

**AMENDMENT NO. 2 TO FACILITIES LEASE
BY AND BETWEEN
SAN RAFAEL CITY SCHOOLS AND JEFF LUCHETTI CONSTRUCTION, INC.**

This Amendment No. 2 to the Facilities Lease ("Second Amendment") is made and entered into this 18th day of September 2018 ("Effective Date") by and between the San Rafael City Schools ("District") and Jeff Luchetti Construction, Inc. ("Developer") (collectively, the "Parties") as follows:

RECITALS

WHEREAS, the Parties entered into a Facilities Lease, dated as of December 20, 2017, pertaining to the San Pedro Elementary School New Construction and Modernization Project ("Project") at the District's San Pedro Elementary School, located at 498 Point San Pedro Rd., San Rafael, California 94901 (APN: 016-213-13), ("Project Site"); and

WHEREAS, on or about July 24, 2018, the Parties amended the Facilities Lease to incorporate the Guaranteed Maximum Price for the Project's Phase 1, Increment 1: Parking Lot and Building Pads; and

WHEREAS, the plans and specifications for Phase 2 of the Project, Increment 1b and Increment 2a: Site Utilities and Modular Buildings Project, were not previously completed and approved by the Division of the State Architect; and

WHEREAS, the plans and specifications for Phase 2 of the Project, Increment 1b and Increment 2a: Site Utilities and Modular Buildings Project, are now completed and approved by the Division of State Architect, and subcontractors provided bids thereto ("Increment 1b and Increment 2a: Site Utilities and Modular Buildings"); and

WHEREAS, the Parties wish to amend and supplement the Facilities Lease to amend the Project's Guaranteed Maximum Price for the work bid to date, inclusive of Phase 2.

NOW, THEREFORE, the Parties agree as follows:

Section I. Second Amendment of Facilities Lease.

A. Facilities Lease Section 15.1.5.1 of the **Facilities Lease** is amended to read as follows:

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

Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, rain, dust, fire, war terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of

any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. Earthquake and flood insurance coverage are available, but at an additional cost to standard builder's risk insurance rates.

- B.** Section 15.2.2 of the **Facilities Lease** is amended to read as follows:

District shall at all times from and after District's **acceptance or occupancy** of the Project whichever occurs first, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Project Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Developer shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

- C. Exhibit C** (Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions), which was amended under Amendment Number 1 to the Facilities Lease, ("Existing Exhibit C") is hereby amended and supplemented such that the Existing Exhibit C is struck and replaced with the amended Exhibit C, which is attached hereto as **EXHIBIT "1"** and incorporated herein by this reference. All references to Exhibit C in the Facilities Lease shall mean and refer to Exhibit "1" hereto.

The Parties expressly acknowledge and agree that this amendment is intended to and does change payment provisions for the Project under the Facilities Lease, including, but not limited to, the amount of Tenant Improvement Payments and amount of Lease Payments.

- D.** Section 10.1.6.2.4 of **Exhibit D** ("General Conditions") is amended to read as follows:

Closeout documentation shall have a value in the preliminary schedule of not less than 1%.

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Section II. All Other Provisions Reaffirmed.

All other provisions of the Facilities Lease shall remain in full force and effect and are hereby reaffirmed. If there is any conflict between this Second Amendment and any provision of the Facilities Lease, the provisions of this Second Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to the Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2018

SAN RAFAEL CITY SCHOOLS

By: _____

Name: Michael Watenpaugh

Title: Superintendent

Dated: 9/13, 2018

JEFF LUCHETTI CONSTRUCTION, INC.

By:  _____

Name: Jeff Luchetti

Title: President

EXHIBIT 1

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