EXHIBIT L
TO FACILITIES LEASE

AGREEMENT FOR PRELIMINARY SERVICES

This Agreement for Preliminary Services ("**Agreement**") dated December 15th, 2021 ("**Effective Date**"), is made and entered into by and between the **San Leandro Unified School District** ("**District**") and **Rodan Builders, Inc.** ("**Contractor**") (together, the "**Parties**").

WHEREAS, the District's Governing Board, in order to enable the District to utilize the lease-leaseback delivery method for future construction projects, adopted procedures for a fair and impartial solicitation process to evaluate qualifications and proposals to determine which proposer provides the "best value" pursuant to Education Code section 17406(a)(2) ("**Lease-Leaseback Procedures**"); and

WHEREAS, Education Code section 17406(a)(1) permits the District to utilize the lease-leaseback delivery method to enter into a lease whereby the District leases the project site to the contractor to construct the project, and the contractor then leases the project site back to the District; and

WHEREAS, prior to entering into the lease to construct the project, Education Code section 17406(b)(1) permits the District to enter into a contract for the performance of preliminary services before the Division of the State Architect ("**DSA**") approves the plans and specifications for a project so long as the contractor does not perform any services for which a contractor's license is required; and

WHEREAS, consistent with the Lease-Leaseback Procedures, the District issued a request for qualifications and proposals ("**RFQ/P**") to solicit proposals from qualified firms to perform both preliminary services and construction services for the District's **Bancroft Middle Site and Entry Improvement** ("**Project**"), and through the RFQ/P the District intended to award both the performance of preliminary phase services and construction phases services to the successful contractor; and

WHEREAS, after receiving and scoring the proposals, the District determined that the Contractor presented the District the "best value" to the District and the District's Governing Board awarded the Project to the Contractor; and

WHEREAS, the District seeks to have the Contractor perform preliminary services as more fully described in **Attachment A** attached hereto ("**Preliminary Services**") pursuant to Education Code section 17406(b)(1), and the Contractor represents that it is able and qualified to perform Preliminary Services for the Lease-Leaseback Project prior to the Contractor providing construction phase services; and

WHEREAS, after the Contractor performs Preliminary Services, the Parties acknowledge that Contractor shall procure subcontractors, propose a Guaranteed Maximum Price / Guaranteed Project Cost ("**GMP**" or "**GPC**"), and the Parties shall enter into a Site Lease and Facilities Lease for the construction of the Lease-Leaseback Project based on the Contractor's response to the RFQ/P.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. **Services**. The Contractor shall provide the services as described in **Attachment A,** attached hereto and incorporated herein by this reference ("**Services**" or "**Work**"). The scope of services will generally consist of the following:

Contractor shall perform Preliminary Services for the Project upon the District's issuance of a Notice to Proceed consistent with the Schedule.

1.1. The Services shall be performed at **Bancroft Middle School**, **Site and Entry Improvement, Project**, as further described in the Scope of Work for Preliminary Services attached hereto as **Attachment A** ("**Project**").

2. **Term**. Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the duration of the Services provided under this Agreement consistent with the Schedule.

2.1. **Notice to Proceed**. Within a reasonable time after the Parties execute this Agreement, the District shall issue a Notice to Proceed to Contractor at which time Contractor shall commence the performance of the Services.

2.2. **Schedule**. The schedule for the Preliminary Services is as follows ("**Schedule**"):

2.2.1. Contractor shall commence the Preliminary Services on or before **December,2021** and

2.2.2. Contractor shall complete the Preliminary Services on or before **March, 2022.**

3. **One Project.** The Parties agree and acknowledge, consistent with the RFQ/P and relevant law, that upon the District's award to the Contractor of the Lease-Leaseback Project, the Parties intended the Contractor to perform Preliminary Services and construction services for the Lease-Leaseback Project as one continuous project, and, except insofar as the Parties cannot agree on a GPC for the Lease-Leaseback Project at the conclusion of Preliminary Services, the District intends, and always has intended, for the Contractor to construct the Lease-Leaseback Project.

4. **Submittal of Documents**. The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

X Signed Agreement
X Workers' Compensation Certification
X Fingerprinting/Criminal Background Investigation Certification
X Insurance Certificates and Endorsements
X W-9 Form
_____ Bonds (as required or requested by District)

5. **Compensation**. The District shall pay Contractor for Contractor's performance of Preliminary Services a total fee **not to exceed _Thirty Six Thousand and Four Hundred_ Dollars** (**$__36,400__**) based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Attachment A** attached hereto and as indicated herein ("**Fee**"):

BY SCOPE

Item	Amount
General Services	$2,240
Review of Design Documents	$3,360
Value Engineering	$2,240
Constructability Review	$3,360
Confirm Modifications to Design Drawings	$2,240
Budget of Project Costs	$2,240

Construction Schedule and Phasing Plan	$3,360
Construction Planning and Bidding	$19,600
Total	**$36,400**

MONTHLY FEE OPTION

Month	Fee
January	$_____
February	$_____
March	$_____
April	$_____
May	$_____
June	$_____
July	$_____
August	$_____
September	$_____
October	$_____
November	$_____
December	$_____
Etc.	$_____

HOURLY FEE OPTION

Job Title	Hourly Rate
Project Manager	$___120___
Constructibility Reviewer	$___120___
Estimator (hourly rate)	$___140____
Scheduler (hourly rate)	$___140____
Other	$___N/A____
Other	$___N/A____

5.1. The Fee includes 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 Lease-Leaseback Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Lease-Leaseback 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.

5.2. The Contractor shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth (5^{th}) day of each month. The itemized statement shall reflect the hours spent, or scopes of work performed, by the Contractor in performing its Services, and, if applicable, the statements shall reflect expenses and materials. The itemized statement shall show the days and hours worked each workday Contractor performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Contractor to submit its invoice for a particular month's work. No amounts shall be due or owing to the Contractor if it fails to submit an invoice to the District at or before the end of that grace period.

5.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty five (45) days after the Contractor submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

6. **Expenses**. District shall not be liable to Contactor for any costs or expenses paid or incurred by Contractor in performing the Services, except as expressly provided for in this Agreement.

7. **Independent Contractor**. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of the work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Contractor's Work, District being interested only in the results obtained.

8. **Contractor and Subcontractor Registration and Compliance.**

   8.1. Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subcontractors. Contractor represents that all of its subcontractors are registered pursuant to Labor Code section 1725.5.

   8.2. Labor Code section 1771.1(a) states the following:

> "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work Contractor to Section 1725.5 at the time the contract is awarded."

   8.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.

   8.4. Contractor shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.

   8.5. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

9. **Designated Representatives.** Contractor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.

10. **Materials**. Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly provided for

in this Agreement.

11. **Performance of Services.**

11.1. **Standard of Care**.

11.1.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

11.1.2. Contractor hereby represents, to the extent applicable, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

11.1.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.

11.1.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

11.2. **Meetings.** In addition to all public hearings and meetings, Contractor agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

11.3. **District Approval.**

11.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

11.3.2. Prior to any documents being made public, Contractor shall provide in draft form to District staff and District legal counsel, all documents that it or its subcontractors prepare.

12. **Information.**

12.1. **Furnished by District.** Upon request by Contractor, District shall furnish Contractor any information and documents readily available to District that the Contractor determines may be of use to the Contractor in the performance of the Services. District shall rely upon Contractor to determine which information and documents may be of use to the Contractor in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Contractor shall determine if it is appropriate to rely on the District furnished information or documents. Contractor shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

12.2. **Furnished by Others.** Contractor is to obtain, utilizing its own personnel, any required information that

has been developed by other public or private entities that are not under contract to District. Contractor shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Contractor shall determine if clarification, additional information, or additional data is needed.

13. **Originality of Services**. Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

14. **Copyright/Trademark/Patent**. Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

15. **Audit**. Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars ($10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

16. **Termination**.

    16.1. **Without Cause by District**. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day the notice was mailed, whichever is sooner.

    16.2. **Without Cause by Contractor**. Contractor cannot terminate this Agreement without cause.

    16.3. **With Cause by District**. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

        16.3.1. material violation of this Agreement by the Contractor; or

        16.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

        16.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

16.4. **With Cause by Contractor**. Contractor may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

16.4.1. Material violation of this Agreement by the District, or

16.4.2. Failure of the District to timely pay undisputed Contractor invoices.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Contractor.

16.5. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

17. **Indemnification**. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property, except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein.

18. **Insurance**.

18.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

18.1.1. **Commercial General Liability and Automobile Liability Insurance**. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the

Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

18.1.2. **Workers' Compensation and Employers' Liability Insurance**. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

18.1.3. **Professional Liability (Errors and Omissions)**. This insurance shall cover the Contractor and his/her subcontractors(s) for two million dollars ($2,000,000) aggregate limit subject to no more than twenty-five thousand dollars ($25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

Type of Coverage	**Minimum Requirement**
Commercial General Liability Insurance, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	$ 1,000,000
Professional Liability	$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	$ 1,000,000

18.2. **Proof of Carriage of Insurance**. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

18.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

18.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

18.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations

on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

18.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

18.3. **Acceptability of Insurers**. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

19. **Assignment**. The obligations and liabilities of the Contractor pursuant to this Agreement shall not be assigned voluntarily by the Contractor nor assigned by operation of law, without express written consent of the District.

20. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.

21. **Compliance with Laws**. Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

22. **Certificates/Permits/Licenses**. Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Contractor shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.

23. **Anti-Discrimination**. It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

24. **Fingerprinting of Employees**. The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.

25. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Contractor must submit, upon request by District, appropriate documentation to the District identifying the steps the Contractor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

26. **Interaction with the Media and Public.** Contractor shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Contractor receives a complaint from a citizen or the community, Contractor shall promptly inform the District about the complaint.

27. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Contractor agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Contractor may be reported to the Internal Revenue Service.

28. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

29. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors**. The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

    29.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.

    29.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

30. **Limitation of District Liability**. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

31. **Disputes**. In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.

32. **Confidentiality**. The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractors(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

33. **Employment with Public Agency**. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.

34. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

San Leandro Unified School District 1145 Aladdin Avenue San Leandro, CA 94577 ATTN: Aaron Kerrigan	**Rodan Builders, Inc** 3486 Investment Blvd, Suite B Hayward, CA 94545 ATTN: Dan Oliver

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

35. **Integration/Entire Agreement of Parties**. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

36. **California Law**. This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located. Contractor waives any claim or right to remove an action on this Agreement to federal court.

37. **Waiver**. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

38. **Severability**. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

39. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

40. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

41. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

42. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

43. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

44. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

45. **Incorporation of Recitals and Attachments**. The Recitals and each attachment attached hereto are hereby incorporated herein by reference.

46. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to

be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

47. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** If the Parties enter into this Agreement as a result of a Request for Qualifications and/or a Request for Proposal ("**RFQ/RFP**"), the RFQ/RFP is incorporated into this Agreement, except that if there is any conflict between the RFQ/RFP and any provision of this Agreement, the Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Agreement, as of the Effective Date, and have directed and authorized their respective officers to execute this Agreement:

San Leandro Unified School District		**Rodan Builders, Inc**	
Signature:	_____	Signature:	_____
Print Name:	Aaron Kerrigan	Print Name:	Dan Oliver
Print Title:	Bond Director	Print Title:	CEO

Attachment A to Agreement for Preliminary Services

Scope of Services

1. **Scope of Contractor's Preliminary Services**. Contractor, as the District's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("Preliminary Services"):

1.1. General Services.

1.1.1. Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.

1.1.2. Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.

1.1.3. Contractor shall assist the Architect with making formal presentations to the governing board of District.

1.1.4. Contractor shall prepare and update the preliminary Project schedule.

1.1.5. Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.

1.1.6. Contractor shall assist District with City land use issues;

1.1.7. Contractor shall assist District with DSA review, input, and timeframe for same;

1.1.8. Contractor shall provide review and comment upon geotechnical / soils investigation and report;

1.1.9. Contractor shall provide review and comment upon survey of the Project site;

1.1.10. Contractor shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.

1.2. Review of Design Documents.

1.2.1. Contractor shall review Project design and budget with the District and the Architect **four (4)** times: during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents Phase, and at 100% Construction Documents Phase to:

1.2.1.1. Contractor shall provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;

1.2.1.2. Contractor shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

1.2.1.3. Contractor shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and

1.2.1.4. Contractor shall provide plan review.

1.2.1.5. **Value-engineering**. Contractor shall prepare a value-engineering report for District review and approval that:

1.2.1.5.1. Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);
1.2.1.5.2. Provides detailed estimate for proposed value-engineering items;
1.2.1.5.3. Defines methodology or approaches that maximize value; and
1.2.1.5.4. Identifies design choices that can be more economically delivered.

1.2.1.6. **Constructability Review**. Contractor shall prepare detailed interdisciplinary constructability review within thirty (30) days of receipt of the plans from the District that:

1.2.1.6.1. Ensures construction documents are well coordinated and reviewed for errors;
1.2.1.6.2. Identifies to the extent known, construction deficiencies and areas of concern;
1.2.1.6.3. Back-checks design drawings for inclusion of modifications;
1.2.1.6.4. Provides the District with written confirmation that:
1.2.1.6.4.1. Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards; and
1.2.1.6.4.2. Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.

1.2.2. **Confirm Modifications to Design Drawings.** If the District accepts Contractor's comments, including the value-engineering and/or constructability review comments, Contractor shall review the design documents to confirm that those comments are properly incorporated into the final design documents.

1.3. Budget of Project Costs.

1.3.1. At each stage of plan review indicated above, Contractor shall update and refine the budget of the Guaranteed Project Cost based on the most recent sent of design documents.

Contractor shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Contractor will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

1.3.2. In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:

1.3.2.1. Overhead and profit;
1.3.2.2. Supervision;
1.3.2.3. General conditions;
1.3.2.4. Layout & Mobilization (not more than 1%)
1.3.2.5. Submittals, samples, shop drawings (not more than 3%);
1.3.2.6. Bonds and insurance (not more than 2%);
1.3.2.7. Close-out documentation (not less than 3%);
1.3.2.8. Demolition;
1.3.2.9. Installation;
1.3.2.10. Rough-in;
1.3.2.11. Finishes;
1.3.2.12. Testing;
1.3.2.13. Punchlist and acceptance.

Contractor shall indicate its willingness and ability to enter into the Contract Document to construct the Project for at or below that Guaranteed Project Cost, excluding unforeseen conditions or District-requested changes. This commitment will be a component of the Contract Documents.

1.4. Construction Schedule and Phasing Plan.

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

1.5. Construction Planning and Bidding.

1.5.1. Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor’s subcontractors.

1.5.2. Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

1.5.3. Contractor shall conduct pre-bid conferences. Contractor shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.

1.5.4. Contractor shall prepare appropriate subcontractor bid packages.

1.6. Bidding for Subcontractor Work. CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

2. **Limited Authority.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.

3. **District's Responsibilities.** The District has and shall continue to provide to Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.