

MASTER SITE LEASE

This master site lease ("**Master Site Lease**"), dated November 9, 2018 for reference purposes only, is made and entered into by and between the **Alameda Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as lessor ("**District**"), and **Lathrop Construction Associates, 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: **3010 Fillmore St. Alameda, CA 94501 (Otis Elementary); 400 Packet Landing Rd. Alameda, CA 94502 (Earhart Elementary) and 200 Aughinbaugh Way, Alameda, CA 94502 (Bay Farm School)** and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**School Site**"); and

WHEREAS, the District desires to provide for the **Multi-Campus Fencing at Otis Elementary, Earhart Elementary and Bay Farm School** ("**Project**"); and

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

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained

herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Master Site Lease.

2.1. Exhibit A: Descriptions of the School Site

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

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

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

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

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

4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.
5. **Term.** The term of this Master Site Lease shall commence as of the **Effective Date**, which is the date upon which the District's Board approves this Master Site Lease and the Parties execute the same, and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Master Site Lease.

7. Termination

7.1. Termination Due to Default by Contractor. If Contractor defaults pursuant to the provisions of the Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provisions allowing termination, then the Contractor shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate at the same time as the Master Facilities Lease.

7.2. Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate this Master Site Lease, in whole or in part, when it is in the interest of, or for the convenience of, the District; provided, however, that such termination for the District's convenience shall be deemed to also include the District's termination of the Master Facilities Lease in accordance with the terms and conditions set forth therein.

8. **Title to School Site.** During the term of this Master Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Master Site Lease or the Master Facilities Lease shall change, in any way, the District's ownership interest in the School Site.
9. **Improvements.** Title to all improvements made on the Project Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Master Facilities Lease.
10. **No Merger.** The leaseback of the Project Site by the Contractor to the District pursuant to the Master Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Contractor shall continue to have a leasehold estate in the Project Site pursuant to this Master Site Lease throughout the term hereof.
11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.
12. **Quiet Enjoyment.** Subject to any rights the District may have under the Master Facilities Lease to possession and enjoyment of the Project Site or otherwise, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof.
13. **Waste.** The Contractor agrees that at all times that it is in possession of the Project Site, it will not commit, suffer or permit any waste on the Project Site, and that it will not willfully or knowingly use or permit the use of the Project Site for any illegal purpose or act.
14. **Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Master Site Lease and the Master Facilities Lease.
15. **Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:
 - 15.1. **Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
 - 15.2. **Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.
 - 15.3. **No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Master Site Lease nor the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.
 - 15.4. **CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the

Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

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

15.6. Condemnation Proceedings.

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

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

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

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

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

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

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

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

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

16.5. No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or

proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Master Site Lease or the Master Facilities Lease.

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

If to District:
 Alameda Unified School District
 2060 Challenger Drive
 Alameda, California 94501
 Telephone: 510-337-7090
 ATTN: Robbie Lyng, Director, Maintenance, Operations
 & Facilities

If to Contractor:
 Lathrop Construction Associates, Inc.
 4001 Park Road
 Benicia, CA 94510
 ATTN: Ricky J. Martellaro, President

With a copy to:
 Orbach Huff Suarez & Henderson LLP
 1901 Harrison Street, Ste.1630
 Oakland, CA 94611
 Attention: Glenn Gould, Esq.

With a copy to:

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

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

- 23. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Master Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
- 24. Severability.** In the event any provision of this Master Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Site Lease or the Master Facilities Lease.
- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Master Facilities Lease, this Master Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
- 27. Execution in Counterparts.** This Master Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 28. Contractor and District Representatives.** Whenever under the provisions of this Master Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 29. Applicable Law.** This Master Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
- 30. No Attorney's Fees.** If either party brings an action or proceeding involving the School Site or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
- 31. Captions.** The captions or headings in this Master Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Site Lease.
- 32. Prior Agreements.** This Master Site Lease and the corresponding Master Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 33. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Site Lease.
- 34. Recitals Incorporated.** The Recitals set forth at the beginning of this Master Site Lease are hereby incorporated into its terms and provisions by this reference.
- 35. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.
- 36. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such

obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Site Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: 11/19/2018, 2018

Alameda Unified School District

By: 

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

By: _____

Print Name: Shariq Khan

Print Title: Chief Business Officer

Dated: November 15, 2018

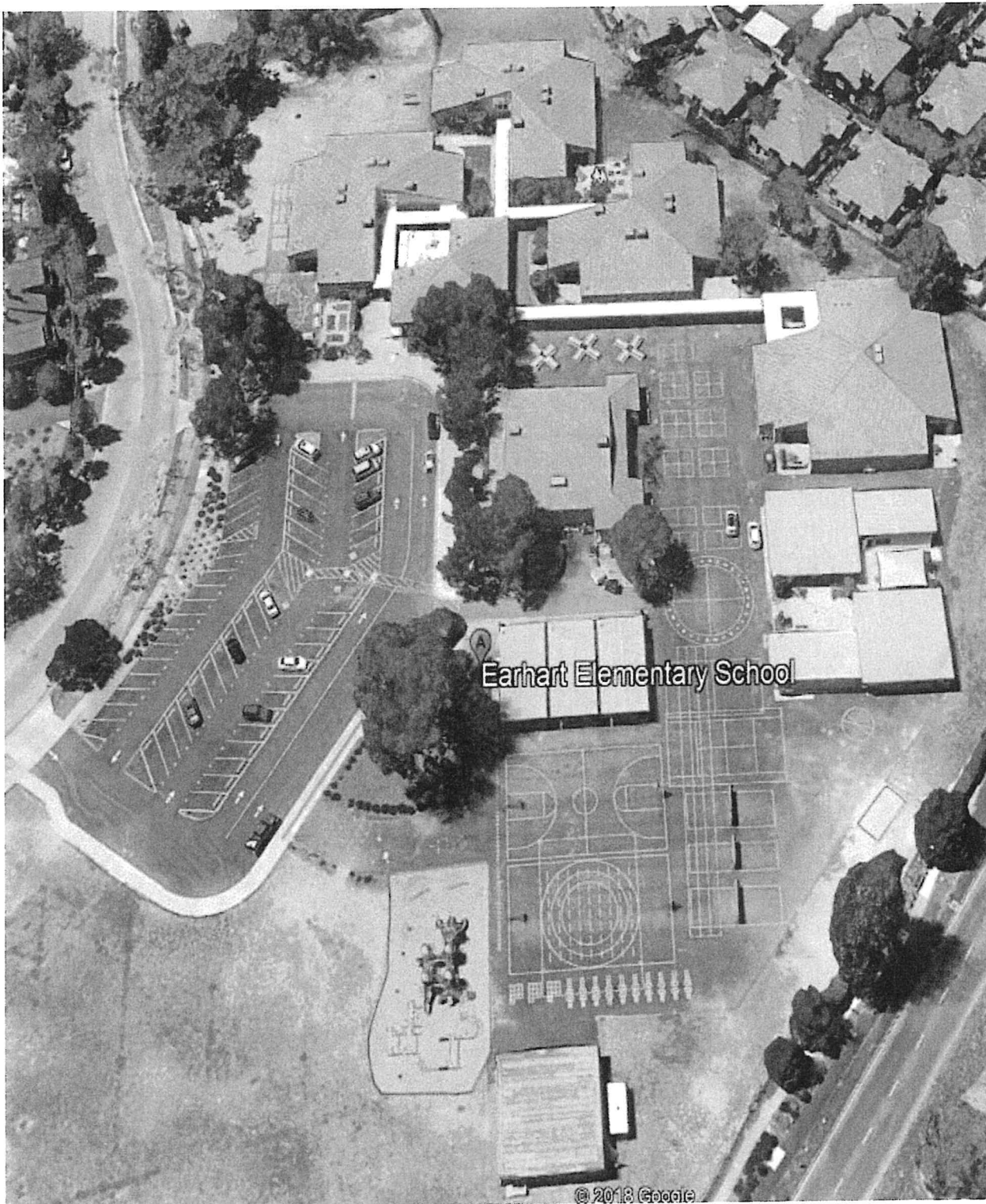
Lathrop Construction Associates, Inc.

By: 

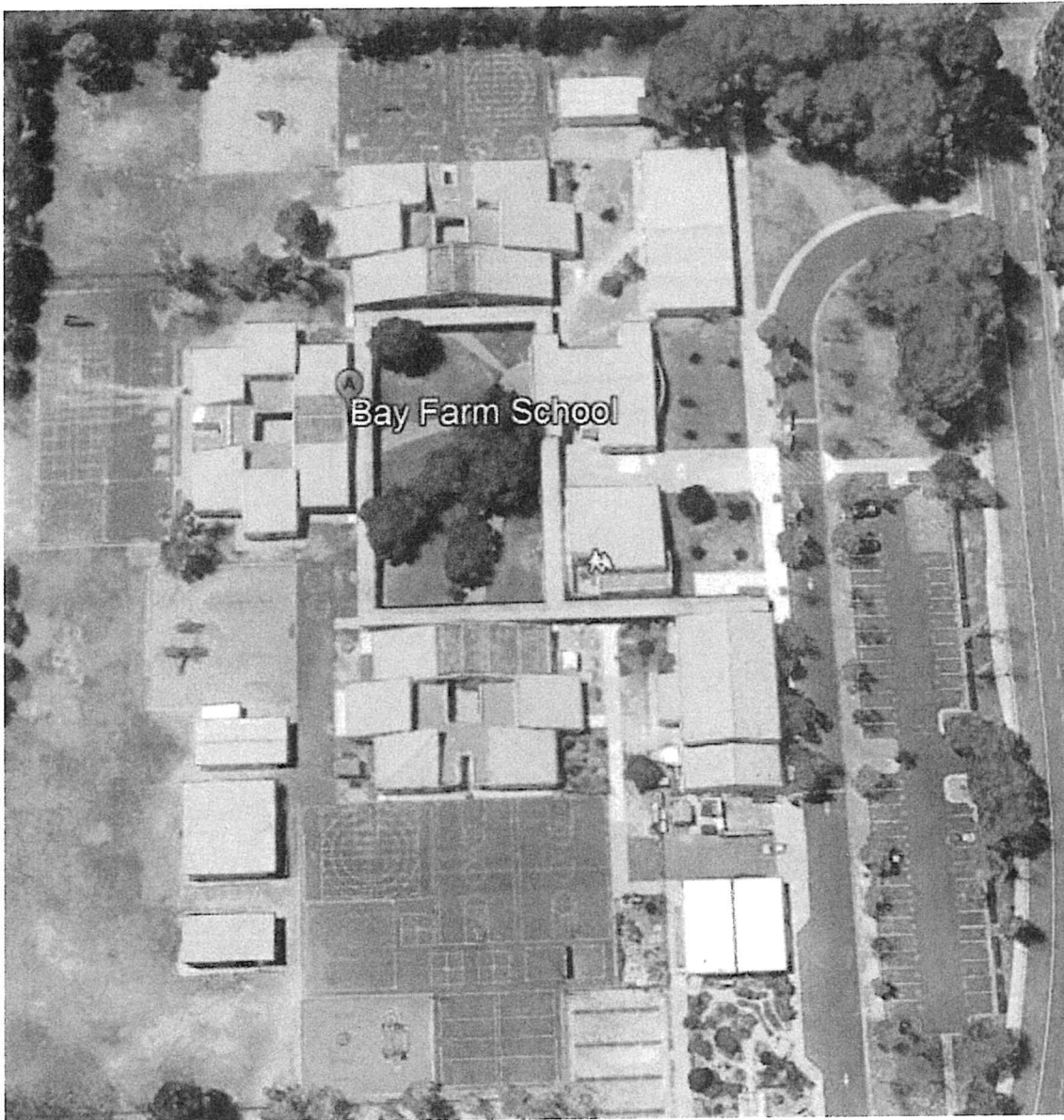
Print Name: Ricky J. Martellaro

Print Title: President

EARHART ELEMENTARY FENCING



BAY FARM SCHOOL FENCING



**EXHIBIT B
TO
MASTER SITE LEASE**

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

PROJECT SITE DESCRIPTION:

Attached is a site diagram for the portions of the Multi-Campus Fencing Otis, Earhart and Bay Farm Elementary Sites that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

PROJECT DESCRIPTION:

THIS PROJECT INCLUDES THE FOLLOWING SCOPE OF WORK:

- NEW CHAIN LINK AND ORNAMENTAL IRON FENCING AND GATES AT THREE (3) ELEMENTARY SCHOOL SITES: OTIS, EARHART, AND BAY FARM.
- INCLUDING RELATED ELECTRICAL WORK FOR MOTORIZED ROLLING GATES, AND RELATED MINOR SITE WORK TO FACILITATE FENCING INSTALLATION.

MASTER FACILITIES LEASE

This master facilities lease ("**Master Facilities Lease**"), dated November 9, 2018 for reference purposes only, is made and entered into by and between **Lathrop Construction Associates, Inc. ("Contractor")**, a California company duly organized and existing under the laws of the State of California, as sublessor, and **Alameda 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 3010 Fillmore St. Alameda, CA 94501 (Otis Elementary); Packet Landing Rd. Alameda, CA 94502 (Earhart Elementary) and 200 Aughinbaugh Way, Alameda, CA 94502 (Bay Farm School) and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**School Site**"); and

WHEREAS, the District desires to provide for the construction of the **Multi-Campus Fencing at Otis, Earhart and Bay Farm School ("Project")**; and

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

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

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

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

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

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

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

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

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

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

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

1.1. "Contractor" or "Lessor" means **Lathrop Construction Associates, 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, Contract Documents: The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

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

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

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

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

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

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

2.1. Exhibit A: Description of the School Site

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

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

2.4. Exhibit D: General Construction Provisions

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

2.6. Exhibit F: Project Schedule

2.7. Exhibit G: Schedule of Values

2.8. Exhibit H: Scope of Preliminary Services

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

2.10. Exhibit J: Division 1 Documents

2.11. Exhibit K: Special Construction Provisions

2.12. Exhibit L: Project Labor Agreement

3. Lease of Project and Project Site.

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

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

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

3.4. No Disruption to Educational Activities

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

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

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

4. Term.

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

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

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

6. Termination.

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

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

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

7. Title.

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

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

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

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

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

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

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

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

the District, or upon the Project Site, except Permitted Encumbrances.

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

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

9.6. Condemnation Proceedings.

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

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

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

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

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

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

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

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

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

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

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

11. Preliminary Services

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

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

12. Construction of Project

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

12.1.7. Compliance Monitoring and Enforcement by the Department of Industrial Relations.

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

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

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

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

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

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

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

16. Insurance

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

17. Indemnification.

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

17.2. District's Indemnity Obligations.

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

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

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

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

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

18. Eminent Domain.

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

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

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

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

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

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

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

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

20. Abatement.

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

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

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

20.3.1. Repair the Project to full use;

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

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

21. Access

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

21.2. By District. The District shall have the right to enter upon the Project Site at all times. District shall

comply with all safety precautions and procedures required by Contractor.

22. Assignment, Subleasing

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

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

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

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

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

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

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

If to District: Alameda Unified School District 2060 Challenger Avenue Alameda CA 94501 510-337-7911 Attention: Robbie Lyng, Director Maintenance, Facilities & Operations	If to Contractor: Lathrop Construction Associates, Inc. 4001 Park Road Benicia, CA 94510 ATTN: Ricky J. Martellaro, President
With a copy to: Orbach Huff Suarez & Henderson LLP 1901 Harrison Street, Ste.1630 Oakland, CA 94611 Attention: Glenn Gould, Esq.	With a copy to:

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

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

25. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Master Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to

the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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

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

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

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

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

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

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

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

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

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

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

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

38. Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Master

updated Construction Schedule as required herein.

16.1.8. Following submission of a notice of delay, the District may determine whether the delay is to be considered:

16.1.8.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;

16.1.8.2. How long the delay continues; and

16.1.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.

16.1.9. Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of its right to assert a claim for a delay.

16.1.10. Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Construction Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of that request, Contractor shall insert into the then current and updated approved Construction Schedule a "fragnet" analysis representing the event that Contractor claims to result in delay to the critical path as depicted in the updated approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

16.2. Excusable and Compensable Delay(s)

16.2.1. Contractor is not entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless all of the following conditions are met:

16.2.1.1. The District is responsible for the delay;

16.2.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

16.2.1.3. The delay was not within the contemplation of District and Contractor;

EXHIBIT D TO MASTER FACILITIES LEASE GENERAL CONSTRUCTION PROVISIONS

and

16.2.1.4. Contractor complies with the claims procedure of the Contract Documents.

16.2.1.5. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence.

16.2.1.6. The delay extends the most current Contract Completion date, and is not concurrent with a Contractor caused delay or other type of Excusable Delay.

16.2.2. In accordance with California Public Contract Code section 7102, if the Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, the "Changes in the Work" section and the percentages in the "Format for Proposed Change" section of these General Conditions.

16.3. Excusable and Non-Compensable Delay(s)

16.3.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:

16.3.1.1. Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence, and

16.3.1.2. Actually extended the most current Project Completion date.

16.3.2. The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.

16.3.3. Excusable Delays are limited to interruptions that satisfy the above requirements and that are acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; and Adverse Weather that satisfies the requirements herein.

16.3.4. Contractor is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to