

CASBO
Beyond Boot Camp

“BASIC CONTRACT PROVISIONS”

Presented by
Megan E. Macy

June 28, 2008
Sacramento, CA

About the Presenter:

MEGAN E. MACY
Associate



Megan Macy is an attorney in the Sacramento office and Co-Leader of the firm's Facilities and Business Practice Group. She is also an active member of the Charter School Practice Group. In her transactional practice, Megan specializes in developer fee issues, including negotiation of school facilities mitigation agreements. She has also represented school districts in property transactions ranging from property sale and acquisition to negotiation of facilities use agreements. In her litigation practice, Megan has represented clients on ADA facilities access issues and construction related disputes.

Megan is an accomplished speaker presenting at various events including the California School Board Association (C.S.B.A.), the California Association of School Business Officials (C.A.S.B.O.), the Coalition for Adequate School Housing (C.A.S.H.) and Lozano Smith's Facilities &

Business Consortium on various topics ranging from school closure to developer fees to construction.

Megan earned her law degree from the University of Oregon School of Law and received a B. A. in Public Policy from Washington and Lee University. After work, Megan enjoys seeing the successes of our public school system by coaching a local high school volleyball team.

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**AGREEMENT REGARDING INSTALLATION AND USE OF HIGH SPEED FIBER
OPTIC CABLE AND RELATED INFRASTRUCTURE**

This Agreement ("Agreement") is effective this ____ day of _____, 2003 by and between the District, a public agency, (hereinafter "District"), and the City, a municipal corporation (hereinafter "City") with respect to the following:

RECITALS

WHEREAS, District is in the process of developing its Metropolitan Area Network ("MAN") to connect the District office with the District's high school and intermediate school sites by means of high speed fiber optic cable, housed in conduit; and

WHEREAS, it is necessary for such conduit and high speed fiber optic cable to be located in certain designated portions of the public right-of-way in the City; and

WHEREAS, City is in the process of developing traffic signal synchronization which will require installation of fiber optic cable within the City's existing right-of-way; and

WHEREAS, District desires to pay for the materials and installation of said conduit and the MAN high speed fiber optic cable in the public right-of-way in exchange for the right to use any and/or all fiber optic strands paid for by the District; and

WHEREAS, the City and District have reached agreement on the installation of high speed fiber optic cable and related improvements to be constructed and use thereof, and desire to enter into a written contract memorializing the Agreement; and

WHEREAS, the Agreement will be mutually beneficial for the City and the District; and

WHEREAS, this Agreement sets forth the terms for the acquisition and installation of conduit to house the fiber optic cable, the placement of the cable within the City's existing right-of-way, the construction of the connecting conduit and cable in the City's right-of-way, and District's use thereof

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals which are contractual in nature and the covenants and conditions contained herein, the parties agree as follows:

1. **City.** City shall acquire and install fiber optic cabling and related conduit meeting the specifications set forth in Exhibit A and shall install said conduit in a manner and location as more fully described in Exhibit B (hereinafter collectively referred to as the "Project").

2. **District.** District is responsible for the entire cost of the Project. District further agrees that the estimated cost of the Project is \$_____. District understands and agrees that this amount is an estimate and the actual cost of the Project may differ. District agrees to make an initial Project payment to the City in the amount of \$_____ on May 15, 2003. Thereafter, District shall make monthly progress payments on the 1st day of each month in the amount of \$_____, until Project is complete as described herein. Should the cost of the Project exceed the estimated amount, District shall pay City any additional sums incurred for the Project within 14 days of notice from City. Should the total cost of the project be less than the estimated amount, then District will be reimbursed the excess amount within 14 days of completion of the Project.

3. **Changes to the Project.** City will keep District apprised of the progress of the work and the costs associated with same. City will secure written consent from the District before approving change orders which increase the Project cost above the estimated cost.

4. **Completion of the Project.** City's estimated date to receive contractor's bids for the Project is _____. City will work diligently and use its best efforts to complete the Project such that the Project is complete and fiber optic cable is available by August 15, 2003.

5. **Ownership.** The City will, at all times, hold clear title of ownership to the Project including all conduits, cables, pull boxes and all other appurtenances provided within the City right-of-way to construct the Project. Any conduit or fiber optic cable outside the City right-of-way is outside the scope of this Agreement and will be installed by District at District's sole cost and thereupon owned by the District

6. **Grant of Fiber Optic Bandwidth Use Right.** Consistent with constitutional and local law requirements and in consideration of payment for the Project, City grants District the exclusive right to use, for the sole purpose of District telecommunications, including but not limited to voice, video, and data etc., that portion of the Project including any and/or all fiber optic strands paid for by the District in this agreement. The use right granted hereunder to District shall expire at 11:59 p.m. on

December 31, 2028. The terms of this lease may be extended upon mutual agreement of the parties.

7. **Maintenance and Repairs.** City shall be the responding authority in the event of damage to the City owned conduit and/or fiber optic cable within the public right of way and shall be responsible for the costs associated with the maintenance of the conduit and/or fiber optic cable within the public right-of-way. The District shall be responsible for District owned conduit and/or fiber optic cable outside of the public right-of-way and shall be responsible for the costs associated with the maintenance of the conduit and/or fiber optic cable outside the public right-of-way.

8. **Indemnity.** District shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, District or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of District or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

City shall indemnify, hold harmless and defend District and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, District or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

City shall require that its contractors and subcontractors defend, indemnify and save harmless City and District, their respective officers, agents and employees from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses of whatsoever kind or nature arising out of the construction of the Project, including any and all direct and indirect costs of defense made against or incurred or suffered by City and District jointly and severally as a direct or indirect consequence of injury, including death to persons, injury to or destruction of property, or any other cause of action whatsoever.

This section shall survive termination or expiration of this Agreement

9. **Default.** Any party's failure to timely pay sums required to be paid or perform work required to be performed pursuant to the terms of this Agreement not cured within 15 days written notice thereof shall constitute a default and shall subject that party to any remedy provided by law.

10. **Assignment.** Except to any extent provided herein neither party to this Agreement may assign or transfer by operation of law or otherwise, any or all of its rights, duties or obligations hereunder without the prior written consent of the other party.

11. **Notices.** All notices, certificates or other communications hereunder shall be in a writing signed by the parties' duly authorized agent and shall be deemed given when personally delivered or mailed by regular mail, postage prepaid, to the parties at their respective places of business. Notices may also be sent by facsimile provided that a proof of facsimile transmission is made to verify the facsimile transmission.

Personal service and facsimile service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

12. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon each party and their respective successors and assigns.

13. **Severability.** In the event any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provisions of this Agreement.

14. **Final Agreement; Amendment.** This Agreement and any documents, instruments and materials referenced and incorporated herein represents the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be amended, altered or modified only by a written document signed by both parties.

15. **Governing Law.** The rights and obligations of the parties and all interpretations in performance of this Agreement shall be governed in all respects by the laws of the State of California.

16. **Execution In Counterparts.** This Agreement may be executed in counterparts such that the signatures of the parties may appear on separate signature pages. Facsimile or photocopy signatures shall be deemed original signatures for all purposes.

17. **Partnership/Joint Venture.** This Agreement does not evidence a partnership or joint venture between District and City.

18. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the

other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.

19. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this agreement shall control and take precedence over terms conditions expressed within the exhibit. Furthermore, any terms or conditions contained within any exhibit hereto which purport to modify the allocation of risk between the parties, provided for within the body of this agreement, shall be null and void.

EXECUTION

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY:

DISTRICT:

CITY

DISTRICT

By: _____

By: _____

City Manager

Superintendent

ATTEST:

City Clerk

By: _____
Deputy

APPROVED AS TO FORM
City Attorney

By: _____:

EXHIBIT “A”
Conduit and Cable Specifications

EXHIBIT “B”

Project Description Including Location of New Conduit

Project Management. The City shall perform any and all acts necessary for the installation of the conduit, where necessary in its right-of-way in order to provide conduit and cable to each high school and intermediate school site, and for the provision of fiber optic cable for use by the District, including, but not limited to, design engineering plan review, approval of plans and specifications, advertising for construction bids, entering into related contracts, utility relocation and overall project management.

City will acquire the necessary permits from the City and the Fresno Irrigation District as well as any other unforeseen utility crossings requiring permitting

EXHIBIT “C”

District’s Documents of Guarantee of Funds

_____-DISTRICT
INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This Independent Contractor Services Agreement (the "Agreement") is made and entered into this _____ day of _____, (the "Effective Date") by and between the District (the "District") and _____, (the "Contractor").

1. **Contractor Services.** Contractor agrees to provide the following services for the District:

It is anticipated that Contractor will provide these services _____ days or _____ hours per _____ days.
2. **Contractor's Qualifications.** Contractor warrants that it is qualified to perform the services herein and has in effect all valid licenses, permits, registrations, and has otherwise all legal qualifications to perform this Agreement.
3. **Term.** This Agreement shall begin on _____, _____, and shall terminate on _____, _____. There shall be no extension of the terms of this agreement without written consent by both parties. District or Contractor may terminate this Agreement at any time for any reason without cause. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of services by Contractor. In the event of early termination, Contractor shall be paid for satisfactory work performed to the date of termination. The District may then proceed with the work in any manner the District deems proper.
4. **Payment.** District agrees to pay contractor at the rate of \$ _____ per _____. District shall reimburse Contractor for the following reasonable and approved out-of-pocket expenses incurred in the performance of this Agreement: _____
_____. Contractor shall submit to District all written documentation and receipts itemizing the dates and expenses incurred. District agrees to pay Contractor within thirty (30) days of receipt of an itemized invoice. Total payment by District to Contractor shall not exceed \$ _____.
5. **Indemnity.** Contractor agrees to defend, indemnify, and hold harmless the District, its agents, employees, Board of Trustees, and members of the Board of Trustees from and against any and all claims, damages, losses and expenses, including attorney's fees, arising out of, or in connection with performance of this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.
6. **Insurance.** Contractor shall secure and maintain for the term of this Agreement general liability, automobile liability, worker's compensation, and employer's liability insurance with combined single limits of \$ _____, or \$ _____ per person, \$ _____ per accident, and \$ _____ per property loss. District shall be named as additional insured on the policies by endorsements that shall be attached to the Agreement as proof of insurance. Contractor's policies shall provide they are primary and any insurance maintained by the District shall be excess and not co-primary. Contractor shall produce all policies for District at District's request.
7. **Relationship of Parties.** Contractor is an independent contractor of the District and not an officer, employee, agent, partner, or joint venturer of the District. Nothing in this Agreement shall be construed as creating an employer-employee relationship. The consideration set forth above shall be the sole payment due for services rendered. Payments to Contractor pursuant to this Agreement will be reported to federal and state taxing authorities as required. Contractor is solely responsible for all of Contractor's federal and state taxes, including

withholding, social security, insurance, and other benefits.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by Contractor of any of its rights, obligations, or duties hereunder to any third party without the District's prior written consent.
9. **Entire Agreement.** This Agreement constitutes the entire agreement of the Contractor and District with regard to the subject matter hereof, and replaces and supercedes all other agreements or understandings, whether written or oral. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Contractor and District.
10. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including fingerprinting under Education Code sections 45125.1 and 45125.2. Contractor understands and agrees that the District has sole and exclusive authority to determine whether contractor and/or employees will have limited contact with students. This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate court in Fresno, CA. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
11. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the Contractor or member of the Contractor's business for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who sends the notice.
12. **Execution of Other Documents.** Contractor and District shall cooperate fully in the execution of any and all other documents and/or any additional actions necessary to give full force and effect to the terms of this Agreement.
13. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

Executed at _____, California, on the date and year first written above.

Contractor

District

Signature

Address

Superintendent

Printed Name

City

Phone

Social Security/Fed. Tax I.D. Number

State/Zip Code

Requesting Department

Acct. #

Phone

Contact Person & Extension #

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2001, by and between the _____ DISTRICT, a political subdivision of the State of California (“Licensor”), and the _____, a California Non-profit Public Benefit Corporation (“Licensee”).

RECITALS

WHEREAS, Licensor is the owner of that certain real property upon which _____ High School is located, and having an address of _____ in the City of _____, County of _____, State of California (“Licensor Property”); and

WHEREAS, Licensee desires to have eight (8) tennis courts, including all fencing, lighting and netting, constructed for the benefit and use of Licensor on the Licensor Property (“the Project”) and to donate the Project to Licensor; and

WHEREAS, the purpose of the Project is to provide additional tennis facilities for the students of the Licensor; and

WHEREAS, Licensee will need a right of entry onto the Licensor Property to construct the Project.

NOW, THEREFORE, LICENSOR AND LICENSEE HEREBY MUTUALLY AGREE AS FOLLOWS:

ARTICLE I

License

1.1 Grant of License. In consideration of Licensee undertaking to construct the Project for the benefit and use of Licensor, and to donate the finished Project to Licensor, Licensor agrees to grant Licensee a revocable license (“License”) to enter the Licensor Property for the sole purpose of constructing the Project. The rights granted to and the obligations imposed on Licensee shall extend to Licensee’s officers, agents, employees, volunteers, and independent contractors.

1.2 Notification. Licensee agrees to give Licensor forty-eight (48) hours prior written notice of the start of construction of the Project. The Licensee shall begin work on the Project on the Licensor Property as soon as possible.

1.3 Termination and Revocation of the License.

(a) The License shall automatically terminate upon completion of the Project.

(b) The License is revocable at the will of Licensor at any time. Any revocation of the License by Licensor shall become effective on the fifth calendar day following the date Licensor gives written notice to the Licensee of Licensor’s intention to revoke the License.

(c) Upon termination of the License or revocation of the License by Licensor, Licensee and Licensee’s agents, officers, employees, volunteers and independent contractors shall immediately vacate the Licensor Property. Upon termination, or upon revocation due to Licensee’s breach of a material provision of this License, Licensee shall repair any and all damage to the Licensor Property caused by Licensee. In the event that Licensee fails to repair all damage to the School Property within sixty (60) days following termination or the effective date of such revocation by the Licensor, Licensee shall be liable to Licensor for the full cost of repairing the Licensor Property.

(d) Licensee shall forward all guarantees, warranties and maintenance and operations manuals related to the Project to Licensor upon completion of the Project. The warranties and guarantees shall be enforceable by Licensor. Warranties and guarantees shall commence on the date of completion of the Project and extend at least one year after the date of completion.

(e) Liens and Claims. Licensee shall promptly pay in full for all materials for the Project and shall promptly pay in full all persons who perform labor on the Project. If any mechanics’ or materialmen’s liens or any other liens or claims for any work done or materials furnished at Licensee’s request are filed against the Project or the Licensor Property, Licensee shall remove the liens and

claims at Licensee's own expense. If Licensee fails to remove the liens or claims and any judgment is entered thereon or thereunder, Licensee shall pay that judgment. Should Licensee fail, neglect, or refuse to remove any lien or claim by the date of Project completion or to pay any judgment, Licensor shall have the right to pay any amount required to release any such liens or claims, or to defend any action brought on the liens or claims and to pay any judgment entered on the liens or claims; and Licensee shall be liable to Licensor for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefor. Licensor may post and maintain upon the premises a notice of nonresponsibility.

Licensee shall not encumber by any security instrument, all or a part of Licensee's interest under this License without the prior written consent of Licensor, and upon such terms and conditions as Licensor may require.

ARTICLE II

Restrictions and Conditions

2.1 Construction of Project.

(a) The Licensee shall be responsible for designing and constructing the Project and paying for its total cost.

(b) The Licensee shall be responsible for seeing that the standards and quality of construction for the Project shall meet the requirements of all applicable federal, state and local laws.

(c) State and local officials shall have the right to inspect any and all aspects of the Project on the Licensor Property at any time during the term of this Agreement.

(d) Licensor shall not direct, inspect or engage in any part of the construction of the Project. Licensor makes no representations of any kind as to the conditions of, on or under the Work Area. (Work Area is defined in Section 2.2 below).

(e) Licensee shall act in a professional manner and shall not do or permit anything to be done in the Work Area which would obstruct or interfere with the rights of anyone on the Licensor's Property or that would injure or annoy them. Licensor shall not permit any nuisance or waste in the Work Area.

(f) Licensee shall not operate any radio, loudspeaker or similar device in the Work Area without prior written permission of Licensor.

(g) Licensee shall not obstruct anyone's access to or passage across Licensor's Property.

(h) Licensee shall not place any signs in the Work Area without prior written approval by Licensor.

(i) Licensee shall require its officers, employees, agents, volunteers, and independent contractors employed on the Project site to comply with the requirements of California Education Code section 45125.2 (a)(1) or 45125.2 (a)(2).

2.2 Work Area.

(a) Licensee shall confine the work to be performed on the Licensor Property to the area depicted on Exhibit "A" as the Work Area ("Work Area"). Licensee shall not expand the scope of work on the Licensor Property beyond the Work Area without the prior written consent of Licensor. Licensee shall obtain access to the Work Area by means of the access route depicted on Exhibit "A" ("Access Route").

(b) Licensee shall provide and maintain such fences, barriers, directional signs, lights, and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the work on the Project, and to give directions to the public. Licensee shall surround the Work Area with a locked fence and provide a key to Licensor. Licensor and its authorized representatives shall have the right to enter the Work Area at all reasonable times.

2.3 Government Regulations.

(a) Licensee, its agents, employees, volunteers, and independent contractors shall comply with all laws, ordinances, and regulations applicable to the Project, the License and this Agreement.

(b) Licensee, its agents, employees, volunteers, and independent contractors shall observe strict fire and smoking precautions on the Licensor Property. Licensee, its agents, employees, volunteers and independent contractors shall not light any fires

on the Licensor Property and shall not carry any firearms, illegal drugs or intoxicating beverages onto the Licensor Property.

2.4 Restoration and Protection of Licensor Property. Licensee shall be responsible for restoring and protecting the Licensor Property including, but not limited to, restoring and/or protecting all existing landscaping and landscaping irrigation that is not to be permanently removed during the construction of the Project. Licensee must complete all restoration work by the date of completion of the Project.

2.5 Storage of Materials. Licensee may store materials or equipment in the Work Area, if Licensor and local fire authorities' give prior written consent, including consent as to the location of the storage. If use of explosives, other hazardous materials or equipment, or unusual methods is necessary for the Project, Licensee shall exercise utmost care, comply with all applicable laws and carry on such activities under supervision of properly qualified personnel. The Licensee shall give Licensor at least 24 hours written notice any time that explosives are to be brought onto, or used in, the Work Area. As used herein, hazardous materials mean any hazardous wastes or toxic substances, materials, wastes, pollutants or contaminants as defined, listed or regulated by Federal or California law.

2.6 Additional Provisions Relating to Environmental Spills and Pollution and Hazardous Materials. In addition to any other obligation of Licensee set forth in this License, Licensee agrees to comply with the following language.

Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders, regardless of when they become or became effective, including without limitation those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of Licensor.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Work Area due to the Project, Licensee, at its expense, shall be obligated to clean the Work Area and any other affected part of the Licensor Property, to the satisfaction of Licensor and any governmental body having jurisdiction.

Licensee agrees to indemnify, defend and hold harmless Licensor against all liability, cost and expense (including without limitation any fines, penalties, judgments, litigation costs and attorneys' fees) incurred by Licensor as a result of Licensee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during or after the lease term, unless such liability, cost or expense is proximately caused solely by the active negligence of Licensor.

Licensee shall pay all amounts due Licensor under this section within ten (10) days after any such amounts become due and owing by Licensor. If not timely paid, the amounts due shall bear interest at the rate of ten percent (10%) per annum from the date due.

2.7 Indemnification. Licensee shall indemnify Licensor and shall hold Licensor free and harmless from all liability and from all claims, demands, damages, and costs asserted against or incurred by Licensor, its officers, agents, or employees, arising from or connected with the Project, the License, this Agreement, or those matters included within the scope of California Code of Civil Procedure sections 337.1 and/or 337.15. The indemnity given herein shall include the cost of defense including, but not limited to, reasonable attorneys' fees. This provision shall survive the termination or revocation of the License and shall continue for the time period provided for in California Code of Civil Procedure section 337.1 with respect to the matters included within the scope of that section, for the time period provided for in California Code of Civil Procedure section 337.15 with respect to the matters included within the scope of that section, and for one (1) year following completion of the Project for all other matters.

2.8 Insurance.

(a) Coverage Required.

Before the commencement of the License and during the term of the License, Licensee shall obtain and maintain, at its expense, in companies acceptable to Licensor, the following insurance policies:

(1) commercial general liability insurance for bodily injury, personal injury and property damage and including products and completed operations and non-owned and hired automobile coverage, with liability limits of not less than \$3,000,000 combined single limit. The policy shall provide coverage for broad form property damage. If the policy contains a General Aggregate, then the liability limits must be not less than \$3,000,000. The policy must also contain an endorsement that makes each job site a separate aggregate limit.

(2) automobile liability insurance for bodily injury, personal injury and property damage for vehicles owned, non-owned, or hired, with policy limits of not less than \$3,000,000 combined single limit.

(3) builder's risk insurance for risk of loss to the Project from fire, lightning, theft, vandalism, and all risk of physical loss (excluding flood and earthquake), with policy limits of not less than the cost of the Project. The policy must include an extended coverage endorsement.

(b) Insurance Provisions.

(1) The policies described in Subsection (a) above shall: (i) name Licensor as an additional insured; (ii) state that such policy is primary, excess, and non-contributing with any other insurance carried by Licensor; (iii) state that the naming of an additional insured shall not negate any right the additional insured would have had as claimant under the policy if not so named; and (iv) state that not less than thirty (30) days written notice shall be given to Licensor before the cancellation or reduction of coverage or amount of such policy.

(2) A certificate issued by the carrier of the policies described in Subsection (a) above shall be delivered to Licensor prior to Licensee's, its employees, volunteers and independent contractor's entry onto the Licensor Property. Each such certificate shall set forth the limits, coverage, and other provisions required under this Section. A renewal certificate for each of the policies described above shall be delivered to Licensor not less than thirty (30) days before the expiration of the term of such policy.

(3) The policy described in Subsection (a) above may be made part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required in this Section and does not reduce the coverage, impair Licensor's rights under this Agreement, or negate Licensee's obligations under this Agreement.

(4) Upon Licensor's request, a copy of the insurance policies described above shall be provided to Licensor.

(c) Worker's Compensation Insurance and Employer's Liability Insurance.

(1) Before the commencement of the work, Licensee shall provide a certificate(s) of insurance and endorsements on forms acceptable to the Licensor, for the period of the License, with full Worker's Compensation Insurance coverage for no less than the statutory limits, and employer's liability insurance coverage with limits not less than \$1,000,000, for all persons whom it employs or may employ in carrying out the work under the Agreement. This insurance shall be in strict accordance with the requirements of the most current and applicable State Worker's compensation insurance laws.

2.9 No Property Interest Created. The License and this Agreement does not create any interest for Licensee in the Licensor Property or any property owned or maintained by Licensor, and is not coupled with any property interest or other interest. The License is personal to Licensee and is not assignable. The License does not inure to the benefit of any assignees, heirs or successors of Licensee.

2.10 No Licensor Money Used. Licensee acknowledges that no funds from Licensor will be used for the Project.

2.11 Plans and Specifications. The Licensee will furnish to the Licensor, free of charge, three (3) copies of any as-built or record drawings.

2.12 Removal of Defective and Unauthorized Work. Any work that does not conform to the Project's plans or specifications shall be promptly remedied or removed and replaced by the Licensee.

2.13 Licensee's Responsibility for the Project Work. Until the Governing Board of Licensor accepts the donation of the Project, Licensee shall have the responsible charge and care of the work and materials to be used therein and shall bear the risk of injury, loss, or damage to any part thereof by the actions of elements or from any other cause, whether arising from the execution or non-execution of the work.

2.14 Safety. Licensee shall be solely and completely responsible for conditions of the Work Area, including safety of all persons and property during performance of the work. The Licensee, its agents, employees, volunteers and independent contractors shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety of the public and workers. All materials, equipment, and supplies provided for the Project shall fully conform to all applicable State, local and Federal safety laws, rules, regulations, and orders.

2.15 Completion of the Project. Licensee shall be responsible to see that the Project is completed promptly.

ARTICLE III

General Terms and Provisions

3.1 Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter dealt with in this Agreement and all understandings, oral or written, with respect to the subject matter of this Agreement are hereby superseded.

3.2 Future Assurances. Each party hereto shall cooperate and take such actions as may reasonably be requested by the other party hereto in order to carry out the provisions of this Agreement and the transactions contemplated by this Agreement.

3.3 Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by both Licensor and Licensee.

3.4 Waiver. The failure by either party to enforce any term or provision of this Agreement shall not constitute a waiver of that term or provision, or any other term or provision. No waiver by either party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

3.5 Severability. In the event any clause, sentence, term or provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of this Agreement shall nonetheless remain in full force and effect.

3.6 Construction of Agreement. The terms and provisions of this Agreement shall be liberally construed to effectuate the purpose of this Agreement. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against either party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Licensor and Licensee each acknowledge that they were represented by legal counsel in conjunction with this transaction.

3.7 Gender and Number. Wherever the context of this Agreement may so require, the gender shall include the masculine, feminine and neuter, and the singular shall include the plural.

3.8 Governing Law. This Agreement is made under and shall be construed in accordance with the laws of the State of California.

3.9 Attorneys' Fees. In the event either party to this Agreement shall commence litigation or other legal proceedings against the other to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the prevailing party shall be entitled to recover from the losing party its costs of suit, including, without limitation, reasonable attorneys' fees plus reasonable attorneys' costs and expenses, as shall be determined by a court.

3.10 Notices. Any notice required or desired to be given pursuant to this Agreement shall be in writing, duly addressed to the parties below. By written notice in conformance herewith, either party may change the address to which notices to said party must be delivered. Any notice deposited with the United States Postal Service shall be deemed to have been duly given when so deposited certified or registered, postage prepaid, addressed as set forth below or as changed as set forth herein. Notice sent by any other manner shall be effective only upon actual receipt thereof.

Licensor: _____ District
Address
Address
Attention: Superintendent
Telephone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx

Licensee: _____
Address
Address
Attention: _____, President
Telephone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx



SIERRA SUMMIT

**CONTRACTOR'S SPECIAL EVENT AGREEMENT
DISTRICT SPECIAL SKI EVENT FEBRUARY 2nd, 3rd, 4th, 2003**

The parties to this agreement are Sierra Summit, Inc., it's owners, officers, directors, members, agents, employees, affiliates and related corporations, hereinafter "**SUMMIT**," and _____ Representative for District Special Ski Event hereinafter "**CONTRACTOR**."

This agreement pertains only to the special event to be known as District Special Ski Event to be held on the above mentioned dates at Sierra Summit Mountain Resort, Lakeshore, California, hereinafter known as the "**EVENT**," and activities necessary and incidental to the **EVENT**, as identified herein.

It is the desire of the parties by this agreement to specify the premises, buildings, facilities, equipment and services that will be provided by **SUMMIT** on the one hand and the duties, obligations and requirements to be satisfied by **CONTRACTOR** on the other hand. It is the intent of the parties that **SUMMIT** not be responsible for provision of any item, service or obligation that is not expressly set forth in this agreement. It is also the intent of the parties that **CONTRACTOR** will assume all liabilities, duties, responsibilities and obligations necessary to successfully and safely present the **EVENT**, including but not limited to retention and payment of all subcontractors and employees, payment of all applicable taxes, filings with any and all applicable governing bodies or regulatory agencies and obtaining insurance in a form and amount acceptable to **SUMMIT**.

It is agreed by the execution of this agreement; **SUMMIT** and **CONTRACTOR** are only entering an agreement for the use and provision of itemized premises, buildings, facilities, equipment and services by **SUMMIT** at an agreed fee or fees. There is neither intent nor expectation of hereby creating any joint venture, partnership nor employer-employee relationship.

In consideration of payment of the sums agreed herein and **CONTRACTOR'S** satisfaction of the terms and conditions hereof, **SUMMIT** agrees to allow **CONTRACTOR** the use of the following sites:

1. **Ski runs and areas to be determined by Summit.**
- 2.
- 3.
- 4.

CONTRACTOR agrees to pay **SUMMIT** the sum of \$0 for the use of said sites during the "**EVENT**," but will provide media exposure and other promotional consideration.

CONTRACTOR'S use of the above sites shall only be for the purposes necessary and incidental to the **EVENT** and for no other purposes. **SUMMIT** will make no additional charge for **CONTRACTOR'S** access during any periods of preparation and clean up unless **CONTRACTOR** conducts those operations in a manner disruptive to **SUMMIT'S** ongoing business pursuits. In that event, **SUMMIT** shall be entitled to assess **CONTRACTOR** additional amounts reasonably reflecting the degree of disruption incurred by **SUMMIT**.

In the event **CONTRACTOR** does not perform all actions and activities necessary during the clean up period to return **SUMMIT'S** premises to the same condition as existed before the **EVENT** and before any of

CONTRACTOR'S preparations for the **EVENT**, then **SUMMIT** shall be entitled to charge **CONTRACTOR** for all fees, costs, expenses and services necessary to have **SUMMIT'S** premises returned to their pre-event preparation condition.

In consideration of payment of the sums agreed herein and **CONTRACTOR'S** satisfaction of the terms and conditions hereof, **SUMMIT** agrees to permit **CONTRACTOR** the use of the following equipment and/or services for the **EVENT**:

1. **Ski equipment for all Event Participants.**
2. **Standard race course set up and equipment.**
3. **Lift tickets for all Event Participants.**
4. **Staff as required to operate race course.**

CONTRACTOR agrees to pay **SUMMIT** the sum of \$0 for the use of said equipment/services during the "**EVENT**," but will provide media exposure and other promotional consideration.

FEES, LICENSES AND PERMITS: CONTRACTOR shall obtain any permits and licenses as required by any local, county, state or federal agencies or regulations. In addition, **CONTRACTOR** shall be responsible for any fees associated with the production of the **EVENT**. **SUMMIT** shall make every reasonable effort to advise **CONTRACTOR** of any fees, licenses, or permits that its experience indicates may be required. The parties acknowledge that **SUMMIT** operates the Sierra Summit Mountain Resort under a Special Use Permit issued by the United States Forest Service, and that the USFS consequently has the ultimate right and authority to control the permitted uses of the leased premises operated by **SUMMIT**. **SUMMIT** shall use all reasonable efforts in good faith to assist **CONTRACTOR** in obtaining the approval and cooperation of the USFS in permitting all activities **CONTRACTOR** determines are reasonable or necessary to the successful presentation of the **EVENT**. However, **CONTRACTOR** shall be responsible for determining and satisfying any and all requirements of the USFS which are necessary to the conduct of the **EVENT**, including the payment of any and all additional or supplemental fees assessed by the USFS.

In the event that the USFS for any reason prevents or prohibits the presentation of the **EVENT**, **SUMMIT** shall not be liable for any fees, costs, damages, expenses or injuries of any kind suffered or incurred by **CONTRACTOR**.

If any form of special arrangements are necessary for the **EVENT**, including but not limited to the selection, design or construction of any stages, scaffolding, or platforms, **CONTRACTOR** shall be solely responsible for all selection, design, specification, construction, markings, barriers, sound systems, lighting or other items or actions necessary for or related thereto. **CONTRACTOR** and **CONTRACTOR** alone accepts full and complete responsibility for determining the suitability of all courses, equipment, safety equipment and personnel necessary to or used in the course of the **EVENT**.

CONTRACTOR FURTHER ACCEPTS AND ACKNOWLEDGES SOLE AND COMPLETE RESPONSIBILITY TO AND LIABILITY FOR THE CLAIMS OF ALL THIRD PARTIES INVOLVED IN OR RELATED TO THE EVENT, WHETHER THOSE THIRD-PARTIES BE PARTICIPANTS, SPECTATORS, VOLUNTEERS, EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS.

Insurance. **CONTRACTOR** shall maintain and provide insurance, as follows:

- (1) Commercial General Liability (CGL) Insurance (including contractual) written on an occurrence form basis, with a minimum limit of one million dollars (\$1,000,000.00) per occurrence covering claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with the **EVENT** or from or out of any negligent act or omission of **CONTRACTOR**.

- (2) If applicable, Worker's Compensation Insurance (WC) as required by applicable law and Employer's Liability Insurance with the minimum limits of one million dollars (\$1,000,000.00) per occurrence.
- (3) If applicable, Automobile/Vehicle Liability Insurance (Auto Liability) with the minimum limit of one million dollars (\$1,000,000.00) per occurrence.
- (4) Such other additional insurance as **SUMMIT** may determine is necessary or reasonable for the **EVENT** and in such amounts as **SUMMIT**, in its sole discretion, determines as reasonable or necessary, so long as **CONTRACTOR** is advised at least 5 days in advance of the **EVENT** that **SUMMIT** will require such insurance.
- (5) **CONTRACTOR** shall provide Certificates of Insurance as determined by **SUMMIT** for any and all insurance deemed reasonable or necessary for the **EVENT** by **SUMMIT**.

Sierra Summit, Inc., and Snow Summit Ski Corporation and their agents shall be named as additional insureds in all CGL, Auto Liability and/or additionally required policies to be maintained or provided by **CONTRACTOR**. **CONTRACTOR** shall be solely and fully responsible for any premiums and deductible amounts required by the insurance policies described in this Insurance section. Certificates of Insurance shall be issued to Sierra Summit, Inc., and Snow Summit Ski Corporation confirming each of the foregoing insurances and Sierra Summit, Inc.'s, and Snow Summit Ski Corporation's position as an additional insured (CGL, Auto Liability and/or additionally required policies) and confirming the waiver of subrogation rights (WC policy).

The insurance policies described in this Insurance section shall be primary and not contributory to other insurance coverage carried by **SUMMIT**. Such insurance shall be obtained from companies with a BEST Guide rating of A VII or better. Such insurance shall be written on forms acceptable to **SUMMIT**, and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days prior written notice of cancellation is furnished to **SUMMIT**. All necessary or required policies shall be effective upon the execution of this Agreement and continuing at least through the end of the **EVENT**.

SUMMIT shall have the sole right and option to cancel the **EVENT** without any cost, penalty or obligation to **SUMMIT** in the event that written evidence of the CGL, Auto Liability, WC and/or other insurance policies determined by **SUMMIT** to be reasonable or necessary are not furnished prior to or concurrently with the execution of this Agreement. Further, **SUMMIT** shall have the sole right and option to cancel the **EVENT** without any cost, penalty or obligation to **SUMMIT** in the event of any act of God, force majeure or other conditions and circumstances that significantly hinder or prevent **SUMMIT** from conducting its normal business operations. **CONTRACTOR** alone shall bear any and all liability for damages and claims, whether direct or indirect, suffered by any person, party or entity as a result of such cancellation.

CONTRACTOR agrees that any and all of its employees, agents, representatives, staff and subcontractors who will be authorized to act on **CONTRACTOR**'s behalf as part of the Activity upon **SUMMIT** premises shall be required to first execute an individual Release and Indemnity agreement in favor of **SUMMIT** in the form attached hereto as (**Exhibit 1**.) **CONTRACTOR** agrees that prior to the scheduled start of the Activity, **CONTRACTOR** shall provide **SUMMIT** with such fully-executed individual Release and Indemnity agreements for each of **CONTRACTOR**'s employees and for all other persons who will represent, act upon the behalf of, or be an agent or subcontractor of **CONTRACTOR** upon **SUMMIT** premises for the purpose of the Activity. **CONTRACTOR** agrees that no person refusing or failing to sign such a Release and Indemnity agreement in favor of **SUMMIT** shall be allowed to participate in **CONTRACTOR**'s Activity on **SUMMIT** premises. In addition to any other remedies available to **SUMMIT**, including complete defense and indemnity from **CONTRACTOR** as set forth herein, it is understood and agreed hereby that **SUMMIT** may at any time

evict from its premises as a trespasser any of CONTRACTOR's non-complying employees, agents, representatives, staff or subcontractors without any obligation for damages of any kind.

As a further express condition of this contract, **CONTRACTOR** agrees that all participants must sign and initial as appropriate a Winter Activities Participant's Agreement (**Exhibit 2**) consisting of a release and waiver of claims in a form acceptable to **SUMMIT** which specifically identifies **SUMMIT**, its employees and agents as among the parties to be released. Any participant under the age of 18 must have their Winter Activities Participant's Agreement signed by a parent or legal guardian. **CONTRACTOR** agrees that any participant not providing a properly executed participant's Release Agreement before the start of the **EVENT** will not be permitted by **CONTRACTOR** to participate. **CONTRACTOR** further agrees to provide all executed Winter Activities Participant's Agreement's and Individual Release and Indemnity Agreement's to **SUMMIT** at the conclusion of the **EVENT**.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD SUMMIT HARMLESS FOR ANY AND ALL INJURIES, LIABILITIES, DAMAGES, CLAIMS, ACTIONS, CAUSES OF ACTION, INCLUDING SUBROGATION, COSTS OR EXPENSES OF ANY KIND ARISING OUT OF OR CONNECTED WITH THE EVENT, WHETHER INITIATED BY CONTRACTOR OR BY ANY OTHER PERSON, ENTITY OR ORGANIZATION CONNECTED WITH THE EVENT, INCLUDING BUT NOT LIMITED TO THEFT, DEMANDS FOR DAMAGES, JUDGMENTS, LOSS OF SERVICES OR REIMBURSEMENT OF REASONABLE COUNSEL FEES INCURRED BY SUMMIT AS A RESULT OF THE ACTIVITIES CONTEMPLATED BY THIS AGREEMENT INCLUDING BUT NOT LIMITED TO INCIDENTS ARISING OUT OF SUMMIT'S ALLEGED NEGLIGENCE.

As an express condition of, and as part of the consideration for **SUMMIT** entering into this contract, **CONTRACTOR** agrees that neither **CONTRACTOR**, nor its employees, representatives, agents or subcontractors, will undertake or perform, nor permit any employee, representative, agent or subcontractor to undertake or perform any activities at **SUMMIT** which could or would injure **SUMMIT'S** reputation as a venue for patrons of all ages, including families with children, or in any manner hold **SUMMIT** up to embarrassment, ridicule, disfavor or discredit within the community. Any violation of this provision by **CONTRACTOR** or by any of **CONTRACTOR'S** employees, representatives, agents or subcontractors shall make **CONTRACTOR** immediately responsible for any and all damages or injuries suffered by **SUMMIT**, or by **SUMMIT'S** patrons and guests, including but not limited to any and all consequential damages arising therefrom and further including any and all attorney's fees and any expenses incurred by **SUMMIT** in reasonably responding to any investigation or inquiries arising from or related to **CONTRACTOR'S** Activity as a result thereof.

SUMMIT reserves the right to refuse to sell or distribute, and to refuse to allow the sale or distribution at Sierra Summit, of products it determines are questionable or potentially dangerous, either as sale merchandise or as promotional "giveaway" items.

Assignment. This Agreement may not be assigned by either **SUMMIT** or **CONTRACTOR** without prior written consent of the other party. In no event may this Agreement, or any part hereof or obligation created hereunder, be assigned, delegated or otherwise transferred so as to impair, result in the elimination of, reductions to or unavailability of the insurance coverage and indemnity provided for hereunder.

Entire Agreement. This Agreement represents the complete and integrated agreement of the Parties with respect to the subject matter set forth herein, and supersedes and negates all prior negotiations, discussions and agreements, whether written or oral, all of which are deemed merged herein. This Agreement may not be modified or amended without prior written consent of the Parties.

Notices. Any notices or further written documents or materials anticipated or required under the terms of this Agreement shall be sent as follows and deemed effective upon receipt:

If to **SUMMIT**: Snow Summit Ski Corporation
P.O. Box 77
Big Bear Lake, CA. 92315
Attention: Janet L. Evans, Risk Manager

If to **CONTRACTOR**: District

Attention:

Governing Law. The laws of the State of California applicable to agreements made and to be wholly performed therein shall govern this Agreement.

Counterparts. This Agreement may be executed by facsimile and in counterpart, each page of which shall constitute part of one complete document.

CONTRACTOR FURTHER EXPRESSLY AGREES THAT THE FOREGOING AGREEMENT IS INTENDED TO BE AS BROAD AND INCLUSIVE AS IS PERMITTED BY LAW AND THAT IF ANY PORTION OR PARAGRAPH IS HELD INVALID, THE BALANCE SHALL CONTINUE IN FULL LEGAL FORCE AND EFFECT.

CONTRACTOR hereby acknowledges that he/she has fully read each of the above provisions and he/she fully understands and agrees with each provision.

This Agreement is effective as of the date set forth below.

CONTRACTOR SIGNATURE

DATE

SIERRA SUMMIT, INC.

DATE

_____ **PILOT PROJECT AGREEMENT**

This Pilot Project Agreement (“**Agreement**”) is made as of the last date set forth below in the signature blocks of this Agreement (the “**Effective Date**”) by and between _____, LLC., having its principal place of business in San Francisco, California (“_____”), and District, located in _____, California (“**District**”).

Recitals

- A. _____ has developed a **Pilot Project** (as defined below) which it desires to have tested and evaluated and for which _____ desires to obtain input to assist in its ongoing corporate development;
- B. District desires to have the opportunity to test the market for the Pilot Project by being one of the first to participate in the project with _____; and,
- C. District is willing to help test and evaluate the Pilot Project and provide input to _____.

Agreement

In consideration of the foregoing Recitals (which are incorporated herein) and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Definitions.

“Pilot Project” shall mean _____’s test case working with an educational institution to sell new and used education products in an online auction environment, as more fully described in Exhibit A (“**Pilot Project Plan and Schedule**”).

2. Relationship of the Parties.

Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties or between District and _____’s Field Auction Manager(s) (defined below).

3. Fees.

District agrees to receive payment for items sold by _____ on behalf of the district, according to the fee structure as set forth in Exhibit B (“**Fee Structure**”). District shall be responsible for any other fees, fines, licenses or taxes required of or imposed against _____ Unified School District. In no event will District be responsible for _____’s corporate income tax or any other fees, fines, licenses or taxes required of or imposed against _____. Each party agrees to indemnify the other party to the extent that it incurs any liability for any fees, fines, licenses or taxes which are the responsibility of the other party.

4. _____ Responsibilities.

_____ agrees to, in a professional and workmanlike manner, use commercially reasonable efforts to comply with the Pilot Project Plan and Schedule as set forth in Exhibit A.

5. District Responsibilities.

District agrees to help _____ define its service models and agrees to provide input on and evaluation of the Pilot Project as appropriate. District agrees to assign a District representative who will be the primary

contact for _____ (the “**District Representative**”) to work with _____ and its Field Auction Manager(s). “**Field Auction Manager(s)**” are _____’s independent contractors who will manage the auction activities at District site(s). Further, District acknowledges that _____’s ability to perform as required under the Pilot Project Plan and Schedule will require District to perform certain tasks as contemplated in Exhibit A, which District agrees to perform in a commercially reasonable manner. District shall not be obligated to conduct itself in a manner or perform tasks which are inconsistent with federal and state law, or the district’s policies and regulations.

6. District Acknowledgements.

District acknowledges and agrees that: (i) the Pilot Project has not been widely tested in the marketplace; (ii) the Pilot Project may not fully meet District requirements; (iii) the Pilot Project may not produce revenue for District or succeed in reducing inventory or storage requirements for _____ Unified School District; (iv) participation in the Pilot Project will require some time commitment from District and its employees or contractors and participation may not be without interruption or errors; and (v) the purpose of this Agreement is to provide for the Pilot Project to be tested and evaluated. District further acknowledges and agrees that: (i) the Field Auction Managers are independent contractors of _____; and (ii) the Field Auction Managers may not be independently fully bonded or insured, except as covered by _____’s applicable insurance coverage.

7. Confidentiality.

The parties agree to hold, and agree to take all reasonable steps to ensure that their employees, independent contractors, and agents hold each other’s Confidential Information (as defined below) in strict confidence and not to make each other’s Confidential Information available in any form to any third party or to use each other’s Confidential Information for any purpose other than as specified in this Agreement. Each party’s Confidential Information shall remain the sole and exclusive property of that party. Each party acknowledges that any use or disclosure of the other party’s Confidential Information may result in irreparable injury and damage to the non-disclosing party and, therefore, in the event of improper use or disclosure by the other party, the non-disclosing party may be entitled to equitable relief as granted by any appropriate judicial body. “Confidential Information” shall mean, with respect to a party hereto, all information or material which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) which is either (A) marked “Confidential,” or other similar marking or (B) known by the parties to be

considered confidential and proprietary. Neither party shall have any obligation with respect to confidential information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) subject to disclosure under court order or other lawful process.

_____ acknowledges that District is subject to various confidentiality and privacy laws, regulations, and policies, including, but not limited to, the parental notification and access provisions of the federal Family Educational Right to Privacy Act (FERPA"), Title 5 of the California Code of Regulations, the provisions of the California Education Code related to the maintenance and transfer of student records, the Information Practices Act of 1977, the Child Privacy Protection and Parental Empowerment Act, and the Children's Online Privacy Protection Act. _____ shall comply with all applicable privacy laws to the extent that it has access to any confidential student or employee information.

8. Disclaimer of Warranties.

_____ DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE PARTICIPATION IN OR RESULTS FROM THE PILOT PROJECT. NO ORAL INFORMATION OR ADVICE GIVEN BY _____ OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE ANY WARRANTY.

9. Term and Termination.

The term ("Term") of this Agreement shall begin on the Effective Date and shall continue thereafter until completion of the Pilot Project or such time as either party provides the other with written notice of termination of this Agreement.

10. Publicity.

AGREED AND ACKNOWLEDGED:

_____ UNIFIED SCHOOL DISTRICT

Signature : _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

District grants _____ the right to and agrees that _____ may use _____ Unified School District's name and the existence of this Agreement in advertising, publicity, press release, client list, presentation or promotion only with prior written approval from District Board of Trustees.

11. General Provisions.

11.1. Governing Law. This Agreement shall be governed by the laws of the State of California without reference to its conflict of laws rules. Fresno County shall be the venue for any action or proceeding filed under this contract.

11.2. Entire Agreement. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of this Agreement, except as referenced herein. This Agreement may be amended only by a written agreement signed by both parties.

11.3. Severability. If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they shall be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

11.4. Waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

EXHIBIT A

PILOT PROJECT PLAN & SCHEDULE

GENERAL SERVICES

- _____ agrees to make an initial visit (“Initial Visit”) to District location(s) within 14 days of the Effective Date of this Agreement to introduce the _____ Field Auction Manager(s) to the District Representative. During this visit, the _____ Field Auction manager will evaluate the size and scope of the District Pilot Auction of school district assets.
- _____ provides District with an estimate of _____ Service Fees (estimated number of listings and/or hours required to determine listings (“Estimate”) within 3 days of the Initial Visit.
- District agrees to evaluate and respond to the Estimate to finalize list of approved and agreed assets within 14 days after receipt of this estimate by the _____ Unified School District’s representatives.
- District agrees to schedule and host subsequent Field Auction Manager visit(s) (“Inventory Assessment”) within 14 days after the Estimate is accepted.

AUCTION SERVICES – INVENTORY ASSESSMENT

- _____ Field Auction Manager takes digital photos and detailed notes on each inventory item.
- _____ Field Auction Manager conducts eBay research regarding optimal listing strategy.
- _____ Field Auction Manager or other _____ staff creates auction listings using detailed product descriptions and eBay research based upon knowledge of the online education auction environment.

AUCTION SERVICES - GENERAL

- _____ posts auction listings in _____ /eBay store.
- _____ complies with all applicable provisions of Education Code sections 17545 (regarding posting and publishing notice requirements) and 17546 (regarding private sale of personal property).
- _____ supports high-level marketing to the buyer community in conjunction with partner auction site.
- _____ initiates auction and manages all auction customer queries through auction close defined as notification to winning bidder and receipt of payment by winning bidder (“Close”).

AUCTION SERVICES - AUCTION CLOSE

- _____ collects payment from winning bidder(s) in accordance with Close of auction procedures specified in the auction listing(s).
- _____ Field Auction Manager returns to District location(s) within 3 business days after Close of auction to package items and coordinate deliveries of goods to winning bidders.
- _____ confirms receipt of goods by buyer(s).
- _____ manages transfer of funds (auction proceeds less _____ fees) to District within 14 days after Close of auction.
- _____ ensures buyer customer satisfaction. In the event that the buyer is not satisfied with product received from _____ Unified School District, _____ will arrange settlement with the buyer in accordance with eBay guidelines.

EXHIBIT B

PILOT PROJECT FEE STRUCTURE

COMPROMISE, SETTLEMENT & RELEASE AGREEMENT

This Compromise, Settlement and Release Agreement (“Agreement”) is made and entered into by and between _____ (“Employee”) and the _____ (“District”).

RECITALS

A. _____’s employment with the District began on _____. Since that time, _____ has been a full time employee of the District and has worked in various capacities;

B. _____ is currently fifty-nine (59) years old, with a birth date of _____;

C. For the past five (5) years, _____ has been employed as the _____ Position;

D. Board _____ specifies that certain management/confidential staff are eligible for continued District-paid membership in the District’s group medical plan if certain conditions are met. _____ may be eligible for said membership and benefits;

E. _____ desires to resign from the District, subject to specified terms and conditions; and

F. The District is willing to accept _____’s resignation under the specified terms and conditions.

AGREEMENT

1. Recitals. The recitals set forth above are true.
2. Resignation. _____’s signature on this Agreement shall constitute his voluntarily and irrevocable resignation from the District, effective _____. The District hereby accepts his resignation. No further documentation or action shall be required to make _____’s resignation effective.

From the date of this Agreement's execution through _____,
_____ shall be on administrative leave with pay.

3. PARS Early Retirement Program. _____ is eligible to participate in the PARS early retirement program administered through the District.

4. Health Benefits. After _____, the District will pay, on _____'s behalf, the capped amount for active management/confidential staff health benefits, until _____'s sixty-fifth (65th) birthday. Until his sixty-fifth (65th) birthday, _____ will be responsible for any portion of health benefits premium which exceeds the capped amount. _____'s Consolidated Omnibus Budget Reconciliation Act ("COBRA") rights to purchase health benefits from the District shall commence on _____.

5. PERS Representations. District makes no representations regarding the impact of this Agreement on _____'s PERS benefits, retirement, or state, federal or local taxes. Notwithstanding any other provision of this Agreement, the District shall not be liable for any retirement or state or federal tax consequences to _____ as a result of this Agreement. Instead, _____ shall indemnify, defend and hold the District harmless from all retirement and tax consequences of this Agreement.

6. Release. _____ hereby releases and forever discharges the District from any and all expenses, debts, demands, costs and other actions or liabilities of every nature, whether in law or in equity, that he may have or may claim to have as a result of the Agreement, including, but not limited to, rights under federal, state or local laws, rights to benefits under District policy beyond those specified in Paragraph 4, above, any claim under the Ralph M. Brown Act, breach of employment contract, statutory violations, employee privacy protections, defamation, or any other claims. Further, _____ waives the benefits of the provisions of California Civil Code Section 1542:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Therefore, _____ expressly acknowledges that this release is intended to include in its effect, without limitation, all claims and causes of action which he does not know

or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims. _____ further agrees to waive any claims under the Age Discrimination in Employment Act (“ADEA”) and any claims under California state law for age discrimination. The parties acknowledge that _____ has had twenty-one (21) days to consider the waiver of his ADEA claims, if any. If _____ executes this Agreement before 21 days has elapsed, _____ acknowledges that he knowingly and voluntarily has waived the 21 day period of consideration, and that such decision was not induced by the District through fraud, misrepresentation, a threat to withdraw or alter the offer prior to the expiration of the 21 days. _____ may revoke this portion of the Agreement only, in writing, within seven (7) days of the Effective Date. _____ acknowledges that if he revokes this portion of the Agreement, he shall not be entitled to any of the proceeds or benefits of this Agreement.

7. Fees and Costs. Each of the parties to this Agreement shall bear its own costs, expenses and attorneys' fees including, but not limited to, costs, expenses or attorneys' fees incurred in or related to this Agreement.

8. Other Documents. All parties agree to cooperate fully in the execution of any additional documents that may be necessary to finalize this Agreement.

9. Amendments. Any modification of this Agreement must be in writing and signed by all parties. No oral modifications shall be effective to vary or alter the terms of this Agreement.

10. Board Approval. The parties recognize that the effectiveness of this Agreement is contingent upon approval by District's Governing Board. In the event that the Governing Board does not approve this Agreement, _____ shall retain all of his statutory rights.

11. Execution in Counterparts. This Agreement may be executed in counterparts, including true and accurate copies of the original, all of which, when taken together, shall be deemed one original agreement. An executed copy shall not be binding upon any party until all parties have duly executed a copy of this Agreement. Facsimile copies of signatures shall be deemed original signatures.

12. Severability. If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.

13. District Defined. The term "District" includes the _____ School District, current and former members of its Governing Board, its current or former officers, employees, agents, attorneys, directors, successors, predecessors, and insurers.

EXECUTION

Executed at _____, California, this ____ day of _____, the "Effective Date."

"EMPLOYEE"

"DISTRICT"

By: _____
Assistant Superintendent, Personnel Services