Project: Seismic at 6 Sites, LLB
Project No.: 14-01, 14-04
Program ID No.: Msr B Savings/781

AMENDMENT No. 1

TO THE

MASTER SITE LEASE &
MASTER FACILITIES LEASE
LEASE-LEASEBACK CONTRACT

FOR

ADDITIONAL CONSTRUCTION SERVICES

FOR

SEISMIC UPGRADES & MODERNIZATION
AT (6) SITES

FOR THE

SAN LEANDRO UNIFIED SCHOOL DISTRICT

This "AMENDMENT" made and entered into this **January 14, 2015** by and between San Leandro Unified School District, a political subdivision of the State of California, herein called "District", and the "Developer"

Strawn Construction, Inc.
1140 Pedro Street, Suite 1
San Jose, CA 95126

President: Randall Strawn
License No: 927286
Telephone No.: (408) 286-1299
Fax No.: (408) 286-1288
E-mail address: info@scmdinc.com

Herein called "Contractor",

Whereas, the parties entered into a Lease-Leaseback Agreement on June 17, 2014, herein called "Agreement", and; whereby construction services shall be provided for the projects known as ***modernization and voluntary seismic upgrades of the facilities and appurtenant structures to be performed on portions of the School Sites*** and will now provide additional services at the (6) Sites.

Now therefore, the parties agree to amend and modify the Agreement as follows:

Provide construction services per the District approved Change Orders for Projects #14-01 & 14-04.

1.0 DESCRIPTION OF THE AMENDMENT

This amendment modifies the Agreement Exhibits as follows:

Master Facilities Lease – Section 11.2.2:
Revise Completion Date at McKinley ES and Bancroft MS to November 26, 2014.
Exhibit A – *Description of School Site*, No change.
Exhibit B – *Description of Project Sites*, No change.
Exhibit C – *Guaranteed Project Cost*, **See Exhibit C – Amendment #1**
Exhibit D – *General Construction Provisions*, No changes.
Exhibit E – *Memorandum of Lease Commencement Date*, No change.
Exhibit F – *Construction Schedule*, No change.
Exhibit G – *Schedule of Values*, **Reference Exhibit C.**
Exhibit H – *Agreement for Preliminary Services*, No change.
Exhibit I – *Certificates and Bonds and Div. 01*, No change.
Exhibit J – *Plans, Specs, and Drawings*, No change.
Exhibit K – *Revisions to Contract Documents*, No change.

2.0 COMPENSATION

Compensation for the Services described in this Amendment is a credit amount of **($167,955.00) for additional construction services and utilization of the project Allowance.** This decreases the total compensation approved under the Agreement, including this Amendment and all previous Amendments, to a new lump sum amount of **$3,859,616.00.**

To the extent that this Amendment conflicts with any of the provisions of the Agreement, the terms and conditions of this Amendment shall have precedence. To the extent that any ambiguity or conflict is created by this Amendment as to the services and/or deliverables to be provided by the Contractor, the provision shall be given the interpretation most favorable to the District.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this _____ Day of January 2015.

Contractor	District
_____	_____
Randall Strawn	Mike McLaughlin, Ed.D.
President	Superintendent

EXHIBIT C – AMENDMENT #1
TO
MASTER FACILITIES LEASE

GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

1. Master Site Lease Payments. As indicated in the Master Site Lease, Contractor shall pay One Dollar ($1.00) to the District as consideration for the Master Site Lease.

2. Guaranteed Project Cost. Pursuant to the Master Facilities Lease, Contractor will cause the Project to be constructed for **Three million eight hundred fifty nine thousand six hundred sixteen and 00/100 Dollars ($3,859,616.00)**, ("Guaranteed Project Cost" or "GPC" or "Guaranteed Maximum Price" or "GMP"). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

2.1. Cost to Perform Work.

2.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

2.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

2.2. General Conditions. The fixed amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

2.3. Fees. All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

2.4. Allowances. The following allowances are within the Guaranteed Project Cost. Contractor shall be permitted to charge only its direct costs to perform the work, as indicated through documentation approved to the District. Contractor shall not include in its charge(s) under a particular allowance the coordination, supervision, bond costs, overhead and profit, installation and all indirect costs associated with performing the work of each allowance.

2.4.1. **N/A**

Any unused allowance or unused portion thereof shall be deducted from the Cost of the Work. The amount to deduct shall be calculated using the steps in the "Changes in the Work" provisions of **Exhibit "D"** to the Facilities Lease including the Deductive Change Order provisions therein.

2.5. Contingency.

2.5.1. **N/A**

2.6. Bonds and Insurance.

2.7. Overhead and Profit.

3. Payment of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein.

3.1. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **Three million four hundred seventy three thousand six hundred fifty four and 00/100 Dollars ($3,473,654.00)** ("Tenant Improvement Payment(s)"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor's Schedule of Values (**Exhibits G-1 through G-6** to the Master Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Master Facilities Lease.

3.2. Lease Payments. After the Parties execute the Memorandum of Commencement Date, attached to the Master Facilities Lease as **Exhibit E**, the District shall pay to Contractor **Three hundred eighty five thousand nine hundred sixty two and 00/100 Dollars ($385,962.00)** ("Lease Payment(s)"), as indicated below.

3.2.1. The Lease Payments shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in equal monthly installments for the duration of the Term.

3.2.2. The District represents that the total annual Lease Payment obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Master Facilities Lease.

3.2.3. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments constitute adequate consideration for the Master Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Master Facilities Lease and Master Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

3.2.4. **Each Payment Constitutes a Current Expense of the District.**

3.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

3.2.4.2. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Master Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

3.2.4.3. The District covenants to take all necessary actions to include the estimated Lease Payments in each of its final approved annual budgets.

3.2.4.4. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual

amount of Lease Payments that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of District contained in this Master Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Master Facilities Lease agreed to be carried out and performed by the District.

3.2.4.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Master Facilities Lease.

3.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **zero percent (0%):**

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
35 days after NOC filed	**$ 64,327.00**	**0%**	**$ 64,327.00**
65 days after NOC filed	**$ 64,327.00**	**0%**	**$ 64,327.00**
95 days after NOC filed	**$ 64,327.00**	**0%**	**$ 64,327.00**
125 days after NOC filed	**$ 64,327.00**	**0%**	**$ 64,327.00**
155 days after NOC filed	**$ 64,327.00**	**0%**	**$ 64,327.00**
185 days after NOC filed	**$ 64,327.00**	**0%**	**$ 64,327.00**

3.2.6. **Financed Portion of Lease Payments.** The District does not at this time believe it will need the Contractor to finance a portion of the Lease Payments. The District and the Contractor have agreed that the District may request at a future time that the Contractor agree to convert a portion of the Tenant Improvement Payments into Lease Payments and revise the Lease Payment schedule. If the District makes this request, the District and the Contractor agree to negotiate in good faith regarding whether Contractor can provide that financing, the amount of that financing, and the terms of that financing, which, if agreed to, shall be memorialized in a written amendment to the Master Facilities Lease and approved by the Parties.

3.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments ever exceed the Guaranteed Project Price as defined herein, unless modified pursuant to **Exhibit D** to the Master Facilities Lease.

4. Changes to Guaranteed Project Cost.

4.1. As indicated in the Master Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the

Contractor when the work is performed, or deducted from the next payment request from the Contractor, as applicable.

4.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the plans, and specifications, as identified in **Exhibit J** to the Master Facilities Lease.

4.3. Cost Savings. Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

4.4. Insurance and Bond Reimbursements. At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

5. District's Purchase Option

5.1. If the District is not then in uncured Default hereunder, the District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Master Facilities Lease and Master Site Lease by paying the total remaining unpaid Lease Payments as of the date the option is exercised ("Option Price").

5.2. District shall provide Contractor no less than three (3) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the Option Date and Contractor shall at that time deliver to District all reasonably necessary documents in recordable form to terminate this Master Facilities Lease and the Master Site Lease. District may record all such documents at District's cost and expense.

5.3. Under no circumstances can the first Option Date be on or before thirty-five (35) days after the Contractor completes the Project and the District accepts the Project.

~~**6. Agreement for Preliminary Services ("PSA").** The Parties acknowledge that Contractor performed preliminary services related to the Project under a PSA.~~