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**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education
Timothy White, Deputy Chief, Facilities Planning and Management

Board Meeting Date October 24, 2018 

Subject Amendment No. 2 to the Facilities Lease with Overaa/Tulum/Eclipse Joint Venture for the Center at Foster Elementary School Project

Action Requested Approval by the Board of Education of Amendment No. 2, to the Facilities Lease with Overaa/Tulum/Eclipse JV for the Center at Foster Elementary School Project (“Project”), located at 2850 West Street, Oakland, CA 94608.

Background California Education Code section 17406 permits the governing board of a school district to lease property to a developer, who constructs tenant improvement to the property and leases back the completed improvement to the district. The lease terminates after payments are completed.

Discussion Amendment No. 1 amended and supplemented the Facilities Lease and accompany Contract documents to, among other things, account for Guaranteed Maximum Price, the Construction Schedule, the Schedule of Values, and Senate Bill No. 96 (Stats. 2017, ch. 28, effective June 27, 2017).

Amendment No. 2 to amend paragraphs 2.1.9 and 2.4.3 of Exhibit C to the Facilities Lease, and the Guaranteed Maximum Price to provide for an Owner’s Contingency of One Million Eight Hundred Forty Thousand Seven Hundred and Four dollars (\$1,840,704.00) as set forth:

The Guaranteed Maximum Price also includes an Owner’s Contingency of five percent (5%) of the Cost of Work as described in Section 2.1.1, 2.1.2, and 2.1.3 to be used solely in the District’s discretion to address scope changes, material upgrades, or owner’s risk items that were unforeseeable at the time of negotiating the Guaranteed Maximum Price.

Exhibit 3 to the Facilities Lease which reflects the line items of the Guaranteed Maximum Price is hereby amended to add the 5% Owner’s Contingency, which contingency totals One Million eight-hundred and forty thousand seven hundred and four dollars (\$1,840,704). It also increases the Guaranteed Maximum Price by the same amount which amends the Guaranteed Maximum Price to Forty-Four million eight hundred and forty-four thousand and thirty five dollars (\$44,844,035). All references to the Guaranteed Maximum Price in the original agreement shall refer to this amended amount. The amended Exhibit 3 is attached hereto and incorporated herein.



LBP (Local business
participation percentage)

50.00%

Recommendation

Approval by the Board of Education of Amendment No. 2, to the Facilities Lease with Overaa/Tulum/Eclipse JV for the Center at Foster Elementary School Project ("Project"), located at 2850 West Street, Oakland, CA 94608.

Fiscal Impact

Fund 21, Measure J

Attachments

- Amendment No. 2, including scope of work
- Consultant Proposal / Insurance Certificate/Insurance Certificate



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With Every Consent Agenda Contract.

Legislative File ID No. _____

Department: Facilities Planning and Management

Vendor Name: Overaa/Tulum/Eclipse Joint Venture

Project Name: Foster The Center **Project No.:** 13133

Contract Term: Intended Start: 10/25/2018 Intended End: 12/1/2018

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$0.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this Vendor selected?

Final selection of this team was based on the reviews and interview process of those RFPs submitted to the District for this project.

Summarize the services this Vendor will be providing.

Lease Leaseback delivery of the Tenant Improvements for construction of the Center, New Central Kitchen, Phase 2, located at 2850 West Street. Amendment No. 2 reflects the line items of the Guaranteed Maximum Price hereby amended to add the 5% Owner's Contingency, which contingency totals \$1,840,704. It also increase the GMP by the same amount which amends the GMP to \$44,844,035.

Was this contract competitively bid? Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
- Emergency** contracts
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3) **Not Applicable - no exception - Project was competitively bid**

AMENDMENT NO. 2 TO FACILITIES LEASE BY AND BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND OVERAA/TULUM/ECLIPSE JOINT VENTURE

This Amendment No. 2 to the Facilities Lease ("Second Amendment") is made and entered into this 25th day of October, 2018 ("Effective Date") by and between the Oakland Unified School District ("District") and Overaa/Tulum/Eclipse Joint Venture ("Developer") (collectively, the "Parties") as follows:

RECITALS

WHEREAS, the Parties entered into a Facilities Lease, dated September 14, 2017, pertaining to the Center Phase 2 ("Project") at Foster Elementary School, located at 2850 West Street, Oakland, California 94608, ("Project Site"); and

WHEREAS, in the First Amendment, the Parties amended and supplemented the Facilities Lease and accompanying Contract Documents to, among other things, account for the Guaranteed Maximum Price, the Construction Schedule, the Schedule of Values, and Senate Bill No. 96 (Stats. 2017, ch. 28, effective June 27, 2017).

WHEREAS, in this Second Amendment, the Parties intend to amend paragraphs 2.1.9 and 2.4.3 of Exhibit C to the Facilities Lease, and the Guaranteed Maximum Price to provide for an Owner's Contingency of One Million Eight Hundred Forty Thousand Seven Hundred and Four dollars (\$1,840,704.00) as set forth below.

NOW, THEREFORE, the Parties agree as follows:

2.1.9 Contingency

2.1.9.1 The Guaranteed Maximum Price includes a Developer Contingency of five percent (5%) of the Cost of the Work as described in Section 2.1.1, 2.1.2, and 2.1.3 for scope gaps between the subcontract categories of the Work.

2.1.9.2 The Developer Contingency is not intended for such things as scope changes.

2.1.9.3 The Contingency shall not be used without the agreement of the District.

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

2.1.9.5 The Guaranteed Maximum Price also includes an Owner's Contingency of five percent (5%) of the Cost of the Work as described in Section 2.1.1, 2.1.2, and 2.1.3 to be used solely in the District's discretion to address scope changes, material

upgrades, or owner's risk items that were unforeseeable at the time of negotiating the Guaranteed Maximum Price.

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

2.4.3 The Parties agree to reduce the Guaranteed Maximum Price for the unused portion of the Developer Contingency and the Owner's Contingency, if any.

Exhibit 3 to the Facilities Lease which reflects the line items of the Guaranteed Maximum Price is hereby amended to add the 5% Owner's Contingency, which contingency totals One million eight-hundred and forty thousand seven hundred and four dollars (\$1,840,704). It also increases the Guaranteed Maximum Price by the same amount which amends the Guaranteed Maximum Price to Forty-four million eight hundred and forty-four thousand and thirty five dollars (\$44,844,035). All references to the Guaranteed Maximum Price in the original agreement shall refer to this amended amount. The amended Exhibit 3 is attached hereto and incorporated herein.

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: October ____, 2018

Dated: October ____, 2018

Oakland Unified School District

Overaa/Tulum/Eclipse JV

By: Aimee Eng
Aimee Eng
President of Board of Education

By: _____

By: Kyla Johnson-Trammell
Kyla Johnson-Trammell
Superintendent &
Secretary of Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: Marion McWilliams
Marion McWilliams, General Counsel

EXHIBIT "3"

061063	LANDSCAPE WOOD STRUCTURES	\$82,045
062000	FINISH CARPENTRY	\$4,000
064100	ARCHITECTURAL WOODWORK	\$161,012
VE#55	Tops from Corian to P-lam	-\$9,000
066413	FRP PANELS	\$69,830
071326	SELF ADHERING SHEET WATERPROOFING	\$78,000
071419	POLYURETHANE MEMBRANE WP	\$37,920
071616	CRYSTALLINE WATERPROOFING	incl
071900	WATER REPELLANTS	\$11,000
072100	BUILDING INSULATION	\$319,171
VE#50	Install with no wires	-\$8,405
072616	UNDER SLAB VAPOR BARRIER	incl
072719	PLASTIC SHEET WATER RESISTIVE BARRIERS	\$85,127
074200	COMPOSITE WALL PANELS	\$1,765,945
VE#23	Delete Composite and Metal in order to use Plaster	-\$701,115
074209	EXTERIOR ACOUSTIC ROOF SCREEN	incl
074213	METAL WALL PANELS	incl
074623	WOOD SIDING	incl
075100	BUILT-UP BITUMINOUS ROOFING	\$551,757
076000	FLASHING & SHEET METAL	incl
077200	ROOF ACCESSORIES	\$2,790
078400	FIRESTOPPING	incl
079200	JOINT SEALANTS	\$60,000
081113	HOLLOW METAL DOORS AND FRAMES	\$182,212
081416	FLUSH WOOD DOORS	incl
081613	FIBERGLASS DOORS	incl
083113	ACCESS DOORS	\$6,656
083613	SECTIONAL OVERHEAD DOORS	\$116,912
083900	TRAFFIC DOORS	incl
084113	ALUMINUM FRAMED ENTRANCES AND SF	\$481,012
086300	METAL FRAMED SKYLIGHTS	\$70,000
087100	DOOR HARDWARE	incl
087813	OPENING ACTUATORS	incl
088100	GLASS GLAZING	incl
089100	WALL LOUVERS	\$8,500
092216	NON-STRUCTURAL METAL FRAMING	incl
092400	PORTLAND CEMENT PLASTERING	\$134,305
VE#23	Add plaster at deleted metal and composite panel areas	\$170,804
092900	GYPSUM BOARD	\$1,815,789
VE#01	LEVEL 4 DRYWALL FINISH IN LIEU OF LEVEL 5	-\$22,000
VE#07	Revise west corridor to Ceiling Tile in lieu of Hardlid	-\$16,372
VE#14	Delete Coved soffits in RR's/ Install light fixtures in hardlid	-\$8,196
VE#18	Use 3/4" ply in lieu of diamond plate	-\$38,306
093000	CERAMIC TILE	\$81,381
VE#10	Tile at Wet walls only	-\$44,328
095116	ACOUSTICAL TILE CEILINGS	\$158,700
VE#07	Revise west corridor to Ceiling Tile in lieu of Hardlid	\$9,300
VE#05	Replace Armstrong with CertainTeed manufacturer	-\$10,000
VE#56	Revise ACT-2 tile to 2X4 in lieu of 2X2 (demonstration teaching and production)	\$13,680

EXHIBIT "3"

096513	RESILIENT BASE AND ACCESSORIES	incl
096723	POLYURETHANE COMPOSITE FLOORING	\$208,820
096729	EPOXY TERRAZZO FLOORING	\$59,400
097217	LARGE-SCALE WALL GRAPHICS	\$35,000
098414	TACKABLE ACOUSTIC WALL PANELS	\$3,000
099100	PAINTING	\$290,900
VE#10	Add for paint at all VE'd walls that had ceramic tile	\$15,000
099623	GRAFFITI-RESISTANT COATINGS	\$5,500
099423	INTERIOR CONCRETE WALL SEALER	\$6,500
099729	CONCRETE FLOOR SEALING	\$18,865
101133	VISUAL DISPLAY UNITS	\$18,865
101400	SIGNAGE	\$117,324
102113	SOLID SURFACE TOILET COMPARTMENTS	\$22,978
VE#49	Installing ASI toilet accessories in lieu of Bobrick	-\$2,072
102116	SHOWER COMPARTMENTS	\$5,656
102623	IMPACT RESISTANT WALL PROTECTION	\$227,513
102813	COMMERCIAL TOILET ACCESSORIES	incl
104400	FIRE PROTECTION SPECIALTIES	\$4,538
105113	METAL LOCKERS	\$24,950
VE#48	Install ASI Storage metal lockers in lieu of specified	-\$8,706
105133	LOCKER ROOM BENCHES	incl
107500	FLAGPOLES	\$5,739
111300	LOADING DOCK EQUIPMENT	\$157,026
114000	FOOD SERVICE EQUIPMENT	\$5,360,000
VE#58	Mayekawa Food Service Equip last minute VE	-\$100,000
VE#58.1	Mayekawa will honor deposits from 1.0	-\$443,802
115221	TELEVISION AND PROJECTOR MOUNTS	\$6,934
115354	FLAMMABLE SAFETY CABINETS	\$3,378
118276	WASTE COMPACTORS AND DESTRUCTORS	\$6,000
122413	ROLLER WINDOW SHADES	\$18,524
123613	EXTERIOR CONCRETE COUNTERTOPS	\$13,500
123661	SOLID SURFACING COUNTERTOPS	incl
124843	ENTRANCE FLOOR MATS	\$14,680
129300	SITE FURNISHINGS--STAIR NOSINGS	\$1,844
	BIKE RACKS--5 ea	\$16,880
	BIKE LOCKERS	\$5,500
	TRENCH DRAIN--POLY	\$28,283
133413	GREENHOUSES	\$97,000
211300	FIRE SUPPRESSION SYSTEM	\$427,850
220501	PLUMBING GENERAL REQUIREMENTS	\$2,480,000
220800	PLUMBING SYSTEMS COMMISSIONING	incl
220813	TESTING PIPING SYSTEMS	incl
221005	PLUMBING PIPING	incl
221006	PLUMBING PIPING SPECIALTIES	incl
221201	ABOVE GROUND RAINWATER STORAGE TANK	NIC
221501	COMPRESSED AIR SYSTEM	incl
223000	PLUMBING EQUIPMENT	incl
224000	PLUMBING FIXTURES	incl
230500	HVAC GENERAL REQUIREMENTS	\$4,017,111

EXHIBIT "3"

VE#31	Delete AHU and Rooftop fan bases/add concrete instead	-\$30,000
VE#26	Alternate Steam Boiler Equipment	-\$100,000
VE#27	Sysarco to reduce their bid day cost	-\$11,000
VE#29	Install Bioclimatic filter system at factory, not on site	-\$3,700
VE#59	Boiler deposit with ACCO--still confirming credit	-\$92,000
230513	COMMON MOTOR REQMENTS/HVAC EQUIP	incl
230519	METERS AND GAGES FOR HVAC PIPING	incl
230548	VIBRATION AND SEISMIC CONTROLS	incl
230550	BASIC MECHANICAL MATERIALS & METHODS	incl
230553	IDENTIFICATION FOR HVAC PIPING & EQUIPMENT	incl
250593	TESTING, ADJUSTING AND BALANCING	incl
230713	DUCT INSULATION	incl
230716	HVAC EQUIPEMNT INSULATION	incl
230719	HVAC PIPING INSULATION	incl
230800	MECHANICAL SYSTEMS COMMISSIONING	incl
230913	INSTRUMENTATION & CONTROL DEVICES HVAC	incl
230923	DIGITAL CONTROL EQUIPMENT FOR HVAC	incl
232113	HYDRONIC PIPING	incl
232123	HYDRONIC PUMPS	incl
232213	STEAM AND CONDENSATE HEATING PIPING	incl
232214	STEAM AND CONDENSATE HEATING SPECIALTIES	incl
232300	REFRIERANT PIPING	incl
232500	HVAC WATER TREATMENT	incl
233100	HVAC DUCTS AND CASINGS	incl
233300	AIR DUCT ACCESSORIES	incl
233416	CENTRIFUGAL HVAC FANS	incl
233600	AIR TERMINAL UNITS	incl
233700	AIR OUTLETS AND INLETS	incl
235100	BREECHINGS, CHIMNEYS AND STACKS	incl
235216	CONDENSING BOILERS	incl
235216	DEAREATORS	incl
236090	FOOD SERVICE SYSTEMS COMMISSIONING	incl
236313	AIR-COOLED REFRIGERANT CONDENSERS	incl
237413	PACKAGED OUTDOOR CENTRAL STATION AHU's	incl
260519	LOW VOLTAGE ELEC POWER CONDUCTORS	incl
260526	GROUNDING AND BONDING FOR ELEC SYSTEMS	incl
230529	HANGERS AND SUPPORTS FOR ELEC SYSTEMS	incl
260533	RACEWAYS AND BOXES FOR ELEC SYSTEMS	incl
260543	UG DUCTS AND RACEWAYS FOR ELEC SYSTEMS	incl
260544	SLEEVES/SEALS FOR ELEC RACEWAYS/SYSTEMS	incl
260548	SEISMIC CONTROLS FOR ELEC SYSTEMS	incl
260553	IDENTIFICATION FOR ELEC SYSTEMS	incl
260572	OVERCURRENT PROTECTIVE DEVICE SHORT CIRCUIT STUDY	incl
260573	OVERCURRENT PROTECTIVE DEVICE COORDINATION STUDY	incl
230574	OVERCURRENT PROTECTIVE DEVICE ARC-FLASH STUDY	incl
260800	LIGHTING CONTROL COMMISSIONING	incl
260923	LIGHTNG CONTROL DEVICES	incl
232200	LOW VOLTAGE TRANSFORMERS	incl
232413	SWITCHBOARDS	incl

EXHIBIT "3"

262416	PANELBOARDS	incl
262726	WIRING DEVICES	incl
262816	ENCLOSED SWITCHES & CIRCUIT BREAKERS	incl
262913	ELECTRICAL POWER MONITORING	incl
263100	PHOTOVOLTAIC SYSTEM	NIC
263100.10	PHOTOVOLTAIC ENERGY POWER OPTIMIZER	NIC
263190	PHOTOVOLTAIC SYSTEM COMMISSIONING	NIC
263213	ENGINE GENERATORS	incl
263235	STANDBY GENERATOR COMMISSIONING	incl
263600	TRANSFER SWITCHES	incl
265119	LED INTERIOR LIGHTING	incl
265613	LIGHTING POLES AND STANDARDS	\$37,000
265619	EXTERIOR LIGHTING	incl
270526	GROUNDING AND BONDING FOR COMM SYSTEMS	\$3,795,000
VE#46	VE ALLOWANCE FOR CHANGING LIGHTING PACKAGE	-\$50,000
270528	PATHWAYS FOR COMMUNICATION SYSTEMS	incl
270536	CABLE TRAYS FOR COMMUNICATION SYSTEMS	incl
270544	SLEEVES/SEALS FOR COMM RACEWAYS/SYSTEMS	incl
270800	COMMUNICATIONS COMMISSIONING	incl
271100	COMMUNICATION EQUIPMENT ROOM FITTINGS	incl
271300	COMMUNICATION BACKBONE CABLING	incl
271500	COMMUNICATION HORIZONTAL CABLING	incl
280513	CONDUCTORS/CABLES FOR ELECTRONIC SAFETY/SECURITY	incl
280526	GROUNDING/BONDING FOR ELECTRONIC SAFETY/SECURITY	incl
280528	PATHWAYS FOR ELECTRONIC SAFETY/SECURITY	incl
281600	INTRUSION DETECTION AND ALARM	incl
283111	DIGITAL ADDRESSABLE FIRE ALARM SYSTEM	incl
311100	CLEARING AND GRUBBING	incl
311400	EARTH STRIPPING AND STOCKPILING	incl
312300	EXCAVATION AND FILL/PAVING	\$143,000
VE#03	Add for paving south of loading dock for deleted concrete	\$49,500
VE#02	Reduce section at parking stalls	-\$10,000
312333	TRENCHING AND BACKFILLING	incl
316329	DRILLED PIERS	\$9,642
320513	SOIL FOR BIORETENTION FACILITIES	\$128,000
320523	CEMENT & CONCRETE FOR CIVIL IMPROVEMENTS	\$884,000
VE#03	Provide credit for concrete paving south of Loading Dock	-\$115,000
VE#38	Delete sandblast finish for conc paving (all conc flatwork to be broom finish)	-\$99,000
VE#39	Eliminate rebar on sidewalks; add mesh	-\$2,500
VE#40	Delete board form finish on seat wall	-\$11,000
VE#42	Install broom finish concrete in lieu of pavers	-\$22,000
321100	BASE COURSES	incl
321200	FLEXIBLE PAVING	incl
321313	CONCRETE PAVING	incl
321540	DECOMPOSED GRANITE & CRUSHED ROCK PAVE	incl
321613	CONCRETE CURBS AND GUTTERS	incl
321713	PARKING BUMPERS	incl
321723	PAVEMENT MARKINGS	\$6,700

EXHIBIT "3"

321726	TACTILE WARNING SURFACING	incl
323113	CHAIN LINK FENCES	\$488,659
VE#17	Replace credited wood fence with chain link with slats	\$20,563
323114	WOOD FENCES	\$92,752
VE#17	Delete on-site wood fence in favor of CL with slats	-\$92,752
323119	ORNAMENTAL STEEL FENCES AND GATES	incl
323506	PLANT WALL SCREENING DEVICES	\$15,000
328400	IRRIGATION SYSTEMS	\$698,187
329300	PLANTS	incl
329450	LANDSCAPE STONE	incl
330516	UTILITY STRUCTURES	\$10,000
331000	WATER UTILITIES	\$95,000
333000	SANITARY SEWERAGE UTILITIES	\$85,000
334000	STORM DRAINAGE UTILITIES	\$55,000
	BAKER TANK--TWO WINTERS--SWPPP BMP's	\$37,973
	Hook-up site camera/New trailer elec/low voltage/data	\$15,000
	Hook-up plumbing to trailer	\$5,000
	Plangrid	\$10,000
	Project Sign	\$1,500
	Remove FF&E Packaging from site for owner/Final Janitorial	\$43,486
	Temporary heat for gyp and paint	\$12,000
	Interior Bollard Installation	\$14,173
	Site Bulletin Board for Announcements/Labor Compliance	\$2,000
	Facilitator Training--Educate Maintenance Personnel	\$10,000
	Purchase 2016 CBC/Title 24/CCR's	\$1,000
	Professional Photos	\$5,000
	CHPS Acoustical testing	\$15,000
	Protection zone fencing and gates for Gardens	\$10,000
	Special laminated O&M isometric drawings	\$6,000
	Two sets hard copy Plans/Specs for closeout	\$2,000
=====		
	SUBTOTAL	\$36,814,082
	5.00 DEVELOPER CONTINGENCY	\$1,829,704
	5.00 OUSD CONTINGENCY	\$1,840,704
	7.00 % TOTAL FEE	\$2,576,986
	1.25 INSURANCE	\$460,176
	0.50 BLDRS RISK	\$184,070
	1.50 % JV BOND	\$552,211
	2.00 % SUB INSURANCE/GUARANTEE	\$736,282
	Less 2% for Oversea self performed work	-\$150,180
		=====
	GRAND TOTAL	\$44,844,035
		=====