

**AMENDMENT TO THE
PROJECT MANAGEMENT SERVICES AGREEMENT BY AND BETWEEN THE
SIERRA SANDS UNIFIED SCHOOL DISTRICT AND MAAS COMPANIES, INC.**

This Amendment (“Amendment”) is entered into on _____ 2016, by and between the Sierra Sands Unified School District (herein referred to as the “District”) and MAAS Companies, Inc. (herein referred to as “Project Manager” or “PM”).

RECITALS

A. WHEREAS, on October 30, 2013, the Parties entered into the agreement titled the “Project Management Services Agreement” (herein referred to as the “PM Agreement”) in which Project Manager agreed to provide comprehensive professional project management services for the District’s Burroughs High School and Murray Middle School Projects;

B. WHEREAS, Article 4.1 of the PM Agreement states that the Project Manager’s performance will end on the following completion dates: 1) December 31, 2015 with respect to the Burroughs High School Project and 2) September 30, 2016 with respect to the Murray Middle School Project;

C. WHEREAS, the Parties entered into four amendments to the PM Agreement extending the PM Agreement with respect to the Burroughs High School Project and the Murray Middle School Project;

D. WHEREAS, the Parties wish to further extend the term of the PM Agreement with respect to both the Burroughs High School Project and the Murray Middle School Project because construction on both Projects is ongoing and the District requires continued project management services as set forth in the PM Agreement;

E. WHEREAS, the purpose and intention of this Amendment is to extend the term of the PM Agreement and adjust the payment to the Project Manager;

F. WHEREAS, this Amendment is being executed between the District and the PM Agreement pursuant to Article 10 of PM Agreement which allows amendments pursuant to written agreement between the Parties;

G. WHEREAS, where any Article or portion of the PM Agreement is amended or superseded by this Amendment, the balance of that Article not specifically amended or superseded shall remain in effect as originally written. Where any Article or portion thereof is supplemented, that supplement shall be considered added thereto, and the original provisions of the Article shall remain in effect as originally written. Where any Paragraph or Section is referenced, such Paragraph or Section is superseded and replaced by the language herein. This Amendment, taken together with the PM Agreement, represents a new PM Agreement and understanding between the Parties; and

WHEREAS, the District and Project Manager agree that the Recitals set forth hereinabove are expressly incorporated into the PM Agreement and correctly set forth the nature of the PM Agreement as modified by this Amendment.

NOW, THEREFORE, the District and the Project Manager agree that the terms and provisions of the PM Agreement are hereby amended as set forth herein below:

1. Revise and Replace Article 3 of the PM Agreement as follows:

3.1 District agrees to pay Project Manager for all the services set forth in this Agreement for a total cost not to exceed a fee of SEVEN HUNDRED SIXTY NINE THOUSAND SEVEN HUNDRED EIGHTY FIVE DOLLARS (\$769,785) inclusive of all reimbursable expenses, for all services performed and expenses incurred pursuant to this Agreement (“TOTAL FEE”).

District agrees to pay Project Manager for the services set forth in this Agreement at the professional fee rates and the monthly schedule set forth in the rate schedule attached hereto as Exhibit “A”. As stated in the Project Manager’s Proposal, Project Manager’s payment shall be broken down on a monthly basis and the total payment for each month shall not exceed a total of SIXTY FOUR THOUSAND ONE HUNDRED FORTY EIGHT DOLLARS AND SEVENTY FIVE CENTS (\$64,148.75) (“MONTHLY PAYMENT LIMIT”). Project Manager must obtain written preapproval from District prior to engaging in any work that will raise the total payment owed to Project Manager over the TOTAL FEE or the MONTHLY PAYMENT LIMIT. To obtain preapproval, Project Manager must submit a detailed description of the proposed work or services to be provided, along with an estimate of the total cost. Project Manager shall not receive any compensation or payment for any work that is not preapproved in writing by the District.

If Project Manager believes that the MONTHLY PAYMENT LIMIT needs to be adjusted, so the Project Manager is paid more in one month and less in another, Project Manager must obtain written approval for any such adjustment. However, in no event shall any adjustments in monthly payments increase the TOTAL FEE amount to be paid to the Project Manager for the Project. All costs must be supported by an invoice, receipt, an employee time sheet, or other acceptable documentation. District may reject any cost claimed by Project Manager, even if it was preapproved, if District determines, at its sole discretion, that the cost was not required to provide the services contemplated by this Agreement or if Project Manager fails to provide adequate documentation that both substantiates the cost and demonstrates why the service was necessary to meet the requirements of this Agreement or the needs of the District. District may also require Project Manager to reduce the number of hours Project Manager charges for certain services if the District determines, at its sole discretion, that the hours claimed are excessive or unnecessary for the services allegedly provided. If the District, at its sole discretion, rejects any cost, the Project Manager shall not receive any payment or reimbursement for the rejected cost.

3.2 Payment of Invoices. District shall make payments to Project Manager within thirty (30) days of receipt of the appropriate and approved invoice from Project Manager.

3.3 Additional Compensation. Project Manager shall not be entitled to additional compensation unless there are unusual and unanticipated circumstances and only when approved in writing by District, in advance of such services being provided. If the Project Manager shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Project Manager shall, within ten (10) days after sustaining of such damage, make to the District a written statement of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained, the Project Manager shall file with the District an itemized statement of the details and amount of such damage in accordance with this Article, and unless such statement is submitted, any claims by Project Manager shall be forfeited and invalidated and Project Manager shall not be entitled to consideration for payment on account of any such damage. In the event extra compensation is approved, extra compensation shall be computed at cost plus ten percent (10%) of billings to Project Manager by Project Manager's consultants and for other costs incurred by the Project Manager.

2 Revise and Replace Article 4.1 of the PM Agreement as follows:

4.1 Period of Performance. This AGREEMENT shall commence on the Effective Date and shall terminate on the dates of completion of the Projects as follows: for the Murray Middle School Project, construction must complete by September 30, 2017 and for the Burroughs High School Project, completion must be complete by June 30, 2017 (collectively, the "Completion Date"). Project Manager shall complete all services for each project by the Completion Date, except for the Close Out Services noted below. Project Manager acknowledges that receiving and maintaining federal funding for the Project is contingent on completing all construction by the Completion Date. After the Completion Date, Project Manager shall be required to provide any services necessary to ensure all remaining punch list items are resolved to the District's satisfaction.

4.1.1 Close-Out Process. After the Completion Date, Project Manager may be required to conduct additional close-out activities to ensure all required forms, records and paperwork necessary to close out the Projects' files and records are completed and finalized. This Close-Out Process may include, but is not limited to, ensuring that all required information and documentation is submitted and approved by all necessary and appropriate agencies, including, but not limited to, the Division of State Architect and any federal agency with jurisdiction over the Projects, including the Department of Defense. This Close-Out Process shall not include any work related to the completion of the construction of the Projects as all construction services must be completed and approved by the Department of Defense, or the federal agency with jurisdiction over the Program, by the Completion Date. Project Manager shall ensure that this Close-Out Process does not include any service or activity required to deem the Projects completed by the Program, as defined in the Agreement. This Close-Out Process is provided for the limited purpose of allowing Project Manager to complete and close out the files for the Projects. Any required service during this Close-Out Process will be invoiced and paid in

accordance with the process set forth in Section 1 above. This Close-Out Process will conclude four (4) months after the Completion Dates.

3. Miscellaneous.

A. Binding. The Parties and each of their signatories hereto warrant that each has the power and authority to execute this Amendment. This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. If any provision of this Amendment shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Amendment or the PM Agreement.

B. Full Force and Effect. Except as herein modified, all terms and conditions of the PM Agreement shall remain unchanged and in full force and effect.

C. Modifications. This Amendment may be amended or modified only by an agreement in writing signed by both the District and Project Manager.

D. Counterparts. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

E. Inconsistencies. In the event of any inconsistency between the terms of this Amendment and those of the PM Agreement, the terms of this Amendment shall control.

SIERRA SANDS UNIFIED SCHOOL DISTRICT

By: _____

Print Name: _____

Title: _____

MAAS COMPANIES, INC.

By: _____

Print Name: _____

Title: _____

EXHIBIT A

Project Manager's Fee Rate Schedule

Position	Hourly Rate	Total Annual Fee
Principal in Charge	\$185	\$6,660
Senior Project Manager	\$145	\$206,625
Project Manager	\$135	\$192,375
Project Manager	\$135	\$192,375
Project Manager- Part Time	\$135	\$50,625
Administrative/Accounting Assist.	\$85	\$121,125
Total Annual Fee		\$769,785

10. CONSTRUCTION ADMINISTRATION

10.8 Approval to Enter into Agreement with Maas Companies, Inc. for Project Management Services for Various Construction Projects

BACKGROUND INFORMATION: The district often hires project managers to help oversee and manage its construction projects. These management services help ensure the construction projects are completed in accordance with the district's needs, meet the requirements of applicable law, and are completed within the budget and timeline required by the district. Project managers can provide unique and specialized professional services to help complete complex or time-sensitive projects. Maas Companies, Inc. ("Maas") is currently providing project management services for the district's construction projects at Burroughs High School and Murray Middle School (the "DoD Projects"). Thus, district staff is familiar with the project management services Maas provides for construction projects and believes Maas is qualified to provide similar project management services for other similar projects pending throughout the district.

CURRENT CONSIDERATIONS: The district has a number of pending construction projects that require project management services which are identified in the attached proposed contract in Exhibit "A" (the "Outstanding Projects"). Thus, district staff engaged in negotiations with Maas for the Outstanding Projects and Maas has agreed to enter into a project management service contract for the Outstanding Projects with similar terms and conditions as set forth in its contract for the DoD Projects. The district has determined that Maas will be best suited to meet the district's needs with respect to the Outstanding Projects.

FINANCIAL IMPLICATIONS: The contract with Maas for the Outstanding Projects allows the district to pay Maas in monthly installments for the documented project management services it provides for a total not-to-exceed amount of \$256,595.00.

SUPERINTENDENT'S RECOMMENDATION: It is recommended that the board approve the agreement for project management for construction services with the Maas Companies, Inc. for the Outstanding Projects as presented.

PROJECT MANAGEMENT SERVICES AGREEMENT

This Project Management Services Agreement (“Agreement”) is made and entered into this ____ day of _____, 2016 (the “Effective Date”) by and between Sierra Sands Unified School District (hereinafter “District”) and MAAS Companies, Inc. (hereinafter referred to as “Project Manager”). The District and Project Manager are sometimes collectively referred to as the Parties.

WHEREAS, District desires to obtain comprehensive professional project management services which include the administration and management of various projects throughout the District, listed and described in Exhibit A (collectively, the “Project”);

WHEREAS, Project Manager has represented that Project Manager is intimately familiar with the rules, regulations and submittal requirements of the California Department of Education, the Office of Public School Construction, the Division of State Architect, all applicable federal regulations, and is capable of meeting each and every requirement of these agencies in an efficient manner in order to meet both time and budget expectations. Further, Project Manager is in complete compliance with all requirements under local, state and federal law.

ARTICLE 1

PROJECT MANAGER’S SERVICES AND RESPONSIBILITIES

1.1 Scope. The Project Manager shall provide to the District, on the terms herein set forth, all of the management services necessary to complete the Project, including all services necessary to provide the organization, coordination, management, and administration required for the District’s facilities needs for the development and completion of the Project, including, without limitation, planning, programming, site investigations, design, construction administration and project close out. The Project Manager shall not provide any services related to the Projects listed in Exhibit A that comprise the Project unless and until the District issues written notice or approval to conduct such work. Such written notice/approval shall be performed in accordance with the terms and conditions of this Agreement, as applicable.

1.2 Master Budget and Cash-Flow Monitoring and Control. The Project Manager shall provide all services necessary to ensure the Project meets the requirements and budget amounts established by the District. Project Manager shall review the District’s Project requirements, scheduled requirements and existing budget data. Where Project Manager’s initial estimate indicates that projected costs may be at variance with the District’s budgetary requirements, Project Manager will present such issues to the District and in writing, along with any readily apparent alternatives which may be identified. Project Manager will cooperate with the District in identifying and implementing additional potential cost adjustment measures which might be employed in order to reach budgetary requirements.

1.3 Progress Reporting. Project Manager shall document and submit written progress reports to the District regarding the funding of the Project along with updated budget and cost tracking, to include the impact of all proposed and executed change orders. Project Manager shall, on a bi-monthly basis, review the progress of construction on the Project, shall evaluate the percentage complete of each construction activity as indicated in each Project’s schedule and

shall review such percentages with the District. Project Manager's review shall indicate the actual progress compared to scheduled progress. Project Manager shall advise and make recommendations to the District concerning the alternative courses of action that the District may take in its efforts to achieve the required Project completion.

1.4. Meetings. Project Manager shall regularly coordinate and/or attend meetings with the District and Project personnel to ensure the successful administration of the Project.

1.5 Monitoring and Administering the Program Communication Plan. Project Manager shall assist the District in public relations activities relating to the Project, including preparing information for and attending public meetings other than regular District meetings (i.e. School Board and other meetings that may be required). Project Manager shall provide and maintain a management team for the Project to provide contract administration as an agent of the District and to establish and implement coordination and communication procedures among the District staff, Design Professionals and all contractors on the Project.

1.6 Monitoring and Coordination of Project Parties. Project Manager shall assist in the coordination of all consultants involved on the Project including, as applicable, the District staff, geotechnical, survey, soils, inspection (including IOR), and other professional consultant services. Project Manager shall ensure all consultant work is coordinated with the architectural services for the Project and shall assist in the evaluation of the performance of all consultants. Project Manager may provide input or suggestions as to the consultants hired by the District for the Project. However, the District shall select and hire all consultants for the Project, to be determined at the District's sole discretion. Any consultant that Project Manager needs to hire to complete its contractual obligations on the Project shall be the sole responsibility of the Project Manager, but must be approved in writing.

1.7 Assistance in Procurement of Professional Services. If requested, Project Manager shall assist the District in selecting, coordinating and retaining the professional services of surveyors, special consultants including the Inspector of Record, Labor Compliance Program consultants, testing laboratories, and other consultants necessary for the Project. Project Manager shall assist in the coordination of the services of all professional consultants. Project Manager shall draft all Request for Proposals and statement of work for all parties participating on the Project.

1.8 Closeout Services. Project Manager shall coordinate with the District and the Architect to secure and process all necessary paperwork and close-out documents with the Office of Public School Construction, Division of the State Architect (DSA) and any other applicable public agencies for the Project, including the federal government as applicable. Project Manager shall work with the Project Architect to prepare and provide all information and documents necessary to close out the Project with DSA and will help the District address any issues that may arise during the DSA Close Out process. However, Project Architect shall be responsible for obtaining final DSA Close Out of the Project.

1.9 Office Space. The District and Project Manager shall enter into a separate agreement to address the Project Manager's use of District office space and equipment during the Project. This Office Space Agreement shall establish the terms and conditions of the Project Manager's use of District property, the insurance requirements, and payment plan applicable to the Project.

All property and equipment granted by the District for the Project Manager's use shall remain the property of the District and Project Manager shall be responsible for its care, maintenance, and proper use.

ARTICLE 2
THE DISTRICT'S RESPONSIBILITIES

2.1 The District shall provide full information regarding the requirements of the Project including the District's objectives, constraints and criteria.

2.2 Prior to the commencement of the Design Phase for the Project, the District shall provide a financial plan and budget to be utilized by Project Manager.

2.3 The District shall designate a representative ("District Representative") to act on the District's behalf with respect to the Project. The District, or the District Representative, if authorized, shall render decisions promptly to avoid unreasonable delay in the progress of the Project Manager's services.

2.4 The District shall furnish tests, inspections and reports as required by law or the contract documents.

2.5 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, prompt notice not to exceed two calendar days thereof shall be given by the District to the Project Manager.

2.6 The District shall retain an Architect and whose services, duties and responsibilities are described in separate agreements. The terms and conditions of the agreements shall be furnished to the Project Manager.

ARTICLE 3
BASIS OF COMPENSATION AND PAYMENT

District agrees to pay Project Manager for all the services set forth in this Agreement for a total cost not to exceed a fee of TWO HUNDRED FIFTY SIX THOUSAND FIVE HUNDRED NINETY FIVE DOLLARS (\$256,595) inclusive of all reimbursable expenses, for all services performed and expenses incurred pursuant to this Agreement ("TOTAL FEE").

District agrees to pay Project Manager for the services set forth in this Agreement at the professional fee rates and the monthly schedule set forth in the rate schedule attached hereto as Exhibit "B". As stated in the Project Manager's Proposal, Project Manager's payment shall be broken down on a monthly basis and the total payment for each month shall not exceed a total of TWENTY ONE THOUSAND THREE HUNDRED EIGHTY TWO DOLLARS AND NINETY TWO CENTS (\$21,382.92) ("MONTHLY PAYMENT LIMIT"). Project Manager must obtain written preapproval from District prior to engaging in any work that will raise the total payment owed to Project Manager over the TOTAL FEE or the MONTHLY PAYMENT LIMIT. To obtain preapproval, Project Manager must submit a detailed description of the proposed work or services to be provided, along with an estimate of the total cost. Project Manager shall not

receive any compensation or payment for any work that is not preapproved in writing by the District.

If Project Manager believes that the MONTHLY PAYMENT LIMIT needs to be adjusted, so the Project Manager is paid more in one month and less in another, Project Manager must obtain written approval for any such adjustment. However, in no event shall any adjustments in monthly payments increase the TOTAL FEE amount to be paid to the Project Manager for the Project. All costs must be supported by an invoice, receipt, an employee time sheet, or other acceptable documentation. District may reject any cost claimed by Project Manager, even if it was preapproved, if District determines, at its sole discretion, that the cost was not required to provide the services contemplated by this Agreement or if Project Manager fails to provide adequate documentation that both substantiates the cost and demonstrates why the service was necessary to meet the requirements of this Agreement or the needs of the District. District may also require Project Manager to reduce the number of hours Project Manager charges for certain services if the District determines, at its sole discretion, that the hours claimed are excessive or unnecessary for the services allegedly provided. If the District, at its sole discretion, rejects any cost, the Project Manager shall not receive any payment or reimbursement for the rejected cost. Nothing in this Agreement, including the stated MONTHLY PAYMENT LIMIT or the TOTAL FEE, shall be construed as indicating or guaranteeing that Project Manager's compensation shall meet or exceed the TOTAL FEE. Project Manager shall only be entitled to payment for work requested by the District and supported with the documentation as set forth herein. It is the Project Manager's sole responsibility to obtain District written approval for any additional work that would raise the total payment owed to Project Manager above the MONTHLY PAYMENT LIMIT. Project Manager must provide adequate documentation on a monthly basis to substantiate all work.

3.2 Payment of Invoices. District shall make payments to Project Manager within thirty (30) days of receipt of the appropriate and approved invoice from Project Manager.

3.3 Additional Compensation. Project Manager shall not be entitled to additional compensation unless there are unusual and unanticipated circumstances and only when approved in writing by District, in advance of such services being provided. If the Project Manager shall claim compensation for any damage sustained by reason of the acts of the District or its agents, Project Manager shall, within ten (10) days after sustaining of such damage, make to the District a written statement of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained, the Project Manager shall file with the District an itemized statement of the details and amount of such damage in accordance with this Article, and unless such statement is submitted, any claims by Project Manager shall be forfeited and invalidated and Project Manager shall not be entitled to consideration for payment on account of any such damage. In the event extra compensation is approved, extra compensation shall be computed at cost plus ten percent (10%) of billings to Project Manager by Project Manager's consultants and for other costs incurred by the Project Manager.

ARTICLE 4
PERIOD OF PERFORMANCE, TERMINATION, ABANDONMENT
OR SUSPENSION OF WORK

4.1 Period of Performance. This AGREEMENT shall commence on the Effective Date and shall be valid for a period of two (2) years by which time all Projects must be completed (“Contract Conclusion Date”). Project Manager shall complete all services for each project by the Contract Conclusion Date. After the Contract Conclusion Date, Project Manager shall be required to provide any services necessary to ensure all remaining punch list items for any remaining incomplete Projects are resolved to the District’s satisfaction.

4.1.1 Liquidated Damages. The District shall be damaged in the event the Project Manager does not provide the services necessary to complete the Project by the Contract Conclusion Date. It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Project Manager will pay the District the sum of **Five Hundred Dollars (\$500) per calendar day** for each and every day of delay beyond the Conclusion Date as liquidated damages and not as a penalty or forfeiture unless Project Manager establishes that the delays in the Project completion were not related to any delays caused by Project Manager. In the event the same is not paid, the Project Manager further agrees that the District may deduct such amount thereof from any money due or that may become due the Project Manager under the Agreement. This Article shall not be construed as preventing the District from the recovery of damages under provisions of the Project documents.

4.2 Termination for Cause. The District may give seven (7) days written notice to Project Manager of District’s intent to suspend or terminate the Project Manager’s services under this Agreement for failure to satisfactorily perform or provide prompt, efficient or thorough service or Project Manager’s failure to complete its services or otherwise comply with the terms of this Agreement. If after the expiration of such seven (7) days, Project Manager fails to cure the performance as set forth in the District’s notice of intent to suspend or terminate the Project Manager’s services, District may issue a notice of termination or suspension. At that time, Project Manager’s services shall be suspended or terminated as set forth in District’s notice.

4.3 Termination for Convenience. District shall also have the right in its absolute discretion to terminate this Agreement in the event the District is not satisfied with the working relationship with Project Manager and without cause following fifteen (15) days prior written notice from District to Project Manager.

In the event Project Manager believes the District is in breach of this Agreement in any manner, including failure to issue prompt payment owed to Project Manager, Project Manager shall issue a written notification to District describing the breach and describing the remedial actions requested. The Parties shall then meet in good faith to resolve the issue. If the District and Project Manager fail to reach an agreement to rectify the issue, Project Manager may request the parties hire a neutral mediator to attempt to resolve the issue. In no event shall Project Manager cease to provide any of the service required under this Agreement and District shall continue to make timely payments of all undisputed amounts.

4.4 Abandonment of Project. The District may suspend or abandon all or any portion of the work on the Project upon written notice to the Project Manager. Upon notice of suspension or abandonment, Project Manager shall as soon as practicable discontinue any further action on the Project or portion thereof. If the entire work to be performed on the Project is abandoned, the Parties shall each be relieved of the remaining executory obligations of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

4.5 Compensation In The Event Of Termination for Convenience Or Abandonment. This Agreement may be terminated without cause by District upon ten (10) days written notice to the Project Manager. In the event of a termination without cause, the District shall pay Project Manager for all Services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the Project Manager for Additional Services approved by the District's Board in writing.

4.6 Compensation In The Event Of Termination for Cause. In the event of termination due to a breach of this Agreement by Project Manager, any compensation due Project Manager upon termination shall be reduced by the amount of damages sustained by the District due to such breach, upon evidence of such damages by the District. The compensation due to Project Manager in the event of termination for cause shall only be for the approved services performed and all approved expenses incurred under this Agreement before the date of the District's written notice of termination, provided under the terms of Article 4.2, supported by documentary evidence, including payroll records, and expense reports. This amount shall be reduced by all costs incurred by the District due to Project Manager's breach which shall include all costs related to the District's efforts to identify Project Manager's breach, remedy any damage or harm incurred as a result of the breach, and costs incurred through the hiring of any additional parties to complete project management services necessary to complete the Project. The District shall provide Project Manager, upon request, documentation demonstrating the District's costs. In the event Project Manager does not agree with the District's determination of damages, the Parties shall meet in good faith to discuss the termination and damages.

4.7 Delivery of Documents. Upon termination, abandonment or suspension, Project Manager shall deliver to District all documents and matters related to the Project.

ARTICLE 5 INDEMNIFICATION

5.1 To the fullest extent permitted by law, Project Manager agrees to indemnify, defend and hold District, its board members, employees, and officers harmless from liability arising out of:

(a) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Project Manager's employees or Project Manager's subcontractor's employees arising out of Project Manager's work under this Agreement;

(b) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure to comply with any provision of law; or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Project Manager or any

person, firm or corporation employed by the Project Manager upon or in connection with the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its board members, officers, employees, agents or independent consultants who are directly employed by the District; and

(c) Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Project Manager, or any person, firm or corporation employed by the Project Manager, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the Project, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by sole or active negligence, or willful misconduct of the District.

(d) Any and all claims, demands, causes of action, lawsuits or other action by any third party arising out of, or in any way connected with the District's retention of Project Manager or the District entering into this Agreement.

The Project Manager at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its board members, officers, or employees, on account of any of the causes identified within sub-sections (a), (b), (c) and (d) herein, and shall pay or satisfy any judgment that may be rendered against the District, its officers, or employees in any actions, suit or other proceedings as a result thereof.

Said indemnity is intended to apply during the period of this Agreement of Project Manager's performance and shall survive the expiration or termination of this Agreement until such time as action against District on account of any matter covered by such waiver of indemnity is resolved or barred by the applicable statute of limitation. Project Manager shall not be responsible for injury or damage that is in no way caused by, or arising out of the services provided by, Project Manager, or any person, firm or corporation employed by the Project Manager upon or in connection with the Project.

ARTICLE 6 SUCCESSORS AND ASSIGNS

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that the Project Manager shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of the District. Any attempted assignment without such consent shall be invalid.

ARTICLE 7 APPLICABLE LAW

This Agreement shall be governed by the laws of the State of California, however, in the event that the District receives any state funding for the Project from the SAB, this Agreement shall also be governed by any applicable laws and/or regulations relating to such state funding

from the SAB (“Applicable Law”). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail.

ARTICLE 8
PROJECT MANAGER NOT AN OFFICER
OR EMPLOYEE OF DISTRICT

While engaged in carrying out and complying with the terms and conditions of this Agreement, the Project Manager is an independent contractor and not an officer or employee of the District.

The Project Manager hereby represents, warrants and covenants that: (i) at the time of execution of this Agreement, the Project Manager has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement; (ii) Project Manager has no business or financial interests which are in conflict with Project Manager 's obligations to the District under this Agreement; and (iii) the Project Manager shall not employ in the performance of services under this Agreement any person or entity having any such interests.

ARTICLE 9
INSURANCE

9.1 The Project Manager shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Project Manager and District from claims which may arise out of or result from Project Manager’s actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. At a minimum, the aforementioned insurance shall include coverage for:

(a) The Project Manager shall carry Workers’ Compensation and Employers Liability Insurance in accordance with the laws of the State of California in an amount not less than Two Million Dollars (\$2,000,000).

(b) Comprehensive general and auto liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage
4. Products/completed operations; and
5. Personal injury.

(c) Professional liability insurance, including contractual liability, with limits of \$1,000,000, per occurrence. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least three (3) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation.

9.2 Each policy of insurance required in (b) above shall name District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Project Manager hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; shall state that no less than thirty (30) days' written notice shall be given to District prior to cancellation; and, shall waive all rights of subrogation. Project Manager shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Project Manager shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Project Manager fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Project Manager, and in such event Project Manager shall reimburse District upon demand for the costs thereof.

ARTICLE 10
EXTENT OF AGREEMENT

10.1 This Agreement represents the entire and integrated agreement between the District and the Project Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and the Project Manager.

ARTICLE 11
MISCELLANEOUS

11.1 NOTICE. All notices required to be delivered under this Agreement to the other Party must be in writing and shall be effective (i) when personally delivered by the other Party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective Party as set forth below or to such other persons as the PARTIES may hereafter designate by written notice to the other Party hereto:

TO THE DISTRICT:
Christina Giraldo
Sierra Sands Unified School District
113 Felspar
Ridgecrest, CA 93555

TO PROJECT MANAGER:
Lori O'Keefe
20280 Acacia Street, Suite 220
Newport Beach, CA 92660

11.2 FINGERPRINTING REQUIREMENTS. Education Code Section 45125.1 states that if employees of any consultant providing services at a school site might have any contact with any underage pupils (younger than 18 years of age); those employees shall be fingerprinted by the Department of Justice (DOJ) before entering to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of this Agreement by Project Manager, Project Manager will not perform any such service until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to District.

11.3 No Boilerplate Terms. THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY TERMS AND CONDITIONS, GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE PROJECT MANAGER. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN ANY PROPOSAL OR QUOTE SUBMITTED BY THE PROJECT MANAGER SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND/OR OTHER SIMILAR DOCUMENTS PREPARED BY THE PROJECT MANAGER MAY BE INCORPORATED INTO THIS AGREEMENT AS EXHIBIT "A" BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE PROJECT MANAGER'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

11.4 Timing. Time is of the essence with respect to all provisions of this AGREEMENT.

11.5 Litigation. If either Party becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each Party shall bear its own litigation costs and expenses, including reasonable attorneys' fees. In no event shall the District be responsible or liable for any attorney fees and costs, court costs, collection costs, or any other costs incurred by the Project Manager which arise out of, relate to, or pertain to any payment dispute(s) between the Project Manager and the District.

The parties, through their authorized representatives, have executed this Agreement as of the day and year first written above.

[Signatures on next page]

PROJECT MANAGER:

By: _____

DISTRICT:

By: _____

APPROVED AS TO FORM:

Atkinson, Andelson, Loya, Ruud & Romo

Stephen M. McLoughlin, Esq.

EXHIBIT A

List of Projects

Burroughs High School (“BHS) Projects

1. **BHS PAC Defective Prior HVAC** - All management and oversight duties associated with the development of scope documents, Request for Qualifications and selection of AE team to conduct existing conditions survey and report for Siemens substandard HVAC revisions to the PAC.
2. **BHS PAC 480V Service** -participate in coordination, research and award of Chiller change order to install 480v service to PAC per engineering requirement; prepare bidding documents, solicit bids, award, initiate construction.
3. **BHS PAC Air Handler** - Development of advertisement, notification of bidding, job walk, receipt of bids, evaluation, notice of intent, development of agreement, award, all management and oversight duties associated with construction administration and coordination with Siemens remediation work, DSA close-out; financial monitoring, recording and reporting.

VARIOUS SCHOOL SITES:

1. **Siemens HVAC Architectural/Engineering Services** - Development of advertisements and evaluation criteria for the solicitation and selection of AE Team to execute existing condition survey, construction documents, DSA approvals, bidding, award, construction phase services and DSA close-out for Siemens Remediation at Monroe, Richmond, Mesquite, PAC, and Vieweg.
2. **Siemens HVAC Construction Defects** - All management and coordination duties as required to oversee the design, documentation, approval, bid/award, construction administration and close-out for correction of Siemens construction defects at Monroe, Richmond, Mesquite, PAC and Vieweg;
3. **Siemens Bidding and Construction** - All management and coordination duties as required to prepare bidding documents, solicit, qualify, award, oversee construction and

close-out all Siemens remediation projects; preparation of bidding documents, development of construction contracts, reviewing and processing authorized RFI's, change orders, payment applications.

4. **Siemens Financial Recording/Reporting** - All duties as necessary to track and report on encumbrances and expenses related to Siemens construction defect correction.
5. **Prior Modernization Close-out** - Monitor progress and coordinate efforts of the AE, inspectors and contractors for DSA close-out of the various prior projects.
6. **Facilities Hardship Funding** - Coordination, documentation, printing and correspondence as necessary to support application for State hardship funding for Siemens Remediation projects, including Monroe, Mesquite and PAC; compose letters and solicit signatures from DSA to support applications; prepare Board materials, application review, response to consultant and OPSC.
7. **Prop 39 Support – In requested by the District in writing**, review and research as necessary to determine possible procedures, solicitation of consultants, viable projects cost of construction in support of district's effort to obtain Prop 39 funding.

EXHIBIT B

Project Manager's Fee Rate Schedule

Position	Hourly Rate	Total Annual Fee
Principal in Charge	\$185	\$2,220
Senior Project Manager	\$145	\$68,875
Project Manager	\$135	\$64,125
Project Manager	\$135	\$64,125
Project Manager- Part Time	\$135	\$16,875
Administrative/Accounting Assist.	\$85	\$40,375
Total Annual Fee		\$256,595

10. CONSTRUCTION ADMINISTRATION

10.9 Approval of Agreement with Indoor Environmental Services (IES) for Proposition 39 Planning Services

BACKGROUND INFORMATION: In November 2012 California voters approved Proposition 39, which provides all California public schools with supplemental funding to undertake energy conservation projects. Funding has been provided through the California Energy Commission by application. The program began in fiscal year 2013-14 and will continue for five years. Upon determining that planning district facilities energy efficiency projects entails significant experience with Proposition 39 requirements, staff issued an RFQ for such services and upon conducting a competitive process, in accordance with the district's established protocol, selected TerraVerde as the final candidate.

CURRENT CONSIDERATIONS: At the regular board meeting of July 16, 2015, district staff was given approval to enter into negotiations with TerraVerde Renewable Partners for Proposition 39 Energy Conservation and Clean Energy Consultant Services. As an agreement could not be reached in contract negotiations with Terra Verde, with guidance from counsel, an alternate consulting company, Indoor Environmental Services (IES) was selected to provide the desired services.

FINANCIAL IMPLICATIONS: The fee for the services described in the agreement is \$29,900.00. Services included in the agreement will be to develop and implement a Facility Energy Master Plan. The purpose is to analyze energy usage and identify the most cost effective energy conservation opportunities for the highest savings investment ratio through the Prop 39 process. The district plans to use Proposition 39 available funding for this contract.

SUPERINTENDENT'S RECOMMENDATION: It is recommended that the agreement with Indoor Environmental Services for Proposition 39 Planning Services for a Facility Energy Master Plan be approved as presented.

**AGREEMENT TO PROVIDE
PROPOSITION 39 PLANNING SERVICES
FOR FACILITIES ENERGY MASTER PLAN**

for

SIERRA SANDS UNIFIED SCHOOL DISTRICT

113 W. Felspar
Ridgecrest, CA 93555

Ernest M Bell Jr.
Superintendent

Prepared by:

Indoor Environmental Services
1512 Silica Avenue
Sacramento, CA 95815
(916) 988-8808

This Agreement to Provide Proposition 39 Planning Services for Facilities Energy Master Plan ("**Agreement**") is entered into between Indoor Environmental Services, Inc., a California corporation ("**IES**" or "**Consultant**") and Sierra Sands Unified School District, a public school district organized and existing under the laws of the State of California ("**District**"), as of May ____, 2016 ("**Effective Date**"), whereby IES will perform an energy analysis of District's energy needs, develop and submit a comprehensive facilities energy master plan that complies with the requirements of Proposition 39 – Clean Energy Jobs Act ("**Project**") and submit the required application to the California Energy Commission ("**CEC**"), under the terms and conditions set forth herein. This Agreement shall terminate 12 months from the Effective Date unless earlier terminated or extended as permitted herein.

1. SCOPE.

1.1 IES will perform an energy usage analysis and preliminary site surveys in order to identify the most cost effective energy conservation and energy generation opportunities to be implemented throughout the District. These opportunities may include lighting, HVAC replacement, controls, renewable power generation, and other energy related scopes of work targeted toward reducing costs and increasing life cycle performance.

1.2 IES will complete an energy expenditure plan ("EEP") and submit it to the CEC for Proposition 39 ("Prop 39") funding, which is currently estimated to be a total of \$1,000,000 over a period of five years.

1.3 In addition, at the District's discretion and approval, IES will work with the District to develop a plan that would leverage Prop 39 energy funding for a more comprehensive Project that will utilize alternative financing and procurement methods for the Project. This includes, but is not limited to, Tax Exempt Municipal Leases, Qualified Zone Academy Bonds, and Power Purchase Agreements.

1.4 IES will investigate any and all additional grant and government incentive funding sources to assist in funding the Project.

1.5 IES will investigate all applicable utility-provided rebate program incentives.

1.6 IES will provide the District a written copy of the CEC approved energy audit report on a site by site basis analyzing the District's current electricity usage, rates/costs, summary of recommendations for energy upgrades, and the costs and projected savings that will result from the energy upgrades.

2. PROJECT IMPLEMENTATION

2.1 IES will comply with all mandated requirements under Proposition 39 and its related Guidelines in completing the services provided in this Agreement, and, if required, will comply with California Government Code Section 4217.10-4217.18 as it relates to implementing energy projects within Government facilities.

2.2 The Project may be completed in phases as deemed appropriate by the District.

2.3 IES will coordinate the energy project with the high school modernization project if possible and will cooperate with the modernization project team.

2.4 The District shall have final approval on all recommended scopes of the Project.

3. PROP 39 PROCESS FOR SUBMISSION TO CEC. IES will assist the District with securing Prop 39 funding by following the CEC recommended process:

3.1 Obtain and analyze 12 months of energy consumption for all District sites.

3.2 Determine the following benchmarking information:

3.2.1 Total energy cost

3.2.2 Square footage of district schools

3.2.3 Annual total energy cost per square foot

3.2.4 Year to year comparison of energy bills

3.3 Prioritize eligible projects by taking into consideration the 11 factors as referenced in Public Resources Code Section 26235(e)(1011).

3.4 Sequence projects based on the following:

3.4.1 Maximize energy efficiency

3.4.2 Consider clean onsite energy generation

3.5 Complete energy survey and identify projects.

3.6 Calculate Savings Investment Ratio (SIR) based on the following:

3.6.1 Annual energy savings

3.6.2 Demand savings

3.6.3 Annual energy cost savings

3.6.4 Project installation cost

3.6.5 Rebates

3.6.6 Other matching grants

3.7 Complete the Energy Expenditure Plan and submit required documents and certifications to CEC to request Prop 39 project funding.

4. PROJECT SCHEDULE

4.1 IES will complete the following in accordance with the corresponding schedule. The Parties understand and agree that: (A) such schedule is based on the information that is

currently available and may need to be adjusted to reflect changes in circumstances or conditions that are not within Consultant’s control; and (B) Stage A shall commence on the Effective Date and each Stage thereafter shall commence on the day following the last day of the prior Stage:

Stage	Activities	Schedule (days)
A. Analysis	<ul style="list-style-type: none"> ▪ Perform detailed technical and financial analyses in accordance with Proposition 39 to determine District’s current energy usage and costs, and potential savings opportunities. These opportunities may include, but are not limited to, lighting, HVAC replacement, controls, and other energy related scopes of work targeted toward reducing costs and increasing life cycle performance. The analyses will be used to support District’s Proposition 39 energy expenditure plan. 	45 – 60
B. Development	<ul style="list-style-type: none"> ▪ Develop scope and specifications for energy conservation and clean energy measures that meet District’s requirements and Proposition 39 requirements. ▪ Prepare and submit Proposition 39 energy expenditure plan(s) after District’s review and approval thereof. ▪ In coordination and communication with District, prepare and submit to District for review and approval all analyses, energy expenditure plan(s), reports, and other documents required of District under Proposition 39, obtain the required approvals of all appropriate government agencies, and comply with reporting and auditing requirements of government agencies 	45 – 90
C. Financing	<ul style="list-style-type: none"> ▪ In parallel with the Development Stage, work with District or its financial advisor (if any and as needed) to identify and secure financing sources beyond funding from Proposition 39, including but not limited to incentives, rebates, subsidies, grants, no or low-interest loans, and no-charge programs or services, to be included in the Project if the District decides to pursue additional financing. 	45 – 90

5. PROVISIONS APPLICABLE TO ALL SERVICES.

The provisions below shall apply to all services that Consultant provides pursuant to this Agreement.

5.1 **COMPLIANCE WITH APPLICABLE LAWS.** In performing the services and this Agreement, Consultant shall comply with, and require all of its consultants and subcontractors to comply with the California Clean Energy Jobs Act, Public Resources Code Section 26200 et seq., and any and all regulations, requirements, guidelines, and handbooks adopted or enacted for implementation thereof (collectively "Proposition 39"); all California laws applicable to California public school districts relating to public works projects; and policies, regulations and procedures of District that are applicable to Consultant.

5.2 **RECORD RETENTION, INSPECTION, AND AUDIT.** Consultant shall maintain accurate books and records of all Services provided under, amounts billed pursuant to, and all documents required of Consultant under this Agreement for at least five years after the date on which this Agreement terminates and make them available for review, audit, and/or copying by or at the request of District. This Agreement is subject, for three years after the final payment is made, to the State Auditor's examination and audit at District's request or as part of an audit of District. The provisions of this paragraph shall survive the termination of this Agreement.

5.3 **CONSULTANT TEAM.** Consultant shall provide the Services through or under the direction of the following: Chris Bristow, P.E., CEM. Consultant shall not remove the above employee from the team without obtaining Owner's approval of such removal unless an employee is no longer employed by Consultant.

5.4 **SITE ENTRY.** District shall provide Consultant access to facilities, sites, or data for activities associated with this Agreement at reasonable times and on Consultant's reasonable advance notice. Consultant shall notify the site administrator prior to entry onto District's property and shall follow the District's policies, regulations, and procedures for entry onto and presence upon District's property.

5.5 **LIMITATION OF LIABILITY.** The liability of a defaulting party in connection with this Agreement will be limited to direct, actual damages. Neither party shall be liable to the other party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including but not limited to operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each party waives any claims for negligence against the other party to the greatest extent permitted by law.

5.6 **ENTIRE AGREEMENT.** This Agreement, and any documents incorporated by reference, constitute the entire understanding between IES and District and supersede all prior oral or written understandings relating to the subject matter herein. This Agreement may not be altered or modified except by written instrument signed by a duly authorized representative of each Party.

5.7 **ADDITIONAL SERVICES.** District may request the addition of services, whereby IES's compensation and scope of services shall be adjusted accordingly. Such changes in the Agreement shall be negotiated in good faith and authorized by written amendment to this Agreement signed by

District and IES. The amendment to the Agreement must be fully executed by District and IES prior to any actual changes being implemented. Such additional services will become part of this Agreement and subject to the terms and conditions contained herein.

5.8 **INSURANCE.** IES and shall each maintain insurance coverage, including without limitation, workers' compensation and employer's liability at statutory limits and commercial general liability insurance covering public liability and property damage with limits generally required for its respective industry with not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the state in which the District is located and the services are being performed with an A.M. Best's rating of at least A- VII.

5.9 **GOVERNING LAW.** This Agreement will be governed, interpreted and construed by, under and in accordance with the laws, statutes and decisions of California.

6. **TOTAL COST.** The total cost of this Agreement shall be \$29,900. IES will complete the services outlined in this Agreement. The District is eligible to request \$130,000 of the first year Prop 39 apportionment for upfront services and assistance in completing the required documents for Prop 39 funding. IES will not perform additional services without prior District authorization.

Planning Services Summary:

Prop 39 Planning Allocation: \$ 130,000

Total Agreement Amount (23% of allocation): \$ 29,900

As full consideration and compensation for Consultant's performance of the services in this Agreement, District shall pay Consultant upon receipt of all documents and actual services that Consultant performed in accordance with this Agreement, the total sum not to exceed \$29,900 which shall be billed one time in full as a lump sum upon successful CEC approval of the District's Energy Expenditure Plan.

7. **CONSTRUCTION OF PROJECTS NOT INCLUDED.** This Agreement is limited to the scope of work described in paragraph 1 Scope and paragraph 4, Sections A, B and C of the Schedule. If District agrees to go forward with construction of the Project, the Parties will enter into a separate contract to construct and implement the energy efficiency projects developed as a result of the analysis and energy master plan completed by IES pursuant to this Agreement.

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This Agreement is between the Sierra Sands Unified School District and Indoor Environmental Services.

Ernest M Bell Jr.
Superintendent
Sierra Sands Unified School District

Stan Butts
Vice President
Indoor Environmental Services

Date

Date