

AMENDMENT NO. 1 TO LEASE LEASEBACK DOCUMENTS:

- 1. FACILITIES LEASE BY AND BETWEEN ALTEN CONSTRUCTION, INC. AS LESSOR AND ALAMEDA UNIFIED SCHOOL DISTRICT AS LESSEE, DATED AS OF NOVEMBER 9, 2018 FOR THE LINCOLN ELEMENTARY SCHOOL MODERNIZATION PROJECT.**

This Amendment to Lease Leaseback Documents ("Amendment") is made and executed this 1st day of March 2019 between Alten Construction, Inc. ("Developer" or "Lessor") and the Alameda Unified School District, a California public school district located in Alameda, California ("District" or "Lessee") (collectively, the "Parties")

RECITALS

- A. WHEREAS, Developer and District executed the following two leases pursuant to Section 17406 of the Education Code of the State of California under which Developer is to provide for construction consisting of the modernization of Lincoln Elementary School. ("Project"):
 1. Site Lease by And Between Alameda Unified School District as Lessor and Alten Construction, Inc. as Sublessee, dated as of November 9, 2018 ("Site Lease"); and
 2. Facilities Lease by And Between Alten Construction, Inc. as Lessor and Alameda Unified School District as Sublessee, dated as of November 9, 2018 ("Facilities Lease") (Collectively, with all incorporated exhibits, the "Lease Leaseback Documents"); and
- B. WHEREAS, the scope of work at the time the Facilities Lease was executed was limited to preliminary services in the amount of \$20,000; and
- C. 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

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 K to the Facilities Lease shall be replaced with Amended Exhibit K, a copy of which is attached as Exhibit B to this Amendment.
3. Exhibits E, F, G and L are hereby added to the Facilities Lease, copies of which are attached hereto as Exhibit C to this Amendment.
4. Exhibit I is hereby added to the Facilities Lease, copies of which are attached hereto as Exhibit D to this Amendment.

ACCEPTED AND AGREED on the date indicated below:

ALAMEDA UNIFIED SCHOOL DISTRICT

Date: 3/5/2019
By: [Signature]

Print Name: Robbie Lyng
Print Title: Senior Director of Construction

Date: _____

By: _____

Print Name: Shariq Khan
Print Title: Chief Business Officer

Date: _____

By: _____

Print Name: Mia Bonta
Print Title: Board President

ALTEN CONSTRUCTION INC.

Dated: 3-4-2019
By: [Signature]

Print Name: Robert Alten

Print Title: President

EXHIBIT A

AMENDED EXHIBIT "C" TO FACILITIES LEASE

**AMENDED EXHIBIT C
TO
MASTER FACILITIES LEASE**

**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 Twenty Thousand Dollars (\$20,000) ("**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:

Job Title	Hourly Rate
Project Manager	\$85
Constructability Reviewer	\$105
Estimator	\$85
Scheduler	\$150

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 Master Facilities Lease, Contractor will cause the Project to be constructed for **Five Million Eight Hundred Sixty Thousand One Hundred Fifty-Six Dollars (\$5,860,156.00)**, ("**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 the 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.** 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.

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. [IDENTIFY SPECIFIC SCOPES AND AMOUNTS.]

3.5. Bonds and Insurance. Two Percent (2%)

3.6. Overhead and Profit. Four Point Five Percent (4.5%)

3.7. Contingency. [OPTIONAL. TERMS AND AMOUNT TO BE NEGOTIATED.] A Contingency of _____ Dollars (\$_____) 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 **Five Million Two Hundred Seventy-Four Thousand One Hundred Forty Dollars (\$5,274,140)** ("Tenant Improvement Payments"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments and pursuant to the provisions in **Exhibit D** to the Master Facilities Lease.

4.2. Lease Payments Plus Interest. After the Parties execute the Memorandum of Commencement Date, attached to the Master Facilities Lease as **Exhibit E**, the District shall pay to Contractor **Five Hundred Eighty-Six Thousand Sixteen Dollars (\$586,016)** ("Lease Payments") 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, subject to the District's right to purchase the Project pursuant to section 5 herein.

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 Master 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 Master 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 Master Facilities Lease and Master 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 Master 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 Master 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 Master 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 Master 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 **Four point Five Percent (4.5%)**:

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	\$48,834.67	\$ 5,371.81	\$54,206.48
30 days thereafter	\$48,834.67	\$ 4,883.47	\$53,718.13
30 days thereafter	\$48,834.67	\$ 4,395.12	\$53,229.79
30 days thereafter	\$48,834.67	\$ 3,906.77	\$52,741.44
30 days thereafter	\$48,834.67	\$ 3,418.43	\$52,253.09
30 days thereafter	\$48,834.67	\$ 2,930.08	\$51,764.75
30 days thereafter	\$48,834.67	\$ 2,441.73	\$51,276.40
30 days thereafter	\$48,834.67	\$ 1,953.39	\$50,788.05
30 days thereafter	\$48,834.67	\$ 1,465.04	\$50,299.71
30 days thereafter	\$48,834.67	\$ 976.69	\$49,811.36
30 days thereafter	\$48,834.67	\$ 488.35	\$49,323.01
30 days thereafter	\$48,834.67	\$ (0.00)	\$48,834.67
Total	\$586,016	\$ 32,230.88	\$618,246.88

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 adjusted pursuant to **Exhibit D** to the Master Facilities Lease. The Parties agree that the Lease Payments will be adjusted upon Final Completion of the Project to account for adjustments made to the Guaranteed Project Cost pursuant to the

terms and conditions of **Exhibit D** General Construction Provisions.

5. District's Purchase Option.

5.1. If the District is not then in uncured default hereunder, the District shall have the option to purchase not less than all of the Project and terminate this Master Facilities Lease and Master Site Lease by paying the total remaining unpaid Lease Payments as of the date the option is exercised ("Option Price").

5.2. District shall provide Contractor no less than fourteen (14) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the Option Date and Contractor shall at that time deliver to District all reasonably necessary documents to terminate this Master Facilities Lease and the Master Site Lease.

5.3. Under no circumstances can the Option Date be on or before thirty-five (35) days after the Contractor achieves Final Completion of the Project.

6. Changes to Guaranteed Project Cost.

6.1. As indicated in the Master 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.

6.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications.

6.3. 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 may be entitled to an extension of Contract Time in accordance with the provisions of Article 7.4 of **Exhibit D** General Construction Provisions, if requested in writing before the approval of the cost savings.

6.4. Insurance and Bond Reimbursements. At Project Final 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

AMENDED EXHIBIT "K" TO THE FACILITIES LEASE

**EXHIBIT K
TO
MASTER FACILITIES LEASE**

SPECIAL CONSTRUCTION PROVISIONS

1. Contract Time; Liquidated Damages.

1.1 Contract Time. The Contract Time for the Contractor's Substantial Completion of the Work is September 25, 2019 (196) calendar days after the date for commencement of the Work as set forth in the Notice to Proceed issued by or on behalf of the District to the Contractor.

1.2 Liquidated Damages.

1.2.1 Delayed Substantial Completion. Pursuant to Article 7 of the General Construction Provisions, the Contractor shall be liable to the District for Liquidated Damages for failure to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto in accordance with the Contract Documents. **Liquidated Damages shall be at the rate of One Thousand Dollars (\$1,000) per day until Substantial Completion of the Work is achieved.**

1.2.2 Cumulative Assessment of Liquidated Damages. If the Contractor fails to achieve a Milestone or fails to achieve Substantial Completion of the Work within the Contract Time, as adjusted pursuant to the Contract, the Contractor shall be subject to assessment and withholding of Liquidated Damages in the amounts set forth above for each such portion of the Work which is not timely delivered or completed within the time allocated for each portion of the Work, such amounts to accrue cumulatively until each such event is achieved in accordance with the Contract Documents.

1.2.3 District Withhold of Liquidated Damages; Performance Bond Surety. If the Contractor is subject to Liquidated Damages for delayed completion of one or more Milestones and/or delayed Substantial Completion, the District may withhold such Liquidated Damages from the Guaranteed Project Cost then or thereafter due the Contractor. If the Liquidated Damages exceed the then remaining balance of the Guaranteed Project Cost, the Contractor and the Surety issuing the Performance Bond shall be jointly and severally liable to the District for such amounts.

2. Mark-Ups on Changes to the Work. In the event of Changes to the Work, pursuant to Article 9 of the General Construction Provisions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%). In addition, the mark-up shall include the actual, direct cost of the bond for such Change, not to exceed One Percent (1.0%) of the direct, actual costs of the performance of the Change. In the event the Change is deductive, the District shall receive a credit equal to the value of the direct actual costs of the Work of the deductive Change plus Ten Percent (10%) of such direct actual costs for all general conditions, overhead (including home and field office overhead), profit and bond, which Ten Percent (10%) is inclusive of all general conditions, overhead (including home and field office overhead), profit and bond for the Contractor and all Subcontractors of every tier.

3. Insurance; Subcontractors' Bonding.

3.1 Contractor's Insurance. Pursuant to Article 6 of the General Construction Provisions, the Contractor shall obtain and maintain the following insurance coverage, with minimum coverage amounts as set forth below:

Comprehensive General Liability Insurance:	
Per Occurrence	\$2,000,000
Aggregate	\$5,000,000
Automobile Liability Insurance:	\$2,000,000
Workers Compensation Insurance	Statutory Limits

3.2 Insurance Primary. Certificates of insurance shall clearly state that the District is named as additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.

3.3 Subcontractors' Insurance. Contractor is required to have all subcontractors insured to the minimum coverage amounts as set forth below:

Comprehensive General Liability Insurance:	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Automobile Liability Insurance:	\$1,000,000
Workers Compensation Insurance	Statutory Limits

3.4 Builder's Risk Insurance.

The District shall provide Builder's Risk coverage for the full insurable value of the Work up to \$50,000,000. The District may or may not include coverage for the perils of earthquakes within the scope of coverage under the Builders Risk Insurance Policy. The Contractor shall be responsible for any deductible or self-insured retention amount for each and every covered loss. The foregoing notwithstanding, the risk of damage to the Work due to the perils covered by the Builder's Risk Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no claims for such damage or hazard shall be recognized by the District (other than to the extent the damage is a covered loss under the Builder's Risk Insurance Policy), nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

3.5 Subcontractors' Bonding. In addition to the Performance and Payment Bonds required of the Contractor per Article 6.10 of the General Construction Provisions, Contractor shall require Performance and Payment Bonds of all subcontractors performing work in excess of \$250,000. Upon request, the Contractor shall furnish the District with a copy of such bonds.

4. Security. In addition to the security requirements set forth elsewhere in the Contract, the Contractor must adhere to the following:

4.1 Keys. The Contractor's site supervisor of the Work will be issued a key for that site at the beginning of the Work. The key must not be duplicated, and the Contractor is responsible for returning the key to the District when the Work at the site is complete. The Contractor may be charged \$1,000.00 per key, for any key not returned to the District at the completion of the Work. If a "Master Key" is issued to the Contractor and not returned, Contractor shall be responsible for the cost to re-key the school.

4.2 Locked Door Policy. No building, room or site gate shall be left unsecured for any period of time when not occupied by the Contractor and/or after the Contractor's daily work hours.

~~4.3 Security Guard. Contractor shall provide a security guard located on the Project Site during non-working hours.~~ NOT INCLUDED IN GMP RL

5. **Hours of work.** All construction and delivery activities shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and from 9:00 a.m. to 5:00 p.m. on Saturdays, or as otherwise modified or amended.
6. **Rain Days.** For purposes of Article 7.4.1. of the General Construction Provisions, seven (7) Rain Days are expected during the Contract Time. The Contractor's Construction Schedule prepared pursuant to Article 7 of the General Construction Provisions shall incorporate the number of expected Rain Days set forth above and there shall be no adjustments to the Contract Time on account of unusually severe weather conditions resulting from rain until the anticipated number of Rain Days are exceeded. Rain Days shall only be allocated to Contractor's Construction Schedule where such Rain Days directly and adversely impact critical path activities as depicted in the Approved Construction Schedule or the most recent update Approved Construction Schedule relative to the date(s) of such Rain Days.
7. **Director of Construction.** The District's Director of Construction is Robbie Lyng, whose offices are located at 2060 Challenger Drive, Alameda CA 94501. Phone: 510-337-7090; email: rlyng@alamedaunified.org. All project correspondence shall be routed through the Director of Construction, unless otherwise directed.
8. **Project Labor Agreement.** This Contract is subject to the District's Project Labor Agreement ("PLA") which is attached to the Master Facilities Lease as **Exhibit L**. The PLA provides that as a condition of accepting a bid, the Contractor will abide by the terms and conditions of the PLA relating to, among other things, hiring practices, wage and rate benefits, union representation, union recognition, hours of work, overtime shifts, holidays, grievances, disputes, safety and working conditions. The PLA also provides that there will be no strikes, labor shutdown or slowdown, and no lockout. The Contractor and all Subcontractors are required to abide by the terms and conditions of the PLA and execution of this Contract constitutes a covenant to do so.

EXHIBIT C

EXHIBITS "E", "F", "G" AND "L" TO THE FACILITIES LEASE

EXHIBIT E
TO
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE

**[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO
COMMENCE THE LEASE TERM – DO THIS AFTER PROJECT FINAL
COMPLETION]**

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____,
and is made by and between **Alten Construction Inc.** (“Contractor”), as Lessor, and the **Alameda Unified School
District** (“District”), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of _____,
2019, (the “Lease”) for the leasing by Contractor to District of the Project Site and Project in _____, CA,
referenced in the Lease.
2. District hereby confirms the following:
 - A. That the Contractor has achieved Final Completion of the all construction of the Project required
to be performed pursuant to the Master Facilities Lease;
 - B. That District has 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: _____

Dated: _____

Alameda Unified School District

Alten Construction, Inc., [Contractor]

By: _____

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

By: _____

Print Name: Robert Alten

Print Title: President

By: _____

Print Name: Shariq Khan

Print Title: Chief Business Officer

**EXHIBIT F
TO
MASTER FACILITIES LEASE**

PROJECT SCHEDULE

