

AMENDMENT NO. 1 TO LEASE LEASEBACK DOCUMENTS:

FACILITIES LEASE BY AND BETWEEN RODAN BUILDERS, INC., AS LESSOR AND MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT AS LESSEE, DATED AS OF APRIL 5, 2018.

This Amendment to Lease Leaseback Documents ("Amendment") is made and entered into this ___ day of October 2018 between Rodan Builders, Inc. ("Contractor" or "Lessor") and the Mountain View Whisman School District, a California public school district located in Mountain View, California ("District" or "Lessee") (collectively, the "Parties")

RECITALS

- A. WHEREAS, Contractor and District entered into the following two leases pursuant to Section 17406 of the Education Code of the State of California under which Contractor is to provide for the modernization of Slater Elementary School. ("Project"):
1. Site Lease by and Between Mountain View Whisman School District as Lessor and Rodan Builders, Inc. as Lessee, dated as of April 5, 2018 ("Site Lease"); and
 2. Facilities Lease by and Between Rodan Builders, Inc., as Lessor and Mountain View Whisman School District as Lessee, dated as of April 5, 2018 ("Facilities Lease").

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

- B. 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

1. 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.

THE FOLLOWING CHANGE SHALL BE MADE TO THE FACILITIES LEASE:

- 1) Exhibit C to the Facilities Lease shall be replaced with Amended Exhibit C, a copy of which is attached as Exhibit A to this Amendment.

- 2) Exhibit F-1 will be added to the Agreement, a copy of which is attached as Exhibit B to this Amendment.
- 3) Exhibit G-1 will be added to the Agreement, a copy of which is attached as Exhibit C to this Amendment.
- 4) Exhibit J-1 will be added to the Agreement, a copy of which is attached as Exhibit D to this Amendment.

ACCEPTED AND AGREED on the date indicated below:

Dated: October __, 2018

Dated: October __, 2018

**MOUNTAIN VIEW WHISMAN
SCHOOL DISTRICT**

**RODAN BUILDERS,
INC.**

By: _____

By: _____

Print Name: Ayinde Rudolph, Ed.D

Print Name:

Print Title: Superintendent

Print Title:

EXHIBIT A

AMENDED EXHIBIT C

**AMENDED EXHIBIT C
TO
FACILITIES LEASE**

**PRELIMINARY SERVICES PAYMENTS, GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

1. Preliminary Services Payments

1.1. District shall pay to Contractor an amount not to exceed (“NTE”) **Fifty Thousand Dollars (\$50,000)** for Preliminary Services for the Slater Elementary School Project (“**Preliminary Services Payment(s)**”), based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Exhibit H** to the Facilities Lease and as indicated here:

SCOPE OF SERVICES

Item	Amount
General Services	Included in NTE
Review of Design Documents	Included in NTE
Value Engineering	Included in NTE
Constructability Review	Included in NTE
Confirm Modifications to Design Drawings	Included in NTE
Budget of Project Costs	Included in NTE
Construction Schedule and Phasing Plan	Included in NTE
Construction Planning and Bidding	Included in NTE
Total Amount Not to Exceed	\$50,000.00

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) 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 **Eleven Million Three Hundred Eighty-Eight Thousand Five Hundred Three Dollars (\$11,388,503.00)**, (“**Guaranteed Project Cost**” or “**GPC**” or “**Guaranteed Maximum Price**” or “**GMP**”). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

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. Nine Hundred Twenty Thousand Forty-Six Dollars (\$920,046).** 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. Not applicable.**

3.5. **Bonds and Insurance. One point five percent (1.5%)**

3.6. **Overhead and Profit. Six percent (6%)**

3.7. **Contingency.** The following contingencies are included in the Guaranteed Project Cost for this Project:

Phase One: Four Hundred Seventy Thousand Four Hundred Twenty-Eight Dollars (\$470,428)

Phase Two: One Hundred Ninety-Nine Thousand Eight Hundred Ninety-Nine Dollars (\$199,899)

Each contingency may be used in the District's sole discretion. If the District chooses to utilize all or a portion of the contingencies, the District shall notify the Contractor in writing in accordance with **Exhibit D** to the Master Facilities Lease. The unused portions of the contingencies shall be 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 **Ten Million Two Hundred Forty-Nine Thousand Six Hundred Fifty-Three Dollars (\$10,249,653)** ("**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 Million One Hundred Thirty-Eight Thousand Eight Hundred Fifty Dollars (\$1,138,653.00)** ("**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 and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this 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 **three point seven five percent (3.75%)**:

Date of Payment	Total Lease Payment plus interest due by District to Contractor (A + B)	(A) Total Principal	(B) Total Interest Due on Lease Payment
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30 Days after execution of Memorandum of Commencement	\$96,842.93	\$93,284.03	\$3,558.91
30 days thereafter	96,842.93	\$93,575.54	\$3,267.39
30 days thereafter	\$96,842.93	\$93,867.96	\$2,974.97
30 days thereafter	\$96,842.93	\$94,161.30	\$2,681.63
30 days thereafter	\$96,842.93	\$94,455.56	\$2,387.38
30 days thereafter	\$96,842.93	\$94,750.73	\$2,092.21
30 days thereafter	\$96,842.93	\$95,046.83	\$1,796.11
30 days thereafter	\$96,842.93	\$95,343.85	\$1,499.09
30 days thereafter	\$96,842.93	\$95,641.80	\$1,201.14
30 days thereafter	\$96,842.93	\$95,940.68	\$902.26
30 days thereafter	\$96,842.93	\$96,240.49	\$602.44
30 days thereafter	\$96,842.93	\$96,541.24	\$301.69
Total	\$1,162,115.21	\$1,138,850	\$23,265.21

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.

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

EXHIBIT B

EXHIBIT F-1 REVISED PROJECT SCHEDULE

EXHIBIT C

EXHIBIT G-1 REVISED SCHEDULE OF VALUES

EXHIBIT D

EXHIBIT J-1 REVISED TABLE OF PLANS AND SPECIFICATIONS