernization and Voluntary Seismic Upgrade; Roosevelt Elementary School Modernization; Washington Elementary School Modernization and Voluntary Seismic Upgrade; and Bancroft Middle School Voluntary Seismic Upgrade ("Project Component 1"); and
- Jefferson ES Modernization at the Multi-Purpose Room ("Project Component 2");

WHEREAS, Project Component 1 and Project Component 2 are collectively referred to herein as "Phase 1".

WHEREAS, District has retained **AEDIS Architects** ("Architect 1") to prepare plans and specifications for the Project Component 1 ("Plans and Specifications 1") which have been approved by the California Division of the State Architect ("DSA"); and

WHEREAS, District has retained **Sim Architects** ("Architect 2") to prepare plans and specifications for the Project Component 2 ("Plans and Specifications 2") which have been approved by the California Division of the State Architect ("DSA"); and

WHEREAS, Architect 1 and Architect 2 are collectively referred to herein as "Architect(s)," and Plans and Specifications 1, and Plans and Specifications 2 are collectively referred to herein as "Plans and Specifications."

WHEREAS, District and Contractor have executed a site lease at the same time as this Master Facilities Lease

whereby the District is leasing the Project Sites to the Contractor ("Master Site Lease"); and

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

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

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

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

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

WHEREAS, the District further acknowledges and agrees that it has entered into the Master Site Lease and the Master Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

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

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

1.1. "**Contractor**" or "**Lessor**" means **Strawn Construction, Inc.**, a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

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

1.3. "**Contract Documents**" are defined in **Exhibit D** to this Master Facilities Lease.

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

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

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

1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2. The Project Master Site Lease;

1.6.3. This Master Facilities Lease,

1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Master Facilities Lease.

1.6.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Master Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Sites; and

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

2.1. Exhibits A-1 through A-6: Descriptions of the School Sites: The descriptions of the real property constituting the School Sites.

2.2. Exhibits B-1 through B-6: Descriptions of The Project Sites and Descriptions of the Projects: The description of the Project Sites and the Project.

2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions for Each of the Leased Project Sites: A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount to the Contractor.

2.4. Exhibit D: General Construction Provisions: The provisions generally describing the Project's construction.

2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for Each of the Leased Project Sites: The Memorandum which will memorialize the commencement and expiration dates of the Term.

2.6. Exhibits F-1 through F-6: Construction Schedules for each of the Project Sites: The Construction Schedule(s) shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

2.7. Exhibits G-1 through G-6: Schedule(s) of Values for Each of the Project Sites

~~**2.8. Exhibit H: Agreement For Preliminary Services (If used)**~~

2.9. Exhibit I: Certificates and Bonds to Lease-Leaseback Documents and Division 1 Documents to Lease-Leaseback Documents

2.10. Exhibit J: Plans, Technical Specifications, and Drawings

2.11. Exhibit K: Revisions to Contract Documents

3. Lease of Project and Project Sites.

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

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

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

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

3.5. Work During Instructional Time. Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to the School Sites up to, and including, rescheduling specific work activities, at no additional cost to the District.

3.6. Student Testing. Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students when students at the School Sites are taking State-required tests.

4. Term.

4.1. Master Facilities Lease is Legally Binding. This Master Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Master Facilities Lease. The Term of this Master Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the earlier of the following two (2) events ("Commencement Date") and shall terminate **six (6) months** after the Commencement Date (the "Term"):

4.1.1. The date the District takes beneficial occupancy of the Project; or

4.1.2. The date of Project Completion, as defined in **Exhibit D** to this Master Facilities Lease.

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

4.3. The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

4.3.1. An Event of Default by District as defined herein and Contractor's election to terminate this Master Facilities Lease as permitted herein, or

4.3.2. An Event of Default by Contractor as defined herein and District's election to terminate this Master Facilities Lease as permitted herein, or

4.3.3. Consummation of the District's purchase option pursuant to the Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions indicated in **Exhibit C** ("Guaranteed Project Cost Provisions").

4.3.4. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.

4.3.5. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

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

6. **Termination; Lease Terminable Only As Set Forth Herein**.

6.1. Except as otherwise expressly provided in this Master Facilities Lease, this Master Facilities Lease shall not terminate, nor shall District have any right to terminate this Master Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Master Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Master Facilities Lease.

6.2. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Master Facilities Lease in accordance with its terms.

6.3. Following Project Completion, that the District will not take any action to terminate, rescind or avoid this Master Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Master Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Master Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Master Facilities Lease or the Project or any part thereof.

6.4. District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

6.5. The District in its sole discretion may terminate for convenience this Master Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor,

materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, through the date of termination, plus necessary and reasonable documented demobilization costs.

7. Title.

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

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

7.3. During the Term of this Master Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.

7.4. If the District exercises its Purchase Option pursuant the Guaranteed Project Cost Provisions indicated in **Exhibit C** or if District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Sites shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Master Facilities Lease and transfer of title to the Project.

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

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

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

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

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

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

any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.).

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

9.6. Condemnation Proceedings.

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

9.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Contractor shall be as indicated in Section 6.1 of this Master Facilities Lease.

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

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

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

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

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

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

10.6. No Encumbrances. Contractor shall not pledge any District payments of any kind, related to the Master Site Lease, this Master Facilities Lease, or in any way derived from the Project Sites, and shall not mortgage or encumber the Project Sites, except as may be specifically permitted pursuant to the provisions of this Master Facilities Lease related to Contractor's financing the construction of the project.

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

10.7.1. Eighteen (18) months following Project Completion,

10.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project,

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

11. Construction Of Project

11.1. Project Site Conditions and Contract Documents. Contractor acknowledges that it has and will perform certain special services in preparation to construct the Project.

11.2. Construction of Project.

11.2.1. Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in **Exhibit D**, including those things reasonably inferable in the Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents.

11.2.2. **Contract Time / Construction Schedule.** It hereby understood and agreed that assuming the District issues a Notice to Proceed for Phase 1 on or before **June 16, 2014,** then District shall have beneficial occupancy of Phase 1 on or before **August 15, 2014** and Phase 1 Project Completion shall be on or before **August 15, 2014.**

11.2.2.1. District and Contractor may also approve additional changes in the Construction Schedule.

11.2.2.2. The time period between the Notice to Proceed and Completion shall be the total Contract time ("Contract Time"). The Construction shall be performed pursuant to the construction schedule(s), attached hereto as **Exhibits F-1 through F-6** ("Construction Schedule(s)").

11.2.2.3. The Construction Schedule must be approved by the District prior to execution of this Master Facilities Lease.

11.2.3. **Schedule of Values.** The Contractor has provided a schedule of values, approved by the District, which attached hereto as **Exhibits G-1 through G-6** ("Schedule(s) of Values"). The Schedule of Values must be approved by the District prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment.

11.2.4. **Liquidated Damages**: Time is of the essence for all work Contractor must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, Contractor agrees that it shall pay to the District, as the District's exclusive remedy for Contractor's delay, the sum of **Two Thousand Dollars ($2,000) per day** as liquidated damages for each and every day's delay beyond the Contract Time for each School Site. For example, if two of the School Sites are delayed as indicated here, the daily liquidated damage amount is two times (2x) the daily rate; three of the School Sites, three times (3X), etc.

11.2.4.1. It is hereby understood and agreed that the liquidated damages daily amount is not a penalty.

11.2.4.2. In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Master Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**.

11.2.4.3. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Contract Time for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Master Facilities Lease

11.2.5. **Guaranteed Project Cost**. Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.

11.2.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a Modification pursuant to the provisions of **Exhibit D**.

11.2.7. Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.

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

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

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

15. Insurance

15.1. Contractor's Insurance. The Contractor shall comply with the insurance requirements as indicated herein.

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Contractor shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

15.1.2. **Umbrella Liability Insurance**

15.1.2.1. Contractor may procure and maintain, during the life of the Project, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required.

15.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, and the State, in amounts and including the provisions and requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

TSubcontractor: Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General

15.1.3. **Subcontractor:** Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits equal to the amounts required of the Contractor.

15.1.4. **Workers' Compensation and Employers' Liability Insurance**

15.1.4.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

15.1.4.2. Contractor shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

15.1.5. **Contractor's Risk Insurance: Contractor's Risk "All Risk" Insurance.** Contractor shall procure and maintain, during the life of the Project, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement

of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. The deductible for this insurance shall be paid by Contractor.

15.1.6. **Professional Liability Insurance**. This insurance shall cover the Contractor and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein below. Additionally, the policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.

15.1.7. **Property of Others Insurance (if not expressly stated as part of above insurance policies).** If equipment and material are stored off-site and are in the Contractor's possession, the Contractor shall procure and maintain, during the storage of equipment and material, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Project equipment and materials stored off-site that is lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District.

15.1.7.1. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

15.1.8. **Proof of Insurance and Other Requirements: Endorsements and Certificates**

15.1.8.1. Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Contractor's insurance policies and/or endorsements from Contractor, Contractor shall provide them within fourteen (14) days.

15.1.8.2. Endorsements, certificates, and insurance policies shall include the following:

15.1.8.2.1. A clause stating:

"This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

15.1.8.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

15.1.8.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability Insurance, and Employers' Liability Insurance.

15.1.8.4. Contractor's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

15.1.8.5. All endorsements, except for Professional Liability, shall waive any right to subrogation against any of the named additional insureds, except Architect.

15.1.8.6. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

15.1.8.7. All of Contractor's insurance shall be with **ADMITTED** insurance companies with an A.M. Best rating of no less than **A: VII.** Contractor shall provide documentation to the District demonstrating this rating.

15.1.9. **Insurance Policy Limits.** The limits of insurance shall not be less than the following amounts or as per the District's standard attached:

Commercial General Liability	Combined Single Limit General Aggregate Product Liability and Completed Operations	$2,000,000 $3,000,000 $2,000,000
Automobile Liability – Any Auto	Combined Single Limit General Aggregate	$2,000,000 $3,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$3,000,000
Contractors Risk (Course of Construction)		Issued for the value and scope of Work indicated herein.
Excess Liability		$5,000.000
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
Professional Liability, If required by the District and either: - the premium is approved by the District, or - by each subconsultant and/or designer of documents produced by Contractor.		$1,000,000 per occurrence and annual aggregate

15.2. District's Insurance.

15.2.1. **Rental Interruption Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force for the benefit of District and Contractor, as their interests may appear, rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Lease Payments payable under this Master Facilities Lease during the current or any future twelve (12) month period. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained

in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Contractor in lieu of the Lease Payments that would otherwise be due and owing during this period.

15.2.2. **Property Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Project Sites and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Contractor shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

15.2.3. **Commercial General Liability Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of commercial general liability insurance policy of $1,000,000. Contractor shall be named as an additional insured or co-insured thereon by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

16. Indemnification.

16.1. Contractor's Indemnity Obligation. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself not covered by Contractor's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, stop payment notice actions, or liens by the California Department of Labor Standards Enforcement.

16.1.1. The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly

or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

16.1.2. In any and all claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

16.2. District's Indemnity Obligation. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Master Facilities Lease, only (1) if those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease; (2) to the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees and (3) only if those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

17. Eminent Domain.

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

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

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

17.2. Total Taking Prior to Project Delivery. If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Contractor is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the amount Contractor has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

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

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

17.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

18. Damage and Destruction. If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or

other casualty beyond the control of either party hereto, the Term shall end and District shall still no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C.**

19. Abatement.

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

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

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

19.3.1. Repair the Project to full use;

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

19.3.3. Exercise the District's purchase option as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Master Facilities Lease.

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

20. Access

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

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

21. Assignment, Subleasing

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

21.1.1. This Master Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

21.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease; and

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

22. Events Of Default of District

22.1. Events of Default by District Defined. The following shall be "Events of Default" of the District under this Master Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Master Site Lease or this Master Facilities Lease, shall only be one or more of the following events:

22.1.1. Failure by the District to pay payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

22.1.2. Failure by the District to perform any material covenant, condition or agreement in this Master Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.2. Remedies on District's Default. If there has been an Event of Default on the District's part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Master Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

22.2.1. Contractor may rescind its leaseback of the Project Site to the District under this Master Facilities Lease and re-rent the Project Site to another lessee for the remaining Term for no less than the fair market value for leasing the Project Site, which shall be:

22.2.1.1. An amount determined by a mutually-agreed upon appraiser, or

22.2.1.2. If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Contractor appraisal for the Project Site, both prepared by an MAI-certified appraiser.

22.2.2. District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:

22.2.2.1. Increased by the amount of costs, expenses, and damages incurred by the Contractor in re-renting the Project Site, and

22.2.2.2. Decreased by the amount of rent Contractor receives in reletting the Project Site.

22.2.3. The District agrees that the terms of this Master Facilities Lease constitute full and sufficient notice of the right of Contractor to re-rent the Project Site in the Event of Default without effecting a surrender of this Master Facilities Lease, and further agrees that no acts of Contractor in performing a re-renting as permitted herein shall constitute a surrender or termination of this Master Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site shall vest in Contractor as indicated herein.

22.3. District's Continuing Obligation. Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

22.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Master Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Master Facilities Lease and by law.

23. Events of Default of Contractor

23.1. Events of Default by Contractor Defined. The following shall be "Events of Default" of the Contractor under this Master Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Contractor in the Master Site Lease or this Master Facilities Lease, shall only be one or more of the following events:

23.1.1.1. Contractor unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;

23.1.1.2. Prior to Project Completion, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

23.1.1.3. Contractor persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.

23.1.2. failure by the Contractor to perform any material covenant, condition or agreement in this Master Facilities Lease and that failure continues for a period of seven (7) days after District provides Contractor with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Contractor within the applicable period and diligently pursued until the default is corrected.

23.2. Remedies on Contractor's Default. If there has been an Event of Default on the Contractor's part, the District may, without waiver of or prejudice to any other right or remedy, terminate the Master Site Lease and Master Facilities Lease.

23.2.1. If District terminates the Master Site Lease and the Master Facilities Lease pursuant to this section, the Project Sites and any improvements built upon the Project Sites shall vest in District upon termination of the Master Site Lease and Master Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Contractor's Default.

23.2.2. The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,

23.2.2.1. The right to assess liquidated damages due as permitted herein;

23.2.2.2. All rights the District holds to demand performance pursuant to the Contractor's required performance bond;

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

24.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

24.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

24.3. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

24.4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for:

If to District:	**If to Contractor:**
San Leandro Unified School District 14735 Juniper Street San Leandro, CA 94579 Attention: Bond Director Telephone: (510) 667-3500 Facsimile: (510) 667-3569	Strawn Construction, Inc. 1140 Pedro Street, Suite 1 San Jose, CA 95126 Attention: _____ Telephone: (408) 286-1299 Facsimile: (408) 286-1288
With a copy to: Orbach Huff Suarez & Henderson 1 Kaiser Plaza, Ste. 1458 Oakland, CA 94612 Attention: Philip J. Henderson Telephone: (510) 999-7908 Facsimile: (510) 999-7918	

The Contractor and the District, by notice given hereunder, may designate different addresses to which

subsequent notices, certificates or other communications will be sent.

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

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

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

28. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein, this Master Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

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

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

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

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

33. Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Master Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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

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

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

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

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

39. Force Majeure. A party shall be excused from the performance of any obligation imposed in this Master Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts , and such non performance will not be a default hereunder or a grounds for termination of this Master Facilities Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2014	Dated: _____, 2014
San Leandro Unified School District	**Strawn Construction, Inc.**
By: _____	By: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____