



ORANGE COUNTY SCHOOLS
FIRST CHOICE FOR FAMILIES

Addendum #1
June 25, 2018

ORANGE COUNTY BOARD OF EDUCATION
200 East King Street, Hillsborough NC 27278

NOTICE OF ADDENDUM OCS BID #2019-OHS-GEO

OHS MODULAR CLASSROOM PROJECT

The following items enclosed in Addendum #1 shall become part of the bid documents:

1. Summary of Questions and Answers from Contractors Dated June 25, 2018

2. Updated BID Submission Form: Contractor should include the earliest Substantial Completion date if contractor is unable to meet the established installation deadline of August 18, 2018.

3. Inclusion of OCS Lease Agreement for Modular Classrooms.

All other terms of this solicitation remain unchanged.

By: Patrick Abele
Orange County Schools
Chief Operations Officer
Dated: June 25, 2018

BID 2019-OHS-GEO

Addendum #1: Response to Contractor Questions

Posted June 25, 2018

1. You mention CAT 5 enabled or wireless for the technology portion of the building. Is there a preference?

Answer: Cat 5e would be the minimum standard.

2. Is it the district's expectation for the modular to come with empty J boxes and conduit for fire, smoke and security to be installed by others?

Answer: Yes. The district will complete security, smoke, fire alarm installations with its current contract providers for the above services.

3. What is the generic turnaround time for permits and will the district be helping awarded vendor with submittals?

Answer: Immediately. The district will expedite contract approval and assist the Lessor with obtaining permits for installation.

4. On the site plan there is an existing power pole. Is that electrical service single or three phase power? Additionally, does the existing service have the capacity to handle 1000amps from the building?

Answer: Three-phase power. Yes, the existing service has the ability to handle 1000amps from the building.

5. Can the district confirm that ABS pads are acceptable for the set up or will they require the asphalt to be cut and footings be poured?

Answer: No, ABS pads are not acceptable per local code. Contractor can build piers on the existing asphalt with grouted or surface bonded piers.

6. There are multiple start and end dates for the lease. Can you clarify each designation or meaning? What is Master Lease Termination Lease?

Answer 6A: The start date of the least will be the first day of the month when substantial completion and setup occur. We anticipate this to be August 1, 2018 based on the bid setup installation date of August 18, 2018. The term length of the lease agreement will be approximately 30 months as the mobile units are being used for relocation of students during a HVAC renovation within the school. The mobile unit term may need to be extended due to unforeseen construction delays on the HVAC project.

Answer 6B: The Master Lease Agreement is the OCS Lease Contract for Mobile Units included in Addendum #1. All bidders should include a tear down and return price in their bid.

7. Will the PO be sent by the district directly or through NC E-procurement? If NC E-procurement what is the fee for that?

Answer: E-procurement is not required. The district can issue a Purchase Order to an authorized and approved vendor outside of E-procurement.

8. Can you provide a list of trades that have successful worked with the district in the last few years?

Answer: Yes. Contractor awarded the project will be given a list of trade providers. Inquiries can also be made to Roger Ivey, Maintenance Director at roger.ivey@orange.k12.nc.us

9. In the bid form under provisions of services , are you asking us to include these items? Please clarify what you want us to include or exclude.

Answer: Included services would be overhead canopy between the mobile units on the main walkway from the front rail to the end rail so that all doors and openings are under canopy as shown on the site plan. Standard walls for mobile units is acceptable without additional sound proofing. Hallways are not applicable.

10. Are you requiring skirting on the building?

Answer: Yes, skirting is required.

11. Is there any circumstance in which the district will have to delay the award? For example not enough bidders present.

Answer: No. We do not anticipate any delays on awarding the contract so long as the terms for the bid as specified and the OCS Lease Contract requirements are met.

12. Regarding buildings that are acceptable, will the district be okay with buildings that are used as long as they meet 2012 IBC for NC?

Answer: Yes, 2012 IBC for NC is acceptable.

ASSET & RATE SCHEDULE (VII-BID FORM) REVISED ADDENDUM #1
Project Number: 2019-OHS-GEO

This Asset & Rate Schedule is agreed upon this *Mo Day Yr* between the Orange County Board of Education, Lessee, and **Vendor Name**, Inc, Lessor, pursuant to the terms of the Master Lease Agreement dated **Day Mo Yr** ("Master Lease").

All the terms and conditions of the parties' Master Lease are fully incorporated herein and remain in full force and effect between the parties.

The following information identifies the mobile or modular classroom units (Assets) to be provided to Lessee by Lessor, the locations to which Lessor shall deliver each Asset, the dates upon which Lessor shall deliver and complete installation of each Asset, the services and amenities shall the lessor provide with each Asset and the maximum compensation agreed upon for each Asset. **ENTER AMOUNTS FOR EACH LINE WHERE APPLICABLE. Blanks without Numbers will be counted as NO COST.**

Location:	
Type:	
Serial # /Unit #:	
Notice to Proceed Date:	
Setup/Trimout Completion:	
Estimated Lease Start Date:	
Actual Lease Start Date:	
Current Lease End Date:	
Asset Removal Date:	
Master Lease Termination Date:	

The following grids identify the rental rate(s) and fixed, one-time fee(s) associated with each mobile or modular classroom unit (Asset) to be provided by Lessor to the Lessee pursuant to the Master Lease and this Asset & Rate Schedule. Unless otherwise specified in this Asset & Rate Schedule, there shall be no conditions on the rate(s) and fee(s) identified herein.

Rental Rate(s)

The monthly Rental Rate for each Asset leased to Lessee pursuant to the Master Lease and this Asset & Rate Schedule shall be :		
Property Tax:		
Orange County Tax:	2.50%	
NC State Tax:	4.25%	
<i>(The monthly rental rate identified above guarantees provision of an Asset with all the amenities, features and dimensions specified in the Owner's and/or Architect's specifications.)</i>		
Additional features that shall be included as part of the rental fee with an Asset provided pursuant to the Master Lease and this Asset & Rate Schedule are:		
Any feature the parties agree shall not be included as part of the rental fee associated with an Asset provided pursuant to the Master Lease and this Asset & Rate Schedule shall be identified here:		
Total Monthly Rate:		
<i>Total rate for Current Fiscal Period (Aug 2018 - July 2019)</i>	12 months	
<i>Total rate for 2nd Fiscal Year (August 2019- July 2020)</i>	12 months	
<i>Total rate for 3rd fiscal Year (August 2020 - December 2020)</i>	5 months	
<i>Total rate for 4th fiscal Year (20XX-20XX)</i>	Mos day	N/A

Fixed, One-Time Setup Fee(s): (ENTER AMOUNTS)

Delivery of the Asset to the location specified on the Asset Schedule	
Installation of Footers (N/A if not included/\$0.00 if no cost)	Included
Block Level and Tie Down (N/A if not included/\$0.00 if no cost)	Included
Trim Work (electrical interconnection, fire caulk the corridor, corridor joints) (N/A if not included/\$0.00 if no cost)	Included
Provision of any other services or amenities not already included in the rental rate are awning over exterior doors, inter walls with soundproofing and carpet squares in hallway	
Changes Proposal: details of change	
Sales Tax (6.75%)	
Teardown and return delivery is to be at the price to be mutually agreed as per the Master Lease Agreement (OCS Lease Contract):	
<i>Total of Fixed, One-Time Fee(s)</i>	

ORANGE COUNTY SCHOOLS

Name
Company
Title

Substantial Completion: DATE OF SUBSTANTIAL COMPLETION FOR INSTALLATION AND OCCUPANCY OF MOBILE UNITS BY THE LESSOR/CONTRACTOR ON OR BEFORE:

_____ MONTH _____ DAY 2018 YEAR

Acknowledgements and Representations:

- a. The undersigned bidder understands that time is of the essence and agrees that the Work must achieve Substantial Completion for delivery and installation prior to August 18, 2018.
- b. If notice of acceptance of this bid is given to the undersigned, within 14 days after the date of opening of bids, the undersigned will execute and deliver an Agreement in the prescribed form promptly after it has been presented to him for signature. Certificates of Insurance and Performance and Payment Bonds shall be furnished to the Owner at the execution of this Agreement.
- c. Upon request of the Owner, the undersigned bidder agrees to submit evidence in affidavit form of applicable experience, adequate financial resources, work in hand capacity, adequate organization, and acceptable past performance. Submittal will be in the form of AIA Document A305 Contractor's Qualification Statement. Bidder's qualification information shall be considered privileged and confidential.

- d. The undersigned bidder certifies that neither he/she, nor any official, agent or employee has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid. The person signing this bid form represents that he/she has full authority and representative capacity to execute this bid form in the capacity indicated below.

- e. By submitting a bid, bidder indicates that all considerations issued by addendum are incorporated in the bid. The undersigned acknowledges receipt of the following Addenda:

Addenda No. Date

I certify that the firm signing this bid and registered under that name is legally qualified to perform all work included in the scope of the contract as determined by the State of North Carolina, in granting the registration.

Name of Bidder: _____
(Company)

By: _____
(Signature)

(Typed name)	(Title)

Address: _____

NC License #: _____

By: _____
 Title: _____

End of Bid Form

LEASE AGREEMENT **(DRAFT: DO NOT SUBMIT WITH BID)**

This Lease Agreement is made this **1st** day of **July, 2018** by and between the Orange County Board of Education ("Lessee") and _____ authorized to do business in North Carolina with its principal office at _____ ("Lessor").

RECITALS

WHEREAS, Lessee is a local board of education working to provide public schools within its local school administrative unit as directed by law.

WHEREAS, Lessor is a Delaware corporation in good standing in the business of leasing mobile/modular classroom units and associated equipment and services.

WHEREAS, Lessor wishes to lease to Lessee and Lessee may wish to lease from Lessor certain mobile classroom units and associated equipment and services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. DEFINITIONS.

Asset(s). All of the personal property, including the mobile/modular classroom units, all associated equipment, handicapped door knobs, dual lights on handicapped ramps, installation and removal services, and/or maintenance listed on any Schedule or provided as part of Basic Services.

Asset Schedule ("Schedule"). The document executed by Lessor and Lessee specifying the Asset(s) to be leased and the locations at which they will be installed by Lessor and the dates upon which they will be installed and removed by Lessor.

Commencement Date. The date(s) Lessee's obligation to pay Rent begins, which will be the following date for each Asset: The date that Lessor has (1) completed delivery of the Asset, (2) completed installation of the Asset, including block, level and tie down, (3) provided Lessee with a key to the Asset by delivering a key to the principal of the school at which the Asset has been installed, and (4) obtained the signature of the principal of the school at which the Asset has been installed indicating that the principal possesses the key to the Asset.

Initial Schedule Term. The period initially agreed to constitute the lease period for a particular Asset as set forth in any individual Schedule attached to and incorporated within this Lease Agreement; no Initial Schedule Term shall extend beyond eighteen months from the Commencement Date for the particular Asset.

Schedule Term. For each Asset shall include the Initial Schedule Term and any Renewal Schedule Terms.

Rate Schedule. The document specifying the rental rate, the delivery and installation rate, and the removal rate for each Asset to be leased by the Lessee from the Lessor pursuant to this Lease Agreement. A Rate Schedule particular to each Asset Schedule shall be attached to each Asset Schedule to which it applies. The rates specified in the Rate Schedule shall not be modified upward at any time during the term of any Asset Schedule or during any automatic renewal period to which the Rate Schedule is attached. The Rate Schedule shall be modified downward as the cost of leasing the Assets declines.

Renewal Schedule Term. Any period subsequent to the Initial Schedule Term.

Rent. The payment by Lessee to Lessor of money for the lease of any Asset(s) and provision of services covered by a Schedule and this Lease Agreement.

2. **SCHEDULES.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, subject to the terms and conditions of this Lease Agreement, the Rate Schedule, and any Schedule, the Asset(s) described in each Schedule. Each Schedule constitutes a separate agreement between the parties and incorporates in full the terms and conditions of this Lease Agreement. Lessor shall not deliver or install any Asset that is not authorized by a Schedule attached to and incorporated within this Lease Agreement.
3. **SCHEDULE TERM.** The Initial Schedule Term for each Schedule shall be as set forth thereon. Until either party provides the other with thirty (30) days prior written notice of termination, Renewal Schedule Terms of each Schedule shall extend automatically, at the rate provided in the Rate Schedule, for successive one-month terms beyond the expiration of the Initial Schedule Term. All Initial and Renewal Schedule Terms shall automatically terminate on June 30 of the last year of the term of this Lease Agreement subject to the terms of Paragraph 11 of this Lease Agreement.
4. **PAYMENT and COMPENSATION.** The Lessor shall be compensated, if at all, according to the Rate Schedule attached to the applicable Asset Schedule attached to this Lease Agreement, this Paragraph, and the applicable Schedule. The Rate Schedule shall itemize the cost of renting an Asset for a period of one month, the cost of delivery of an Asset to a location designated by Lessee, the cost of installing an Asset at a location designated by Lessee, and the cost of removing an Asset from the Lessee's property. Each Schedule shall specify the Asset(s) to be leased by Lessee from the Lessor and shall specify any delivery, installation or removal or other services to be provided by Lessor to Lessee. Each Schedule shall also specify the maximum compensation authorized for the work and Asset rental specified in the Schedule. The Lessee shall pay Rent to Lessor for work performed and Assets leased pursuant to a Schedule in the amount of either (1) the actual value of the services authorized by the Schedule and performed by the Lessor at the rate specified in the Rate Schedule or (2) the maximum compensation authorized by the Schedule authorizing the work and Asset rental, whichever is lower, unless the parties have agreed in writing in advance of the Lessor's performance of any work or delivery and installation of any Asset to some alternative compensation. The Lessor shall not be compensated for any work or services performed or any Asset delivered to Lessee without specific authorization in a Schedule. The payments itemized on Lessor's invoices to Lessee for Assets identified in a Schedule and leased, delivered, installed and accepted by Lessee are due within forty-five (45) days from Lessee's receipt of invoice so long as those payments are in accord with the Rate Schedule attached to the particular Asset Schedule but Lessee shall endeavor to pay such invoices with thirty (30) days of receipt. Lessee is not responsible for taxes on the Asset(s) or services provided under this Agreement, nor for any expenses not specifically itemized in the Rate Schedule incorporated within this Lease Agreement.
5. **NONAPPROPRIATION.** Lessee agrees, if necessary, to duly request the appropriation of funds for all payment amounts specified in this Agreement. Notwithstanding anything to the contrary herein, if the funds Lessee requests for a fiscal year are not appropriated, Lessee will not be obligated to pay amounts due beyond the end of the last funded fiscal year. If a nonappropriation of this kind occurs, Lessee will notify Lessor, the Agreement will terminate at the end of the last fiscal year for which funds were appropriated, Lessor may remove the

Asset(s), and Lessee will not be in default notwithstanding the default provisions that might otherwise appear herein. The initial fiscal year relevant to this Lease Agreement began on **July 1, 2018 and ends on June 30, 2019**; each subsequent fiscal year that may be relevant to this Lease Agreement also begins on July 1 and ends the next June 30. Notwithstanding anything herein to the contrary, Lessee shall be responsible for all rental payments and charges authorized by Lessee prior to the end of the Fiscal Year.

6. BASIC SERVICES. In addition to its delivery, installation and removal of Asset(s), Lessor will provide the following Basic Services under this Agreement. Lessor shall, in performing Basic Services, exercise the highest degree of care and perform such services in an expert fashion.

a. REPAIRS AND PARTS. Lessor promptly will make adjustments and repairs necessary to keep Asset(s) in good operating condition (including such adjustments or repairs required during initial installation); provided, however, that Lessor's obligation to make adjustments and repairs necessary shall not apply to defects or damage caused by Lessee's neglect or improper maintenance. Parts required for repair may be new, reprocessed, or recovered, but shall be of sufficient quality to enable the Asset(s) to provide complete and efficient service without requiring an unreasonable amount of repairs or adjustments.

Lessee, however, will be responsible for the replacement of light bulbs and HVAC filters, and janitorial services per the Lessee's traditional replacement schedule and janitorial services schedule. Lessee shall maintain reasonable control over HVAC controls in each classroom.

Except as provided in Paragraph 7 and that the Asset provided pursuant to this Agreement shall be in good operating condition when it is installed by Lessor and shall be maintained by Lessor throughout the lease term in good operating condition, there are no other warranties, express or implied, provided by Lessor.

b. HOURS. Lessor will provide Basic Services during the hours from 8:00 A.M. to 5:00 P.M., Monday through Saturday. Basic Services shall cover all repairs and adjustments required, including, but not limited to, those required as a result of normal wear and tear or defects in materials or workmanship including the use of options, accessories, or other items connected to the Asset(s). Basic Services shall not pertain to any repairs or adjustments necessary as a result of Lessee's neglect or improper maintenance. The schedule for performing Basic Services shall be designed to maximize equipment performance, efficiency and use by Lessee. The Basic Services provided shall not violate or in any way infringe on the rights of third parties.

c. REMEDY. If Lessor does not maintain the Asset(s) as described above, Lessee may, at its option, require Lessor to replace the Asset(s) with an identical product or another product of equal or greater capabilities. This replacement product shall be subject to these same terms and conditions, and in no event will Lessee be required to pay additional amounts in connection with the replacement product.

- d. **INSTALLATION.** Lessor shall complete “block, level, and tie down” and complete trim work as part of its installation of each Asset.
 - e. **KEYS.** After Lessor has completed the installation services for each Asset, Lessor shall deliver the keys to the mobile classroom unit to the principal of the school at which the Asset was installed. Lessor shall provide the principal with an opportunity to review the installed Asset and obtain the principal’s signature indicating that the principal accepted the keys to the Asset. Lessor shall provide to the principal one key for each door on each Asset installed. The Lessor shall provide additional keys if available to each Asset to Lessee at Lessee’s request without cost to Lessee. Lessor shall not assess any fees for lost keys, and Lessee will make its best effort to keep all keys issued to it in known locations.
 - f. **REMOVAL.** Within thirty (30) days after the expiration of this Lease Agreement or any Schedule Term, Lessor shall remove any Asset(s) no longer covered by an effective Schedule from Lessee’s property. Lessee will make its best efforts to remind Lessor of the expiration of this Lease Agreement or any Schedule Term in writing within thirty (30) days of such expiration. Lessor shall also keep its own records regarding the expiration of this Lease Agreement or any Schedule Term and shall not rely upon any reminders from Lessee. Lessor shall fence off the area needed to perform its removal obligations during the removal process and shall remove all debris from the removal site. In the event leaving the site in a condition that is safe for young children and others on school property requires Lessor to leave the property in a condition other than that existing prior to installation of the Asset, Lessee shall reimburse Lessor for the reasonable additional costs and expenses incurred. Lessor shall be responsible for any injuries or deaths resulting from debris left on the site by Lessor after Lessor’s removal of any Asset from Lessee’s property or from any dangerous condition left by Lessor on the site after Lessor’s removal of any Asset from Lessee’s property. Lessor shall hold harmless, defend and indemnify Lessee from any and all liability, loss, costs, damage, judgment or expense (including reasonable attorney’s fees) resulting from or arising in any way out of any such claims based upon, or the result of Lessor’s failure to comply with the terms of this Subparagraph.
 - g. **SPECIFICATIONS AND BID PACKAGE.** All of the terms of the Specifications and Bid Package for the mobile classroom project shall be incorporated herein by reference.
- 6.1. **LIQUIDATED DAMAGES.** If the Lessor shall neglect, fail or refuse to complete installation of any Asset, including “block, level and tie down” and all trim work, by the deadline established for installation of the Asset in the Schedule, then the Lessor does hereby agree, as a part of the consideration for the award of this contract, to pay to the Lessee the amount hereinafter specified, not as a penalty, but as liquidated damages for each and every calendar day after the time stipulated in the Schedule for completion of installation of the Asset.

For each consecutive calendar day that any Asset is not completely installed, including “block, level and tie down” and all trim work, after the deadline established for installation of

the Asset in the Schedule, the Lessor shall pay to the Lessee or the Lessee will retain from the compensation otherwise to be paid to the Lessor the sum of **\$250** as liquidated damages. The parties agree that this liquidated damages sum is a reasonable and proper estimate of the damages which the Lessee will sustain per day by the failure of the Lessor to complete installation of the Asset as agreed upon, the inability of the Lessee to utilize the Asset and its site fully, and the disruption to the school and learning environment. This sum is set and agreed upon because the Lessor and Lessee recognize the injury to the Lessee that could result from the Lessor's failure to complete installation of any Asset by the deadline established in the Schedule is uncertain and cannot be computed exactly.

Should the Lessor neglect, fail or refuse to complete installation as described above of more than one Asset by the deadlines established for installation of each such Asset in the applicable Schedule, the amount of liquidated damages set forth above shall be aggregated such that the Lessor pays to the Lessee or the Lessee retains from the compensation otherwise to be paid to the Lessor the aggregate sum of **\$250** per Asset per calendar day that each such Asset is not completely installed after the deadline established for its installation in the applicable Schedule.

This provision of liquidated damages does not bar the Lessee's right to enforce other rights and remedies against the Lessor, including but not limited to specific performance or injunctive relief or any remedy identified in Paragraphs 14 and 16 of this Lease Agreement. In no way shall costs for liquidated damages be construed as a penalty to the Lessor.

- 7. WARRANTY AND GUARANTEE.** Lessor warrants and guarantees that the Asset(s) leased to Lessee will provide excellent performance without the need for unreasonable repair, adjustment or servicing. If an Asset does not fully satisfy the specifications required by Lessee, Lessor shall repair or replace the Asset such that it satisfies or exceeds the specifications required by Lessee; provided, however, that Lessor shall not be required to repair or replace the Asset resulting from the neglect or improper maintenance by Lessee. Lessor shall not be required to replace the Asset if it can be repaired to the Lessee's reasonable satisfaction. The Lessee shall not unreasonably withhold its approval of a repair. Lessor shall commence and make its best efforts to complete such repairs or replacements within five (5) days of written notice by Lessee that the Asset does not satisfy the specifications required by the Lessee. This Warranty and Guarantee shall be effective during the term of this Agreement and any renewals or extensions of this Agreement. Without in any way altering the warranty provided in this paragraph, Lessor and Lessee acknowledge that if Lessee issues written directives to Lessor that are not part of the original structure or the sealed foundation plans and are in violation of local building codes, Lessee will be responsible for any costs required to modify Lessee's directive to bring it into compliance with local building codes.
- 8. AUTHORITY.** Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Lessor has all necessary corporate power and authority to enter into and perform this Agreement.
- 9. INSURANCE.**
LESSOR'S INSURANCE. Lessor has obtained and shall maintain insurance to sufficiently protect Lessor and Lessee from any and all potential claims or damages, including but not limited to Worker's Compensation, Comprehensive General and Contractual Liability

Insurance in no event less than the amount of \$1,000,000 or more for each occurrence with an insurer having a "Best Policyholders" rating of B+ or better. Lessor has also obtained and shall maintain Commercial Property Insurance protecting the Asset(s) against all loss and damages, at full replacement cost. Lessee shall be named as an additional insured on the Certificate of Insurance. Copies of certificates of insurance shall be provided to Lessee and shall include the following:

- a. Name of insurance company, policy number, and expiration date;
- b. The coverage required and the limits on each, including the amount of deductibles or self-insured retentions (which shall be for the account of the Lessor);
- c. A statement indicating that Lessee shall receive thirty (30) days' notice of cancellation or significant modification of any of the policies which may affect Lessee's interest;
- d. A statement confirming that Lessee has been named an additional insured (except for Workers' Compensation) on all policies; and

LESSEE'S INSURANCE. After the Lessor has (1) completed delivery of the Asset, (2) completed installation of the Asset, including block, level and tie down, (3) provided Lessee with a key to the Asset by delivering a key to the principal of the school at which the Asset has been installed and (4) obtained the signature of the principal of the school at which the Asset has been installed indicating that the principal possesses the key to the Asset, the Lessee shall provide Commercial Property Insurance to protect the Asset against all loss and damages, shall have the Asset covered under the general liability policy covering the location at which the Asset was installed, and shall retain such insurance until the date and time that Lessor's obligation to remove the Asset is triggered under the terms of this Agreement. Lessor and Bank of America, NA shall be named as additional insureds on any commercial property insurance procured to protect the asset. Lessor shall provide to Lessee at the start of the Initial Schedule Term Lessor's value of the Asset as guidance for Lessee in procuring property insurance coverage.

10. **TITLE, RISK, AND RELOCATION.** The title to the Asset(s) shall remain with Lessor. Lessor shall bear the risk of loss for the Asset(s) prior to the Commencement Date and following the expiration of this Lease Agreement or any Schedule Term and Lessee shall bear the risk of loss for the Asset(s) subsequent to the Commencement Date and until the expiration of this Lease Agreement and/or any Schedule Term. If the Asset(s) are damaged or destroyed, Lessee shall i) repair and/or replace the Asset(s) or ii) assign the insurance proceeds for up to the value of the Asset(s) received by it to Lessor (unless Lessor receives payment directly from the Lessee's insurance company). Lessor reserves the right of inspection of the Assets during non-school hours after written notice to Lessee.
11. **TERM.** This Agreement shall be for the time period between July 1, 2018 and December 31, 2020 which shall not exceed a period of 2.5 years, unless terminated earlier as provided herein. The parties may renew this Agreement only by separate written agreement or addendum hereto, which must be executed by both parties. Unless either party provides notice at least 30 days before the end of the lease term of its intention not to renew the lease, the lease term and any Initial or Renewal Schedule Term will be renewed

automatically on a month-to-month basis at the same price and on the same terms and conditions. Billing will occur at the same frequency as the original lease. During this renewal period, either side may terminate this Agreement upon at least 30 days notice.

- 12. INDEMNIFICATION.** Lessor shall indemnify, defend and save harmless Lessee against any and all claims, actions, demands, costs, damages, loss or expense of any kind whatsoever resulting from or connected with any negligent acts or omissions under this Agreement by Lessor, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by Lessee in connection with the defense of said matters. Lessee shall not in any event, be liable in damages for business loss or other incidental, indirect, special, punitive or consequential damages of whatever kind or nature, regardless of the cause of such damage, and Lessor, and anyone claiming by or through it, expressly waives all claims to such damages. Lessee shall indemnify, defend, and save harmless Lessor against any and all claims, actions, demands, costs, damages, loss or expense of any kind whatsoever resulting from the negligent acts or omissions of the Lessee during the period between the Commencement Date and the termination of this Lease Agreement and/or any Schedule Term.
- 13. EVENTS OF DEFAULT.** This paragraph shall not limit Lessee's right to terminate this Agreement as provided in the foregoing sections of this Agreement. The occurrence of any one of the following events shall constitute an event of default allowing either party to terminate this Agreement thirty (30) days after written notice to the other party if the other party has not cured the default before the expiration of the thirty-day notice period:

 - a.** A party's failure to provide payment or services required under this Agreement or a party's material breach of its obligations under this Agreement and a failure to cure such failure or breach within thirty (30) days after written notification of such failure or breach.
 - b.** A party's unauthorized transfer or assignment of this Agreement or any rights or obligations under this Agreement.
 - c.** A party or any agent or employee of that party commits, during the course of performance of any activity for or on behalf of the other party, any act punishable by fine or imprisonment under state or federal law.
 - d.** A party or any agent or employee of that party commits an act or omission, in the course of its performance hereunder, that endangers or threatens the health and safety of others.
 - e.** A party or any agent or employee of that party commits an act of fraud, defalcation, or dishonesty, or any act or omission or series of acts or omissions which singly or together constitute an unfair or deceptive act or practice.
 - f.** Any discovery that any material representation by a party is materially misleading or inaccurate, or a party's failure to perform any material covenant, obligation, term or condition contained in this Agreement.

- g.** A party's cessation of doing business as a going concern, assignment for the benefit of creditor's, admission in writing of its inability to pay debts as they become due, filing of a petition in bankruptcy or appointment of a receiver, acquiescence in the appointment of a trustee or liquidator of it or any substantial part of its assets or properties.
- 14. RIGHTS UPON TERMINATION.** Upon the occurrence of an event of default, the non-offending party shall have the right to terminate the Agreement upon thirty (30) days written notice to the other party, and seek all legal and equitable remedies to which it is entitled, including but not limited to refunds for amounts paid and including the Lessor's right of repossession and other remedies in accordance with North Carolina law. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other remedies available to it
- 15. ATTACHED SCHEDULES.** The parties acknowledge that one or more specified Asset Schedules and Rate Schedules have been provided to them with this Agreement. These Schedules, which provide additional terms relevant to the transactions covered hereunder, are hereby fully integrated into this Agreement.
- 16. LESSEE'S REMEDIES.** Upon the occurrence and continuance of any Event of Default, Lessee may, after reasonable notice to Lessor of its intentions, surrender possession of the Asset(s) to Lessor, terminate this Agreement, and/or extinguish any further obligation to make payments hereunder. No right or remedy herein conferred upon or reserved to Lessee is exclusive of any right or remedy herein or at law or in equity or otherwise provided or permitted, but shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. The parties specifically agree that Lessee's assessment of Liquidated Damages as provided in Paragraph 6.1 does not bar the Lessee's right to enforce other rights and remedies, including those identified in this Paragraph and Paragraph 14, against the Lessor, should Lessor fail to cure and correct such deficiency and continue such corrections or neglect after thirty (30) days written notice from Lessee of such failure or breach. In no way shall liquidated damages be construed as a penalty to the Lessor.
- 17. NOTICE.** Any notice, consent or other communication in connection with this Agreement shall be in writing and may be delivered in person, by mail or by facsimile transmission (provided sender confirms notice by written copy). If hand-delivered, the notice shall be effective upon delivery. If by facsimile copy, the notice shall be effective when sent. If served by mail, the notice shall be effective three (3) business days after being deposited in the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient as follows:

If to Lessee:

Orange County Public School System
c/o Patrick Abele, Chief Operations Officer
200 East King Street
Hillsborough, North Carolina 27278

If to Lessor:

Attn: _____

With a copy to:

Attn: _____

- 18. Lunsford Act/Criminal Background Checks.** Lessor acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Lessor shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors (“contractual personnel”) who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry (“the Registries”). For the Lessor’s convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. The Lessor shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Lease Agreement prior to the commencement of such services or the delivery of such goods. The Lessor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Lease Agreement shall not satisfy this contractual obligation). In addition, the Lessor agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Lease Agreement. The Lessor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Lease Agreement. The Lessor shall not assign any individual to deliver goods or provide services pursuant to this Lease Agreement if said individual appears on any of the listed registries. The Lessor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Lessee upon request. The Lessor specifically acknowledges that the Lessee retains the right to audit these records to ensure compliance with this section at any time in the Lessee’s sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Lease Agreement. In addition, the Lessee may conduct additional criminal records checks at the Lessee’s expense. If the Lessee exercises this right to conduct additional criminal records checks, the Lessor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Lessee for all contractual personnel who may deliver goods or perform services under this Lease Agreement. The Lessor further agrees that it has an ongoing obligation to provide the Lessee with the name of any new contractual personnel who may deliver goods or provide services under the Lease

Agreement. The Lessee reserves the right to prohibit any contractual personnel of the Lessor from delivering goods or providing services under this Lease Agreement if the Lessee determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

19. **NO THIRD PARTY BENEFICIARIES.** Nothing herein is intended or shall be construed to confer upon or to give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under this Agreement.
20. **SEVERABILITY.** Unless otherwise expressly provided herein, the rights of the parties hereunder are several rights, not rights jointly held with each other or with any other party. Any invalidity, illegality or limitation of the enforceability of any part of this Agreement, whether arising by reason of law or otherwise, shall in no way affect or impair the validity, legality or enforceability of this Agreement in all other respects.
21. **FORCE MAJEURE.** Neither party shall be liable for damages to the other by reason of any failure of performance hereunder if such failure arises out of the acts of governmental authority, acts of God, acts of the public enemy, acts of civil or military authority, governmental priorities, fires, flood, strikes or union activity, labor or material unavailability caused by acts of God or governmental actions, unavailability of energy resources, riots, war, or events of similar nature. Any party experiencing such an event shall give as prompt notice as possible under the circumstances and such protection from liability shall last only for the duration of the event of such *force majeure*. The completion schedule for the Asset may be extended for such reasonable time as the circumstances dictate upon receipt of adequate documentation of the delay. In the event a school facility is damaged by fire, weather, or by events of a similar nature to those described in this paragraph and this substantially prevents Lessee's use of Lessor's Asset(s) or services, Lessee shall have the option of suspending payments due under the Agreement for the time period use is substantially prevented or terminating the Agreement immediately without penalty or further lease payments.
22. **OTHER DELAYS.** Neither party shall be liable to the other for damages by reason of any failure of performance hereunder if such failure arises out of delays by Owner, including obtaining any permits or regulatory approval required to be obtained by the Owner, or delays in site preparation being performed by others.
23. **DAMAGE TO UNITS.** Lessor is responsible for any vandalism damages prior to the Commencement Date and following the expiration of this Lease Agreement or any Schedule Term. Lessee is responsible for any vandalism damage or damages from abuse subsequent to the Commencement Date and until the expiration of this Lease Agreement and/or any Schedule Term. Neither Lessee nor Lessor shall be responsible for damages caused by third parties who install any exterior structures to the Assets, such as decks, ramps or awnings. Lessee agrees to pursue claims against parties against whom the Lessee has a clear legally viable claim and with whom the Lessee has a binding contract if such party contractors damage the Asset during their installation of exterior structures such as ramps and awnings to the Asset. Lessee is responsible for providing general janitorial services associated with the Assets during the period between the Commencement Date and the expiration of this Lease Agreement or any Schedule Term whichever is sooner. If

and when Lessee identifies a leak in the structure of an Asset, Lessee shall promptly notify the Lessor of such leak and Lessor shall promptly repair it; provided, however, that Lessor shall have no obligation to repair any leak(s) arising from the neglect or improper maintenance of Lessee. Lessee shall make the Assets available to Lessor for removal at the end of the lease term in a condition similar to that of the Assets when they were delivered, normal wear and tear excluded.

24. **UNIT REMOVAL.** Lessee is responsible for tear down and removal costs at a price to be mutually agreed to by the parties that shall be based upon and equitable adjustment to the then current tear down and removal prices at the time the units were delivered. Tear down and removal includes unblocking, unanchoring, wrapping and transporting buildings off the site, and removal of the debris from the Asset and from Lessor's tear down operations. Removal of items installed by others, Lessee installed items, including removal or capping of utilities, is by Lessee.
25. **PERMITS.** Lessor will provide all permits necessary for the manufacture and delivery of the Assets to the site. The Lessee shall obtain and be responsible for all permits pertaining to the installation, site work and occupancy.
26. **SITE.** Lessee will provide free and clear access for delivery, installation and removal of equipment by standard mobile transport vehicles. The Lessee will be solely responsible for preparation of the site on which the equipment is to be used, including any required structural or grade alterations, unless Lessor agrees to perform services in writing. The Lessee will provide firm and generally level ground with no more slope than is reasonable for safe and unobstructed installation for the equipment. Lessor shall provide Lessee with notice of any site conditions requiring corrections allowing reasonable time for Lessee to correct the site conditions without impacting Lessor's timely installation of the Asset.
27. **ENVIRONMENTAL CONDITIONS.** Lessor shall not be responsible for any and all environmental and/or subsurface conditions in, on, or around the project site, unless said condition was caused in whole or in part by Lessor. The storage or transportation of any hazardous substances in the equipment is not permitted. The effects of such substances on the Equipment shall not be considered ordinary wear and tear. If the equipment is determined to have been used to store any such hazardous substances, the Lessee will be required to purchase the equipment at the Lessor then current published sale price for used equipment. Standard cleaning products and materials used by students in school science labs shall not be deemed a hazardous substance pursuant to this section.
28. **LOCATION OF THE ASSETS.** Lessee shall not move the Assets without the prior written consent of Lessor.
29. **COUNTERPARTS.** This Agreement may be executed in several counterparts, all of which taken together, shall constitute one single agreement between the parties hereto.
30. **WAIVER.** No delay or omission by either party hereto to exercise any right or power hereunder shall be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant

contained herein. All remedies provided for in this Agreement shall be cumulative and, in addition to any remedies available to either party at law, in equity or otherwise.

31. **ASSIGNMENT.** Lessor may assign its interest under this Agreement with Lessee's reasonable written approval, but if the same is assigned by agreement, it shall be binding on the assignee and his heirs.
32. **GOVERNING LAW.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina without regard to any principles of conflicts of laws that would make applicable the law of any other jurisdiction. Further, the parties irrevocably agree that any legal action or proceedings brought by or against them with respect to this Agreement or its subject matter shall be in the General Court of Justice in Orange County, North Carolina or in the United States District Court located in Orange County, North Carolina and, by execution and delivery hereof, the parties hereby irrevocably submit to each such jurisdiction and hereby irrevocably waive any and all objections which they may have with respect to such proceedings in any of the courts of North Carolina identified above.
33. **COMPLIANCE WITH APPLICABLE LAWS.** Lessor shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, Lessor shall not employ any individuals to provide services to the School System who are not authorized by federal law to work in the United States. Lessor represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. Lessor shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement. Lessor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the School System. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.
34. **RESTRICTED COMPANIES LISTS.** Lessor represents that as of the date of this Agreement, Lessor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Lessor also represents that as of the date of this Agreement, Lessor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
35. **ANTI-NEPOTISM.** Lessor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Orange County Board of Education or of any principal or central office staff administrator employed by the School System. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Lessor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Lessor shall immediately disclose the family

relationship in writing to the Superintendent of Schools. Unless formally waived by the School System, the existence of a family relationship covered by this Agreement is grounds for immediate termination by School System without further financial liability to Lessor.

- 36. **BINDING.** All provisions of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by and against the parties, their respective heirs, representatives, successors, and assigns.
- 37. **FURTHER ASSURANCES.** The parties hereto shall each perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated herein.
- 38. **HEADINGS.** The articles and section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.
- 39. **RELATIONSHIP OF PARTIES.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained herein shall be construed to (i) give any party the power to direct and control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make Lessor an agent of the Orange County Schools for any purpose whatsoever except as otherwise agreed in writing by the parties hereto.
- 40. **ENTIRE UNDERSTANDING.** This Agreement contains the final expression of the parties' intent and the sole and entire understanding between Lessor and Lessee. The parties agree that any statements, representations, discussions, or documentation, whether made prior to or contemporaneously with the execution of this Agreement, have been merged into this Agreement and this Agreement fairly and comprehensively memorializes the final negotiated agreement between the parties. The Agreement shall not be modified or amended in any manner except in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties to this agreement have hereunder set their respective hands on the day and year first above written.

LESSOR: _____ (SEAL)

Title: _____

Attest:

Corporate Secretary

(CORPORATE SEAL)

LESSEE: ORANGE COUNTY BOARD OF EDUCATION (SEAL)

Dr. Stephen H. Halkiotis
Chair

Attest:

Dr. Todd Wirt
Secretary

(CORPORATE SEAL)

R1735172

DRAFT: DO NOT SUBMIT WITH BID