AMENDMENT NO. 1 TO LEASE LEASEBACK DOCUMENTS

1. FACILITIES LEASE BY AND BETWEEN JL CONSTRUCTION, AS LESSOR AND SAN LEANDRO UNIFIED SCHOOL DISTRICT AS LESSEE, DATED AS OF SEPTEMBER 12, 2018.

This Amendment Number One to Lease Leaseback Documents ("Amendment") is made and entered into this ___ day of October 2018 between JL Construction ("Contractor" or "Lessor") and the San Leandro Unified School District, a California public school district located in San Leandro, California ("District" or "Lessee") (collectively, the "Parties")

RECITALS

A. WHEREAS, Developer and District entered into the following two leases pursuant to Section 17406 of the Education Code of the State of California under which Developer is to provide for construction consisting of modernization of heating, ventilation and air conditioning systems at multiple District school sites. ("Project"):

1. Site Lease by And Between San Leandro Unified School District as Lessor and JL Construction as Lessee, dated as of September 12, 2018 ("Site Lease"); and

2. Facilities Lease by And Between JL Construction as Lessor and San Leandro Unified School District as Lessee, dated as of September 12, 2018 ("Facilities Lease").

(Collectively, with all incorporated exhibits, the "Lease Leaseback Documents"); and

B. WHEREAS, the Parties would like to make certain revisions to the terms of the Lease Leaseback Documents; and

D. WHEREAS, it is now the desire and intention of the Parties to amend the Lease Leaseback Documents as set forth below.

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties set forth herein below, it is mutually agreed as follows:

TERMS AND CONDITIONS

Except as revised herein, all other provisions of the Lease Leaseback Documents and/or addendum shall remain in full force and effect and are reaffirmed. If there is any conflict between this Amendment and any provision of the Lease Leaseback Documents, the provisions of this Amendment shall control.

1. **THE CHANGES ATTACHED HERETO AS EXHIBIT A SHALL BE MADE TO THE FACILITIES LEASE.**

2. **EXHIBIT C-1 TO THE FACILITIES LEASE SHALL REPLACED WITH AMENDED EXHIBIT C-1, ATTACHED HERETO AS EXHIBIT B.**

3. **EXHIBIT C-2 TO THE FACILITIES LEASE SHALL REPLACED WITH AMENDED EXHIBIT C-2, ATTACHED HERETO AS EXHIBIT C.**

ACCEPTED AND AGREED on the date indicated below:

Dated: _____ 2018

SAN LEANDRO UNIFIED SCHOOL DISTRICT

By: _____

Print Name: Aaron Kerrigan

Print Title: Director, Facilities & Operations

Dated: 10/2 2018

JL CONSTRUCTION

By: _____

Print Name: Jeff Luchetti

Print Title: President

EXHIBIT A

CHANGES TO FACILITES LEASE

1. Section 8 of the Facilities Lease is amended to read:

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

2. Section 16.1.1 of the Facilities Lease is amended to read:

   Commercial General Liability and Automobile Liability Insurance. Contractor shall procure and maintain, during the life of the Project or occupancy by District, whichever occurs first, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

3. Section 16.1.2.1 of the Facilities Lease is amended to read:

   Contractor shall procure and maintain, during the life of the Contract or occupancy by District, whichever occurs first., an Excess Liability and/or Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, Construction Manager(s), Project Manager(s), and Architect(s) in the amounts indicated herein and shall comply with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance. This coverage shall be provided in a form at least as broad as the Insurance Services Office (ISO) standard form.

3a. Section 16.1.5.1 of the Facilities Lease is amended to read:

   Contractor shall procure and maintain, during the life of the Contract or occupancy by District, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents.

4. Section 16.1.3 of the Facilities Lease is amended to read:

   Subcontractor: Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance of $1 million per occurrence/$2 million aggregate, Automobile Liability Insurance of $1 million per occurrence/$2million aggregate.

5. Section 16.1.4.2 of the Facilities Lease is amended to read:

   Contractor shall procure and maintain, during the life of the Project, or occupancy by District, whichever occurs first. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death

benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

6. Section 5.1.3 of Exhibit D to the Facilities Lease is amended to read as follows:

   If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. For each portion of the work submitted for off-site inspection, District shall pay for the initial inspection and one re-inspection. Any additional inspections for that portion of the work shall be at the expense of the Contractor.

7. Section 5.3 of Exhibit D to the Facilities Lease is amended to read as follows:

   If the Contractor performs Work outside the Inspector's regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or requests the Inspector to perform inspections off Site, then, provided the work was not directed by District to be performed outside of regular working hours, the costs of any inspections required outside regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or off Site, shall be borne by the Contractor and may be invoiced to the Contractor by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

8. Section 6 of Exhibit D to the Facilities Lease is amended to read as follows:

   Contractor shall construct the Work for the Contract price including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Project Cost. Except as otherwise indicated herein, Contractor shall provide and pay for all labor, materials, equipment, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Project Completion.

9. Section 6.3.6 of Exhibit D to the Facilities Lease is amended to read as follows:

   The Contractor shall employ a full-time superintendent who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years' experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

10. Sections 6.3.7 and 6.3.8 of Exhibit D to the Facilities Lease are deleted in their entirety.

11. Section 6.5.2 of Exhibit D to the Facilities Lease is amended to read as follows:

    Preconstruction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by the District) shall attend a preconstruction conference at such time and place as designated by the District. The preconstruction conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the preconstruction conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, Architect, Construction Manager, Contractor, Subcontractors, Project Inspector, and others performing any part of the Work or services relating to the Work; (b) Submittals; (c)

Changes; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of the Contractor and Subcontractors; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (h) communication procedures, including the handling of Requests for Information; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Contractor/Subcontractor personnel at the Site; and (l) Completion, Punchlist and closeout procedures.

12. Section 6.8 of Exhibit D to the Facilities Lease is amended to read as follows:

    The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Contractor. The Contractor shall make available at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

13. Sections 6.12.11.1 through 6.12.11.4 of Exhibit D to the Facilities Lease are deleted in their entirety.

14. Section 6.12 of Exhibit D to the Facilities Lease is amended to read as follows:

    Contractor may be required to work evenings and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours' notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any Inspector charges necessitated by the Contractor's evening, weekend and/or legal holiday work, unless the work is performed at the direction of the District or the District has otherwise agreed to be responsible for such costs at the District's expense in advance of the evening and/or weekend work.

15. Section 6.13 of Exhibit D to the Facilities Lease is amended to read as follows:

    Noise Control. The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise at the Site shall be limited as required by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school at the Site, at the District's request, the Contractor shall schedule the performance of that Work around normal school hours or make other arrangements so that the Work does not cause disruption or disturbance. In the event the District requests additional re-scheduling of work not included in the testing calendar submitted by Contractor, the Contractor shall be entitled to a reasonable adjustment of the Contract Price of Contract Time.

16. Section 6.14 Exhibit D to the Facilities Lease is amended to read as follows:

    Dust Control. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Those protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability

derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Contractor shall replace any damages property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all that Work around normal school hours and make other arrangements so that the Work does not cause disruption or disturbance.

17. Section 7.3.1 of Exhibit D to the Facilities Lease is amended to read as follows:

    In addition to all legal requirements and District requirements that Contractor must comply with to procure and select Subcontractors, the Contractor shall make its best efforts to obtain (3) bona fide bids from Subcontractors for all scopes of work on the Project that constitute more than three percent (3%) of the total Project scope. Prior to the Contractor seeking bids, the District and Contractor may negotiate a different minimum number of bona fide bids from Subcontractors, which shall be as indicated in **Exhibit K** to the Master Facilities Lease.

18. Section 8 of Exhibit D to the Facilities Lease is deleted in its entirety.

19. Section 10.2.1.3.1 of Exhibit D to the Facilities Lease is amended to read as follows:

    Mobilization and layout combined to equal not more than 5%;

20. Section 10.2.1.4 of Exhibit D to the Facilities Lease is amended to read as follows:

    Closeout Documentation shall have a value in the schedule of values of not less than 1.5 %. The value for Closeout Documentation shall be in addition to and shall not be a part of the Lease Payments.

21. Section 17.8.1 of Exhibit D to the Facilities Lease is amended to read as follows:

    (G) <u>Subcontractor's Overhead and Profit Charge</u>

    1. This shall be no more than fifteen percent (15%) of **item (F)**.

    (I) <u>Contractor's Overhead, Profit, Bond and Insurance</u>

    1. This shall be no more than eight percent (8%) of **Item (H)**.

22. Section 8 of Exhibit D to the Facilities Lease is deleted in its entirety.

23. Section 17.8.2.1.3.3 of Exhibit D to the Facilities Lease is amended to read as follows:

    Individual pieces of equipment having a replacement value of one thousand dollars ($1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein unless the payment is for rental only and documentation of same is provided to District. In that instance only, payment will be made.

24. Section 17.8.2.1.4.5 of Exhibit D to the Facilities Lease is deleted in its entirety.

25. Section 8 of Exhibit D to the Facilities Lease is deleted in its entirety.

26. Section 19.2.1.1.12 of Exhibit D to the Facilities Lease is amended to read as follows:

    A duly completed and executed "Conditional Waiver and Release on Progress Payment" compliant with Civil Code section 8132 from each first tier subcontractor to be paid from the current Tenant Improvement Payment.

27. Section 19.2.1.1.13 of Exhibit D to the Facilities Lease is amended to read as follows:

    A duly completed and executed "Unconditional Waiver and Release on Progress Payment" compliant with Civil Code section 8134; from each first tier subcontractor that was paid from the Tenant Improvement Payment from sixty (60) days prior;

28. Section 19.3.1.3 of Exhibit D to the Facilities Lease is deleted in its entirety.

EXHIBIT B

AMENDED EXHIBIT C-1
TO
FACILITIES LEASE

PRELIMINARY SERVICES PAYMENTS, GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS FOR GARFIELD ELEMENTARY SCHOOL SITE

1. Preliminary Services Payments

1.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor **Forty-One Thousand Two Hundred Sixty-Four Dollars ($41,264)** ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District.

1.2. The Preliminary Services Payment s include all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

1.3. Each Preliminary Services Payment shall be paid within forth-five (45)) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the billed-for tasks.

2. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar ($1.00)U per year to the District as consideration for the Site Lease.

3. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **Four Million Three Hundred Twenty-Two Thousand Five Hundred Forty Dollars ($4,322,540)** ("**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:

3.1. Cost to Perform Work.

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

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

3.2. 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.

3.3. 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.

3.4. Allowances.

Sitework Allowance – Three Hundred Eighty-Seven Thousand Five Hundred Twenty-Three Dollars ($387,523)

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.

3.5. Bonds and Insurance. 2.5%

3.6. Overhead and Profit. 8%

3.7 Contingency

3.7.1 The Guaranteed Project Cost includes a Contractor Contingency of ten percent (10%) of the Cost of the Site Improvements Work (excluding building cost) as described in Sections 3.1, 3.2 and 3.3 of this Exhibit, for potential additional construction costs for costs incurred in section 3.1 above, unforeseen conditions that occur over the course of construction and/or scope gaps between subcontract categories of the Work.

3.7.2 The Contractor Contingency is not intended for such things as scope changes by the District. Contractor shall have the sole discretion to use contingency on individual items not exceeding $2,500 with an aggregate of $10,000 without District prior approval.

3.7.3 The Contingency shall not be used without the agreement of the District which shall not be unreasonably withheld.

3.7.4 The unused portion of the Contingency shall be considered as cost savings and retained by the District at the end of the Project.

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

4.1. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **Four Million One Hundred Six Thousand Four Hundred Thirteen Dollars ($4,106,413)** ("**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 (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

4.2. Lease Payments Plus Interest. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Contractor **Two Hundred Sixteen Thousand One Hundred Twenty-Seven Dollars ($216,127)** ("**Lease Payment(s)**") plus interest, as indicated below.

4.2.1. The Lease Payments plus interest 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.

4.2.2. The District represents that the total annual Lease Payment plus interest 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 Facilities Lease.

4.2.3. Fair Rental Value. District and Contractor have agreed and determined that the total Lease Payments

plus interest constitute adequate consideration for the 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 Facilities Lease and 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.

4.2.4. Each Payment Constitutes a Current Expense of the District.

4.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest 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.

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

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

4.2.4.4. The District further covenants to in good faith 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 plus interest 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 plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each 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 Facilities Lease agreed to be carried out and performed by the District.

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

4.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **four point five percent (4.5%):**

Date of Payment	(A) Total Principal Due on Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment (A + B)
Thirty Days after NOC	**$17,642.13**	**$810.48**	**$18,452.60**
30 days thereafter	**$17,708.29**	**$744.32**	**$18,452.60**
30 days thereafter	**$17,774.69**	**$677.91**	**$18,452.60**
30 days thereafter	**$17,841.35**	**$611.26**	**$18,452.60**
30 days thereafter	**$17,908.25**	**$544.35**	**$18,452.60**
30 days thereafter	**$17,975.41**	**$477.20**	**$18,452.60**
30 days thereafter	**$18,042.82**	**$409.79**	**$18,452.60**
30 days thereafter	**$18,110.48**	**$342.13**	**$18,452.60**
30 days thereafter	**$18,178.39**	**$274.21**	**$18,452.60**
30 days thereafter	**$18,246.56**	**$206.04**	**$18,452.60**
30 days thereafter	**$18,314.98**	**$137.62**	**$18,452.60**
30 days thereafter	**$18,383.66**	**$68.94**	**$18,452.60**

4.2.6. Financed Portion of Lease Payments. The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

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

5. Changes to Guaranteed Project Cost.

5.1. As indicated in the 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.

5.2. 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 Facilities Lease.

5.3. 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.

EXHIBIT C

AMENDED EXHIBIT C-2 TO FACILITIES LEASE

PRELIMINARY SERVICES PAYMENTS, GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS FOR WILSON ELEMENTARY SCHOOL SITE

1. Preliminary Services Payments

1.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor **Twenty-Eight Thousand One Hundred Forty-Five Dollars ($28,145)** ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District.

1.2. The Preliminary Services Payment s include all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

1.3. Each Preliminary Services Payment shall be paid within forth-five (45)) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the billed-for tasks.

2. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar ($1.00)U per year to the District as consideration for the Site Lease.

3. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **Three Million Twenty-Eight Thousand Seven Hundred Ninety-Eight Dollars ($3,028,798)** ("**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:

3.1. Cost to Perform Work.

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

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

3.2. 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.

3.3. 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.

3.4. Allowances.

Sitework Allowance – Three Hundred Eighty-Seven Thousand Five Hundred Twenty-Three Dollars ($387,523)

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.

3.5. Bonds and Insurance. 2.5%

3.6. Overhead and Profit. 8%

3.7 Contingency

3.7.1 The Guaranteed Project Cost includes a Contractor Contingency of ten percent (10%) of the Cost of the Site Improvements Work (excluding building cost) as described in Sections 3.1, 3.2 and 3.3 of this Exhibit, for potential additional construction costs for costs incurred in section 3.1 above, unforeseen conditions that occur over the course of construction and/or scope gaps between subcontract categories of the Work.

3.7.2 The Contractor Contingency is not intended for such things as scope changes by the District. Contractor shall have the sole discretion to use contingency on individual items not exceeding $2,500 with an aggregate of $10,000 without District prior approval.

3.7.3 The Contingency shall not be used without the agreement of the District which shall not be unreasonably withheld.

3.7.4 The unused portion of the Contingency shall be considered as cost savings and retained by the District at the end of the Project.

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

4.1. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **Two Million Eight Hundred Seventy-Seven Thousand Three Hundred Fifty-Eight Dollars ($2,877,358)** ("**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 (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

4.2. Lease Payments Plus Interest. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Contractor **One Hundred Fifty-One Thousand Four Hundred Forty Dollars ($151,440)** ("**Lease Payment(s)**") plus interest, as indicated below.

4.2.1. The Lease Payments plus interest 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.

4.2.2. The District represents that the total annual Lease Payment plus interest 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 Facilities Lease.

4.2.3. Fair Rental Value. District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the 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 Facilities Lease and 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.

4.2.4. Each Payment Constitutes a Current Expense of the District.

4.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest 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.

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

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

4.2.4.4. The District further covenants to in good faith 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 plus interest 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 plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each 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 Facilities Lease agreed to be carried out and performed by the District.

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

4.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **four point five percent (4.5%):**

Date of Payment	(A) Total Principal Due on Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment (A + B)
Thirty Days after NOC	**$12,361.82**	**$567.90**	**$12,929.72**
30 days thereafter	**$12,408.18**	**$521.54**	**$12,929.72**
30 days thereafter	**$12,454.71**	**$475.01**	**$12,929.72**
30 days thereafter	**$12,501.42**	**$428.31**	**$12,929.72**
30 days thereafter	**$12,548.30**	**$381.43**	**$12,929.72**
30 days thereafter	**$12,595.35**	**$334.37**	**$12,929.72**
30 days thereafter	**$12,642.58**	**$287.14**	**$12,929.72**
30 days thereafter	**$12,689.99**	**$239.73**	**$12,929.72**
30 days thereafter	**$12,737.58**	**$192.14**	**$12,929.72**
30 days thereafter	**$12,785.35**	**$144.38**	**$12,929.72**
30 days thereafter	**12,833.29**	**$96.43**	**$12,929.72**
30 days thereafter	**$12,881.42**	**$48.31**	**$12,929.72**

4.2.6. Financed Portion of Lease Payments. The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

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

5. Changes to Guaranteed Project Cost.

5.1. As indicated in the 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.

5.2. 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 Facilities Lease.

5.3. 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.