

**AMENDMENT NO. 2 TO LEASE LEASEBACK DOCUMENTS:**

**FACILITIES LEASE BY AND BETWEEN COULTER CONSTRUCTION INC., AS LESSOR AND MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT AS LESSEE, DATED AS OF MARCH 1<sup>ST</sup>, 2018.**

This Amendment to Lease Leaseback Documents ("Amendment") is made and entered into this 15<sup>th</sup> day of November 2018 between Coulter Construction, 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, on March 1<sup>st</sup>, 2018 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 Theuerkauf Elementary School. ("Project"):
1. Site Lease by and Between Mountain View Whisman School District as Lessor and Coulter Construction, Inc. as Lessee, dated as of March 1<sup>st</sup>, 2018 ("Site Lease"); and
  2. Facilities Lease by and Between Coulter Construction, Inc., as Lessor and Mountain View Whisman School District as Lessee, dated as of March 1<sup>st</sup>, 2018 ("Facilities Lease").

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

- B. WHEREAS, on April 19<sup>th</sup>, 2018, the Parties entered into an amendment to the Facilities Lease to include the initial guaranteed project cost ("GPC").
- C. WHEREAS, it is now the desire and intention of the Parties to further 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) Amended Exhibit C to the Facilities Lease shall be replaced with Exhibit C-3, a copy of which is attached as Exhibit A to this Amendment.
- 2) Amended Exhibit E to the Facilities Lease shall be replaced with Exhibits E-1 and E-2, copies of which are attached as Exhibit B to this Amendment.
- 3) Exhibit F to the Facilities Lease shall be replaced with Amended Exhibit F-1, a copy of which is attached as Exhibit C to this Amendment.
- 4) Exhibit G to the Facilities Lease shall be replaced with Amended Exhibit G-1, a copy of which is attached as Exhibit D to this Amendment.
- 5) Exhibit J to the Facilities Lease shall be replaced with Amended Exhibit J-1, a copy of which is attached as Exhibit E to this Amendment.

**ACCEPTED AND AGREED** on the date indicated below:

Dated: November \_\_, 2018

Dated: November \_\_, 2018

**MOUNTAIN VIEW WHISMAN  
SCHOOL DISTRICT**

**COULTER CONSTRUCTION,  
INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Ayinde Rudolph, Ed.D

Print Name: William McNamara

Print Title: Superintendent

Print Title: Vice-President

**EXHIBIT A**

**EXHIBIT C-3**

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

**1. Preliminary Services Payments**

**1.1.** If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor an amount not to exceed **Twenty-Nine Thousand Nine-Hundred Sixty Dollars (\$29,960)** (“**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**

<b>Item</b>	<b>Amount</b>
Plan Development	\$22,720
Final Pricing	\$7,240
<b>Total</b>	<b>\$29,960</b>

**1.2.** The Preliminary Services Payments 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 **Ten Million Seventy-Seven Thousand Fifty-Nine Dollars (\$10,077,059.00)**, (“**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. Three Hundred Twenty-Six Thousand Five Hundred Eighty-Three Dollars (\$326,583.00).** 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.** Because it was impossible at the time of the execution of the Facilities Lease to determine the exact cost of performing certain tasks, the Cost of the Work shall include the following Allowances for those tasks:

- **Underground Locating Service** **\$ 5,000.**
- **Abatement** **\$ 15,000.**
- **Hardware** **\$ 45,000.**
- **High Performance Metal Roof Coatings** **\$500,000.**
- **Clock/Speaker/Intercom** **\$170,000.**

The District shall have sole discretion to authorize all expenditures from the Allowances. The District shall process expenditures from the Allowances in the form of an Allowance Expenditure Directive (“AED”). The Allowances are included in the Guaranteed Maximum Price. Any unused Allowance or unused portion thereof shall be deducted from the Cost of the Work pursuant to Article 17 of Exhibit D to this Facilities Lease.

**3.5. Bonds and Insurance. One point seven five percent. (1.75%)**

**3.6. Overhead and Profit. Three point seven four five percent. (3.745%)**

**3.7. Contingency.** A Contingency of **Nine Hundred Fifteen Thousand One Hundred Fifteen Dollars (\$915,115)** is included in the Guaranteed Project Cost and may be used in the District’s sole discretion. If the District chooses to utilize all or a portion of the Contingency, the District shall notify the Contractor in writing in accordance with **Exhibit D** to the Master Facilities Lease. The unused portion of the Contingency 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 **Nine Million Two Sixty-Nine Thousand Three Hundred Fifty-Three Dollars (\$9,069,353)** (“**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.** Lease Payments shall be made on two separate payment schedules.

4.2.1. Lease Payments on Payment Schedule No. 1 will commence when the Classroom Building and

Library Building are complete. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E-1**, the District shall pay to Contractor **Three Hundred Forty-Three Thousand Seven Hundred Fifty-One Dollars (\$343,751)** (“**Lease Payment(s)**”) plus interest, as set forth in section 4.2.7 of this Exhibit.

4.2.2. Lease Payments on Payment Schedule No. 1 will commence when the Multi-Use Room is complete. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E-2**, the District shall pay to Contractor **One Hundred Sixty Thousand One Hundred Two Dollars (\$160,102)** (“**Lease Payment(s)**”) plus interest, as set forth in section 4.2.8 of this Exhibit.

4.2.3. 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.

4.2.4. 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.

4.2.5. **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.

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

4.2.6.1. 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.

4.2.6.2. 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.

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

4.2.6.4. 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.

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

4.2.7. 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	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment Plus Interest due by District to Contractor (A + B)
30 days after execution of Memorandum of Commencement	\$28,645.92	\$3,151.05	\$31,796.97
30 days thereafter	\$28,645.92	\$ 2,864.59	\$31,510.51
30 days thereafter	\$28,645.92	\$ 2,578.13	\$31,224.05
30 days thereafter	\$28,645.92	\$ 2,291.67	\$30,937.59
30 days thereafter	\$28,645.92	\$ 2,005.21	\$30,651.13
30 days thereafter	\$28,645.92	\$ 1,718.76	\$30,364.67
30 days thereafter	\$28,645.92	\$ 1,432.30	\$30,078.21
30 days thereafter	\$28,645.92	\$ 1,145.84	\$29,791.75
30 days thereafter	\$28,645.92	\$ 859.38	\$29,505.29
30 days thereafter	\$28,645.92	\$ 572.92	\$29,218.84
30 days thereafter	\$28,645.92	\$ 286.46	\$28,932.38
30 days thereafter	\$28,645.92	\$ (0.00)	\$28,645.92

4.2.8. 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	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement	\$13,341.83	\$ 1,467.60	\$14,809.44
30 days thereafter	\$13,341.83	\$ 1,334.18	\$14,676.02
30 days thereafter	\$13,341.83	\$ 1,200.77	\$14,542.60
30 days thereafter	\$13,341.83	\$ 1,067.35	\$14,409.18
30 days thereafter	\$13,341.83	\$ 933.93	\$14,275.76
30 days thereafter	\$13,341.83	\$ 800.51	\$14,142.34
30 days thereafter	\$13,341.83	\$ 667.09	\$14,008.93
30 days thereafter	\$13,341.83	\$ 533.67	\$13,875.51
30 days thereafter	\$13,341.83	\$ 400.26	\$13,742.09
30 days thereafter	\$13,341.83	\$ 266.84	\$13,608.67
30 days thereafter	\$13,341.83	\$ 133.42	\$13,475.25
30 days thereafter	\$13,341.83	\$ (0.00)	\$13,341.83

4.2.9. **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**

**EXHIBITS E-1 AND E-2**  
**MEMORANDA OF COMMENCEMENT**



EXHIBIT E-1  
TO  
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE

**[TO BE ENTERED INTO AFTER CONSTRUCTION OF THE CLASSROOM BUILDING AND LIBRARY ARE COMPLETE TO COMMENCE THE LEASE TERM FOR THIS PORTION OF THE WORK]**

This MEMORANDUM OF COMMENCEMENT DATE is dated \_\_\_\_\_, 20\_\_\_\_, and is made by and between **Coulter Construction, Inc.** ("Contractor"), as Lessor, and the **Mountain View Whisman School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of **March 1<sup>st</sup> 2018**, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in Mountain View, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That the Classroom Building and Library Building portion of the Project required to be performed pursuant to the Master Facilities Lease has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Classroom Building and Library Building portion Project and now occupies same; and

C. That the term of the Master Facilities Lease commenced on \_\_\_\_\_, 20\_\_\_\_, and will expire at 11:59 P.M. on \_\_\_\_\_, 20\_\_\_\_.

**THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED** on the date indicated below:

Dated: \_\_\_\_\_, 20\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_\_

**Mountain View Whisman School District**

**Coulter Construction, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXHIBIT E-2  
TO  
MASTER FACILITIES LEASE**

**MEMORANDUM OF COMMENCEMENT DATE**

**[TO BE ENTERED INTO AFTER THE PROJECT IS COMPLETE TO  
COMMENCE THE LEASE TERM FOR THE MULTI-PURPOSE  
ROOM PORTION OF THE WORK]**

This MEMORANDUM OF COMMENCEMENT DATE is dated \_\_\_\_\_, 20\_\_\_\_, and is made by and between **Coulter Construction, Inc.** ("Contractor"), as Lessor, and the **Mountain View Whisman School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of **March 1<sup>st</sup> 2018**, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in Mountain View, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Master Facilities Lease has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the Master Facilities Lease commenced on \_\_\_\_\_, 20\_\_\_\_, and will expire at 11:59 P.M. on \_\_\_\_\_, 20\_\_\_\_.

**THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED** on the date indicated below:

Dated: \_\_\_\_\_, 20\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_\_

**Mountain View Whisman School District**

**Coulter Construction, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_



**EXHIBIT C**

**EXHIBIT F-1 REVISED PROJECT SCHEDULE**

**EXHIBIT D**

**EXHIBIT G-1 REVISED SCHEDULE OF VALUES**

**EXHIBIT E**

**EXHIBIT J-1 REVISED TABLE OF PLANS AND SPECIFICATIONS**