

BOND MODERNIZATION PROGRAM

AMENDMENT No. 2 TO LEASE-LEASEBACK AGREEMENT BETWEEN ROSS VALLEY SCHOOL DISTRICT AND PLANT CONSTRUCTION CO., LP (WHITE HILL MIDDLE SCHOOL)

This Amendment No. 2 to the Lease-leaseback Agreement (“Amendment”) is made and entered into this 21th day of August, 2012 between the ROSS VALLEY SCHOOL DISTRICT, hereinafter referred to as District or Lessee, and Plant Construction Co., LP hereinafter referred to as Developer or Lessor.

RECITALS

- A. WHEREAS, Developer and District entered into the following two leases pursuant to Section 17406 of the Education Code of the State of California under which Developer is to provide for the development, modernization, and construction of Phase I work for the Construction of Academic Classrooms and HexPlex Replacement and Enrichment Specific Classrooms at the White Hill Middle School to be performed on portions of the school site (“Project”):
1. Site Lease by and between the Ross Valley School District as Lessor and Plant Construction Co., LP, dated June 11, 2012 (“Site Lease”); and
 2. Facilities Lease by and between Plant Construction Co., LP, as Lessor and Ross Valley School District as Lessee, dated as of June 11, 2012 (“Facilities Lease”).
- B. WHEREAS Developer and District amended the lease-leaseback Documents as detailed in Amendment No. 1 dated July 20, 2012.
- C. WHEREAS, it is now the desire and intention of the Parties to amend the Lease-leaseback Documents as indicated in this Amendment.

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties as set forth herein, it is mutually agreed as follows:

TERMS AND CONDITIONS

- **Revise** Site Lease, Second Recital (Page 2 of the Site Lease), to the following:

WHEREAS, the District desires to provide for the development, modernization, and construction of Phase I work for the Construction of Academic Classrooms and HexPlex Replacement and Enrichment Specific Classrooms at the White Hill Middle School, as well as additional work as approved by the Division of the State Architect for Building 100, and all site work and appurtenant facilities to be performed on portions of the School Site. That work will include related work at the School Site for the students, staff, and community living in the Ross Valley School District ("Project"); and

- **Replace** Exhibit "B" to the Site Lease, with Attachment "B" attached hereto as Attachment "1." (DESCRIPTION OF PROJECT SITE)
- **Revise** Facilities Lease, Second Recital (Page 2 of the Facilities Lease), to the following:

WHEREAS, the District desires to provide for the development, modernization, and construction of Phase I work for the Construction of Academic Classrooms and HexPlex Replacement and Enrichment Specific Classrooms at the White Hill Middle School, as well as additional work as approved by the Division of the State Architect for Building 100, and all site work and appurtenant facilities to be performed on portions of the School Site. That work will include related work at the School Site for the students, staff, and community living in the Ross Valley School District ("Project"); and

- **Replace** Exhibit "B" to the Facilities Lease, with Attachment "B" attached hereto as Attachment "2." (DESCRIPTION OF PROJECT SITE)
- **Replace** Exhibit "C" to the Facilities Lease with Exhibit "C" attached hereto as Attachment "3" (GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS).
- **Replace** Exhibit "F" to the Facilities Lease with Exhibit "F" attached hereto as Attachment "4." (CONSTRUCTION SCHEDULE).
- **Replace** Exhibit "G" to the Facilities Lease with Exhibit "G" attached hereto as Attachment "5." (SCHEDULE OF VALUES)
- **Replace** the Performance Bond and Payment Bond with the Performance Bond and Payment Bond attached hereto as Attachment "6."

The Parties acknowledge that this Amendment is subject to approval or ratification by the District Board of Education ("Board"). In the event that the Board rejects this Amendment, none of the Parties shall be deemed to have waived any rights with respect to the Agreement or the Lease-Leaseback Documents.

All other provisions of the Lease-leaseback Documents 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.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____
_____, 20__

Dated: _____
_____, 20__

ROSS VALLEY SCHOOL DISTRICT

PLANT CONSTRUCTION CO., LP

By: _____

By: Plant/Allison Corp., its General Partner

Print Name: Eileen Rohan

Print Name: John Wilson

Print Title: Superintendent

Print Title: _____

DRAFT

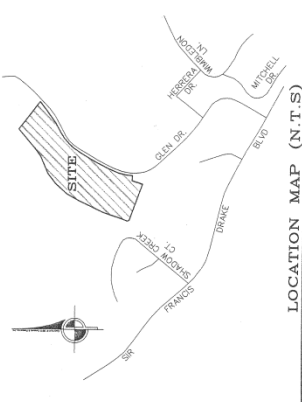
EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

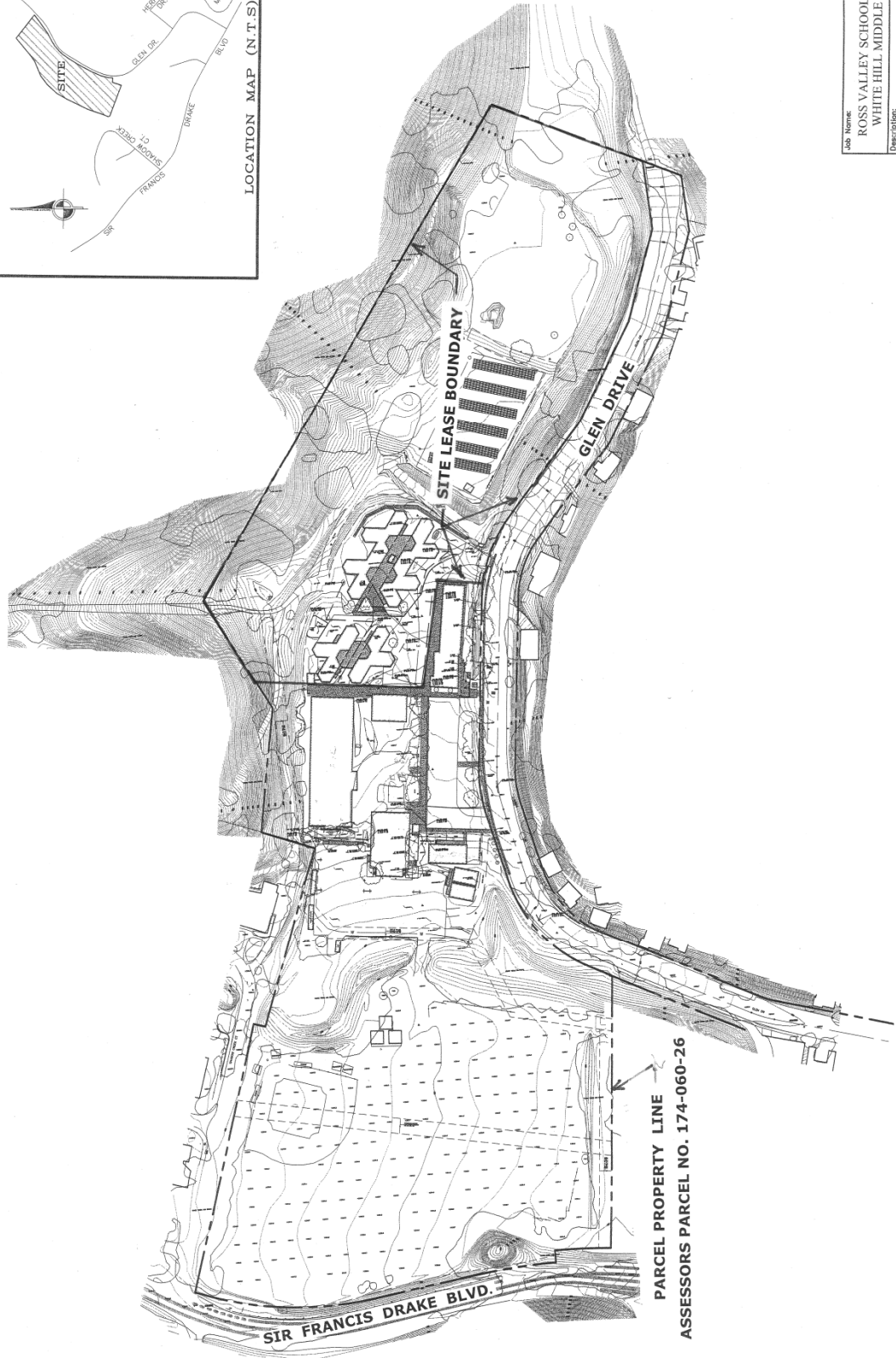
Attached is the Legal Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.

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CITY OF SAN ANSELMO



LOCATION MAP (N.T.S)



Job Name: ROSS VALLEY SCHOOL DISTRICT
 WHITE HILL MIDDLE SCHOOL
 Description: TOPOGRAPHIC MAP

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

Attached is the Legal Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.

A description of Phase I of the Project is as follows:

The phasing schedule and scope for the summer 2012, with work expected to begin on June 11, 2012 and completed by August 5, 2012 in time for the start of school on August 20, 2012, shall be as follows:

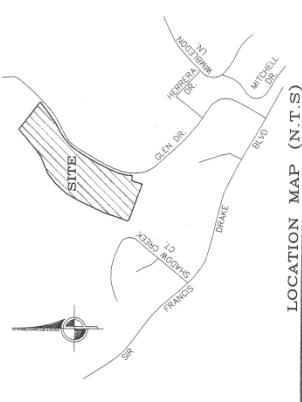
- Temporary Classroom Infrastructure
- Construct Hardscape Playfield
- Set and commission Temp Classrooms
- Demolition – Existing Hex-plex Classrooms
- Modernization of Building 100
- Enrichment Classrooms modernization in Building 300

A complete breakdown of the scopes of work with associated costs is found in the Schedule of Values in Exhibit "G".

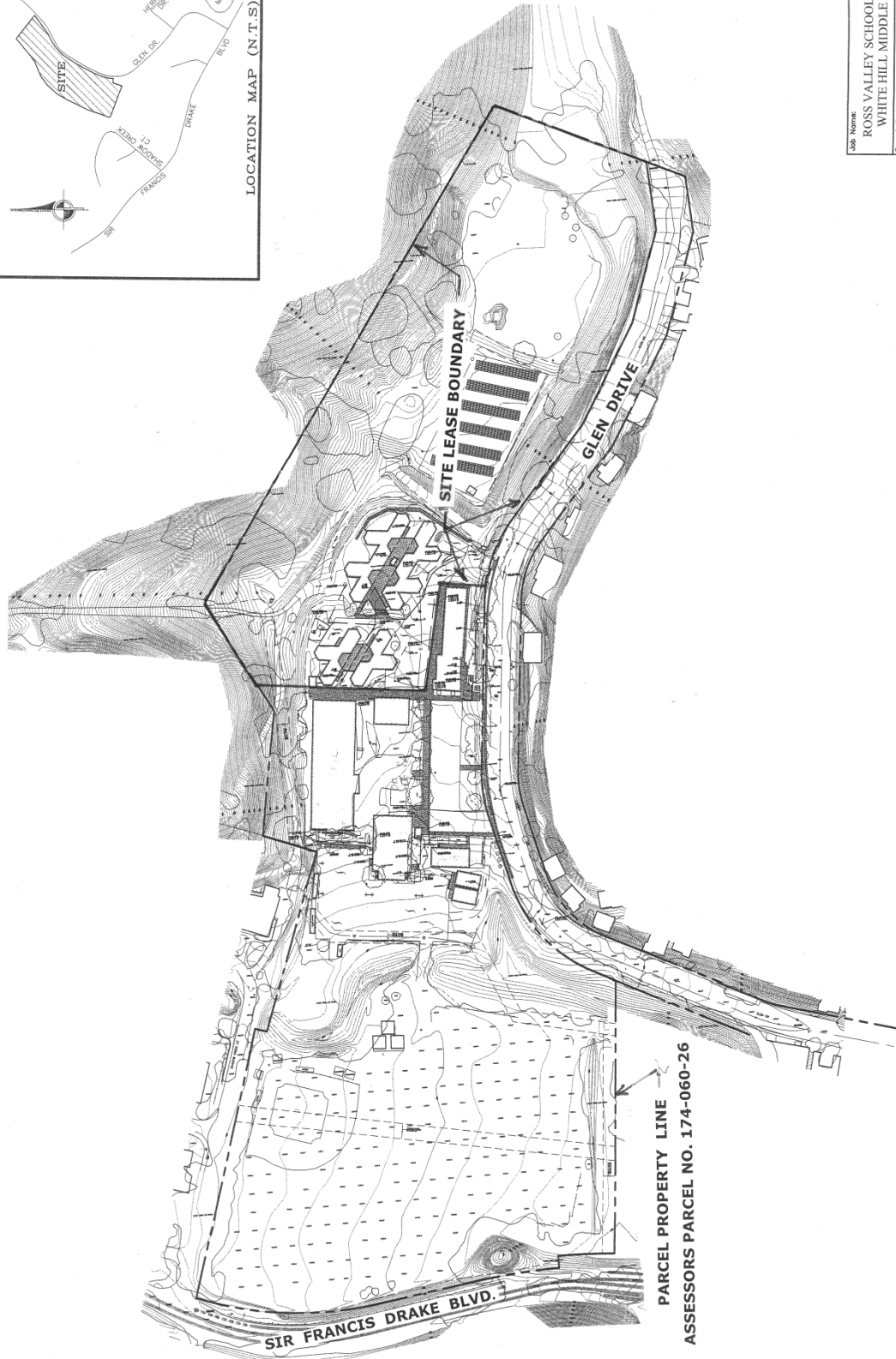
A description of the balance of the project is as follows:

- Construction of "Two New Classroom Buildings" at White Hill Middle School identified by Project Tracking No. 75002-24 and as detailed by WRNS architects and as approved by Department of State Architect project No. 01-112496 dated 7/2/12

CITY OF SAN ANSELMO



LOCATION MAP (N.T.S)



PARCEL PROPERTY LINE
 ASSESSORS PARCEL NO. 174-060-26

Job Name:
 ROSS VALLEY SCHOOL DISTRICT
 WHITE HILL MIDDLE SCHOOL
 Description:
 TOPOGRAPHIC MAP

**EXHIBIT “C”
TO
FACILITIES LEASE**

**GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

- 1. Site Lease Payments.** As indicated in the Site Lease, Developer shall pay One Dollar (\$1.00) to the District as consideration for the Site Lease.
- 2. Guaranteed Project Cost.** Pursuant to the Facilities Lease, Developer will cause the Project to be constructed for Seventeen Million One Hundred Six Thousand One Hundred Eighty Five Dollars (\$17,106,185.00) (“Guaranteed Project Cost”). Except as indicated herein for modifications to the Project approved by the District, Developer will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Developer 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:
- 2.1. Cost to Perform Work.**
- 2.1.1. **Subcontract Costs.** Payments made by the Developer to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.
- 2.1.2. **Developer-Performed Work.** Costs incurred by the Developer for self-performed work.
- 2.2. General Conditions.** The amount to be paid 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 Developer 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 Developer 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 District shall be entitled to a reduction in the cost of General Conditions.
- 2.3. 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.
- 2.4. Allowances.** The following allowances are within the Guaranteed Project Cost. Developer shall be permitted to charge only its direct costs to perform the work, as indicated through documentation approved to the District. Developer shall not include in its charge(s) under a particular allowance the coordination, supervision, bond costs, overhead and profit, installation and all indirect costs associated with performing the work of each allowance.
- 2.4.1. N/A
- Any unused allowance or unused portion thereof shall be deducted from the Cost of the Work. The amount to deduct shall be calculated using the steps in the “Changes in the Work” provisions of **Exhibit “D”** to the Facilities Lease including the Deductive Change Order provisions therein.
- 2.5. Contingency.** The District Contingency is not intended for such things as “Changes” as further described herein. The District Contingency shall not be used without the agreement of the District. The unused

portion of the District Contingency shall be retained by the District at the end of the Project.

2.5.1. N/A

2.6. Bonds and Insurance.

2.7. Overhead and Profit.

3. **Payment of Guaranteed Project Cost.** District shall pay the Guaranteed Project Cost to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein.

3.1. **Tenant Improvement Payments.** Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Developer **Fifteen Million Three Hundred Ninety Five Thousand Five Hundred Sixty Seven Dollars (\$15,395,567)** ("Tenant Improvement Payment(s)"), based on the amount of Work performed according to the Developer's Schedule of Values (**Exhibit "G"** to the Facilities Lease) and pursuant to the provisions in **Exhibit "D"** to the Facilities Lease.

3.2. **Lease Payments.** After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit "E,"** the District shall pay to Developer One Million Seven Hundred Ten Thousand Six Hundred Nineteen (\$1,710,619.00) ("Lease Payment(s)"), as indicated below.

3.2.1. The Lease Payments 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.

3.2.2. The District represents that the total annual Lease Payment 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.

3.2.3. **Fair Rental Value.** District and Developer have agreed and determined that the total Lease Payments 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.

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

3.2.4.1. The District and Developer understand and intend that the obligation of the District to pay Lease Payments 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.

3.2.4.2. Lease Payments 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.

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

3.2.4.4. The District further covenants to 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 that come due and payable during the period covered by each such budget. Developer 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 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.

3.2.4.5. The Developer cannot, under any circumstances, accelerate the District’s payments under the Facilities Lease.

3.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be eight percent (8 %):

| Date of Payment | (A) Total Lease Payment | (B) Total Interest Due on Lease Payment | Total Lease Payment plus interest due by District to Developer (A + B) |
|--------------------------|-------------------------|---|--|
| 35 days after NOC filed | \$285,103 | \$0 | \$285,103 |
| 65 days after NOC filed | \$285,103 | \$9,503 | \$294,606 |
| 95 days after NOC filed | \$285,103 | \$7,603 | \$292,706 |
| 125 days after NOC filed | \$285,103 | \$5,702 | \$290,805 |
| 155 days after NOC filed | \$285,103 | \$3,801 | \$288,904 |
| 185 days after NOC filed | \$285,103 | \$1,901 | \$287,004 |

3.2.6. **Financed Portion of Lease Payments.** The District does not at this time believe it will need the Developer to finance a portion of the Lease Payments. The District and the Developer have agreed that the District may request at a future time that the Developer agree to convert a portion of the Tenant Improvement Payments into Lease Payments and revise the Lease Payment schedule. If the District makes this request, the District and the Developer agree to negotiate in good faith regarding whether Developer can provide that financing, the amount of that financing, and the terms of that financing, which, if agreed to, shall be memorialized in a written amendment to the Facilities Lease and approved by the Parties.

3.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments ever exceed the Guaranteed Project Price as defined herein, unless modified pursuant to **Exhibit “D”** to the Facilities Lease.

4. Changes to Guaranteed Project Cost.

4.1. 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 Developer when the work is performed, or deducted from the next payment request from the Developer, as applicable.

4.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the plans, and specifications, as identified in **Exhibit “D”** to the Facilities Lease.

4.3. **Cost Savings.** Developer shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified

cost savings from the Guaranteed Project Cost shall be identified by Developer, 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, Developer 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 Developer for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Developer 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. 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 in its "as-is, where-is" condition and terminate this Facilities Lease and 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 Developer 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 Developer the Option Price on or prior to the Option Date and Developer shall at that time deliver to District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense.

5.3. Under no circumstances can the first Option Date be on or before thirty-five (35) days after the Developer completes the Project and the District accepts the Project.

6. Agreement for Preliminary Services ("PSA"). The Parties acknowledge that Developer performed preliminary services related to the Project under a PSA and District paid Developer: **Seventy –Five Thousand Dollars (\$75,000)** under that PSA.

EXHIBIT F

CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

| | |
|-------------------------------|------------------------|
| Notice to Proceed | June 8, 2012 |
| Start of Construction | June 11, 2012 |
| Portable Classroom Delivery | June 19, 2012 |
| Completion Phase I | August 20, 2012 |
| Total Project: | |
| Substantial Completion | August 23, 2013 |
| Completion | August 30, 2013 |

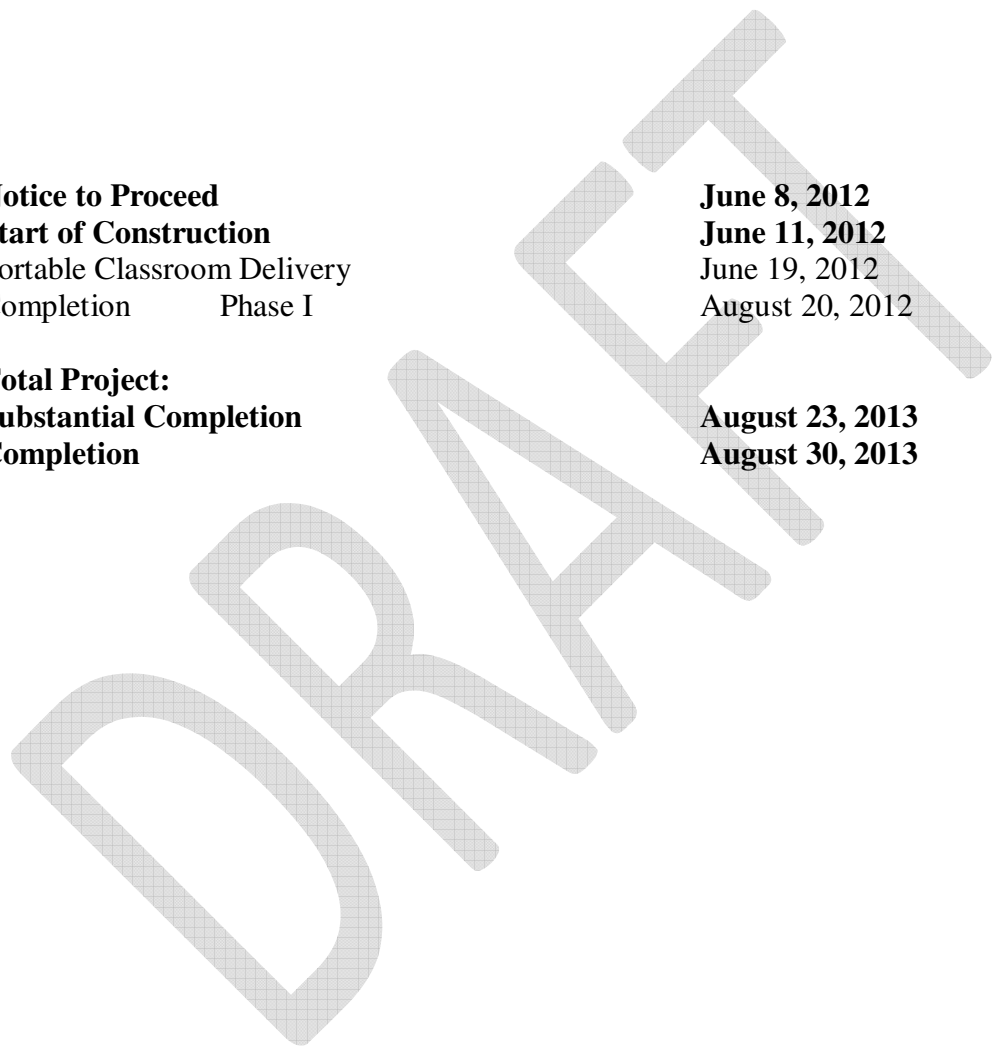


EXHIBIT G**SCHEDULE OF VALUES**

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

WHITEHILL MIDDLE SCHOOL - GPC
LLB AGREEMENT

| PC | ITEM of WORK | Schedule of Value |
|-----------|------------------------|--------------------------|
| 1001 | General requirements | 1,057,648 |
| 1500 | Temporary Construction | 593,528 |
| 1630 | Protection of Openings | 25,710 |
| 1850 | Scaffolding | 87,640 |
| 2050 | Salvage | 10,000 |
| 2100 | Soft Demolition | 50,000 |
| 2300 | Hard Demolition | 30,000 |
| 2340 | Building Demolition | 124,691 |
| 2500 | Earthwork | 597,323 |
| 2560 | Asphalt Paving | 154,564 |
| 2600 | Site Furn. & Improv. | 28,281 |
| 2610 | Fencing | 21,000 |
| 2630 | Landscaping & Irrig. | 186,065 |
| 2760 | Sidewalks & Site Conc. | 475,121 |
| 2800 | Underground Utilities | 162,900 |
| 2850 | Foundation Drainage | 11,640 |
| 3030 | Concrete | 1,044,990 |
| 3950 | Rebar | 222,900 |
| 4400 | Stonework | 21,521 |
| 5100 | Structural Steel | 1,517,650 |
| 5300 | Metal Decking | 165,400 |
| 6400 | Rough Carpentry | 1,028,266 |
| 6700 | Finish Carpentry | 503,379 |
| 7100 | Waterproofing | 100,194 |
| 7200 | insulation | 195,160 |
| 7500 | Roofing | 374,078 |
| 7600 | Sheet Metal | 238,400 |
| 7710 | Roof Specialties | 4,310 |
| 7900 | Sealants & Caulking | 126,382 |
| 8010 | Door Assemblies | 272,388 |

| | | |
|-------|---------------------------|------------|
| 8400 | Storefront & Curtainwall | 350,644 |
| 9200 | Plaster | 217,000 |
| 9250 | Drywall | 360,000 |
| 9300 | Tile | 138,900 |
| 9510 | Acoustic Ceiling | 389,880 |
| 9520 | Acoustic wall panels | 22,450 |
| 9680 | Carpet/resilient flooring | 279,946 |
| 9900 | Painting | 218,300 |
| 9985 | Prefinished Panels | 4,200 |
| 10010 | Misc. Specialties | 87,419 |
| 10160 | Toil Part & Assess. | 34,480 |
| 10430 | Signage | 40,762 |
| 10640 | Operable Partitions | 161,270 |
| 10650 | Shelving | 12,650 |
| 10700 | Awning/Canopies | 87,595 |
| 11130 | A-V Equipment | 18,950 |
| 11450 | Appliances | 5,000 |
| 12500 | Window Covering | 49,580 |
| 14200 | Elevators | 138,880 |
| 15400 | Plumbing | 494,950 |
| 15500 | Fire Protection | 148,000 |
| 15800 | HVAC | 1,260,382 |
| 16100 | Electrical | 1,461,632 |
| 16600 | Special Electrical Sys | 275,000 |
| 1220 | G C Bonds | 145,804 |
| 1240 | Insurance | 162,996 |
| 20100 | Fee | 630,479 |
| 20400 | Contingency | 477,908 |
| | Contract Total: | 17,106,186 |

Total for LLB Agreement \$ 17,106,186.00

Performance and Payment Bonds

Updated Performance and Payment Bonds shall be received by the District prior to the district making any payments to developer under this amendment.

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