

NOTICE OF SPECIAL MEETING
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

Monday
December 3, 2012
4:00 PM

Lovonya DeJean Middle School
Music Room G112
3400 Macdonald Avenue
(Entrance on Harry Ells Place)
Richmond, CA 94805

MEETING AGENDA

A. OPENING PROCEDURES

- A.1 Pledge of Allegiance**
- A.2 Welcome and Meeting Procedures**
- A.3 Roll Call**

B. ACTION ITEMS

- * B.1 Amended and Restated Ground Lease Agreement Between the District And The City Of San Pablo Regarding The Construction And Use Of A Community Center At Helms Middle School and Related Documents**

Comment:

In June 2010, the District's Board of Education ("District") and the City of San Pablo ("City") approved the original Ground Lease for Construction and Use of a Community Center at Helms Middle School ("Ground Lease"). Thereafter, the Ground Lease was amended in July 2012, to set forth the negotiated construction process for the Community Center ("Amended Ground Lease"). The District and City have now negotiated additional revisions to the Amended Ground Lease relating to requirements for the City's New Markets Tax Credit Program ("Loan"), the funding mechanism for the City's construction of the Community Center.

This Amended and Restated Ground Lease contemplates that the Helms Middle School site ("School Site") will be subdivided to create a real property parcel for the portion of the School Site leased to the City under the Amended Ground Lease ("Ground Lease Parcel") that is separate and distinct from the School Site. The Ground Lease Parcel will be the subject of the Amended and Restated Ground Lease and the parcel upon which the Community Center will be constructed, and will be pledged as collateral for the City's lender to make the Loan. In order to accomplish the subdivision, the District will record the new legal descriptions prepared for both the School Site and the Ground Lease Parcel. In addition, the City's lender is requiring that the District execute an Estoppel Agreement that sets forth remedies and responsibilities of the parties in the event of a Loan default by the City, or its authorized assignee.

Further, the Amended and Restated Ground Lease contemplates that the Amended and Restated Ground Lease will be assigned to San Pablo Economic Development Corporation, a California public authority, as referenced in Education Code section 10910, the governing authority under the original Ground Lease and

this Amended Ground Lease. Finally, the Amended Ground Lease includes negotiated terms relating to, but not limited to, the parking, construction staging and access rights relating to both the School Site and the Ground Lease Parcel.

Recommendation:

Approve the (1) Amended and Restated Ground Lease Agreement; (2) Ground Lease Estoppel Agreement; and (3) School Site and Ground Lease Parcel Legal Descriptions

Fiscal Impact:

No fiscal impact or implications associated with the approval of these documents.

C. THE NEXT SCHEDULED BOARD OF EDUCATION MEETING
Lovonya DeJean Middle School – December 12, 2012

D. ADJOURNMENT

* The public may only address items which are marked with an asterisk (*).

The Governing Board welcomes and encourages public comment. Members of the public may comment on items included on this agenda; however, we ask that you limit your comments to 2 minutes so that as many as possible may be heard. The total time for public comment for each item is limited to no more than 30 minutes. (Education Code §35145.5, Government Code §54954.3)

Special Accommodations: *Upon written request to the District, disability-related modifications or accommodations, including auxiliary aids or services, will be provided. Please contact the Superintendent's Office at 510-231-1101 at least 48 hours in advance of meetings.*

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

1108 Bissell Avenue
Richmond, California 94801-3135
Office of Superintendent of Schools

ITEM REQUIRING ATTENTION --- BOARD OF EDUCATION

To: Board of Education **Meeting Date:** December 3, 2012

From: Bill Fay **Agenda Item:** B.1
Associate Superintendent for Operations

Subject: Amended and Restated Ground Lease Agreement Between the District And The City Of San Pablo Regarding The Construction And Use Of A Community Center At Helms Middle School and Related Documents

Background information: In June 2010, the District’s Board of Education (“District”) and the City of San Pablo (“City”) approved the original Ground Lease for Construction and Use of a Community Center at Helms Middle School (“Ground Lease”). Thereafter, the Ground Lease was amended in July 2012, to set forth the negotiated construction process for the Community Center (“Amended Ground Lease”). The District and City have now negotiated additional revisions to the Amended Ground Lease relating to requirements for the City’s New Markets Tax Credit Program (“Loan”), the funding mechanism for the City’s construction of the Community Center.

This Amended and Restated Ground Lease contemplates that the Helms Middle School site (“School Site”) will be subdivided to create a real property parcel for the portion of the School Site leased to the City under the Amended Ground Lease (“Ground Lease Parcel”) that is separate and distinct from the School Site. The Ground Lease Parcel will be the subject of the Amended and Restated Ground Lease and the parcel upon which the Community Center will be constructed, and will be pledged as collateral for the City’s lender to make the Loan. In order to accomplish the subdivision, the District will record the new legal descriptions prepared for both the School Site and the Ground Lease Parcel. In addition, the City’s lender is requiring that the District execute an Estoppel Agreement that sets forth remedies and responsibilities of the parties in the event of a Loan default by the City, or its authorized assignee.

Further, the Amended and Restated Ground Lease contemplates that the Amended and Restated Ground Lease will be assigned to San Pablo Economic Development Corporation, a California public authority, as referenced in Education Code section 10910, the governing authority under the original Ground Lease and this Amended Ground Lease. Finally, the Amended Ground Lease includes negotiated terms relating to, but not limited to, the parking, construction staging and access rights relating to both the School Site and the Ground Lease Parcel.

Recommendation: Approve the (1) Amended and Restated Ground Lease Agreement; (2) Ground Lease Estoppel Agreement; and (3) School Site and Ground Lease Parcel Legal Descriptions

Fiscal Impact: No fiscal impact or implications associated with the approval of these documents.

DISPOSITION BY BOARD OF EDUCATION

Motion by: _____ Seconded by: _____

Approved _____ Not Approved _____ Tabled _____

RESOLUTION NO. 54-1213

A RESOLUTION OF THE GOVERNING BOARD OF THE WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT APPROVING THE AMENDED AND RESTATED GROUND LEASE AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF SAN PABLO REGARDING THE CONSTRUCTION AND USE OF A COMMUNITY CENTER AT HELMS MIDDLE SCHOOL AND CERTAIN DOCUMENTS RELATED THERETO

WHEREAS, Chapter 10 of Division 1 of the California Education Code, commencing with Section 10900, authorizes public entities to cooperate with one another to organize, promote, and conduct programs for community recreation that will contribute to the attainment of general recreational and educational objects for children and adults of this State; and

WHEREAS, Educational Code section 10905 specifically authorizes public entities to cooperate with one another to establish, improve, or maintain recreation facilities; and

WHEREAS, Education Code section 10910 authorizes the governing body of any school district to grant the use of any building, grounds, or equipment of the district to any other public authority for community recreational purposes if such use will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system; and

WHEREAS, the City of San Pablo (“City”) is in need of a community center which may be used by the public and by the students of the District for community purposes (“Community Center”); and

WHEREAS, District has determined that there is space for a Community Center on a portion of the Helms Middle School site (“Ground Lease Parcel”) located at 2500 Road 20, San Pablo, CA, 94806 (“School Site”); and

WHEREAS, in June 2010, the Governing Board approved the original ground lease with the City of San Pablo; and

WHEREAS, District and the City have negotiated the attached Amended and Restated Ground Lease Agreement (“Amended Ground Lease”) to facilitate and effectuate the desires of City to jointly develop a Community Center located on the Ground Lease Parcel and to set forth the terms and conditions agreed to by the parties for the funding, construction, operation and use of the Community Center; and

WHEREAS, the Amended Ground Lease contemplates that the Ground Lease Parcel will be subdivided from the School Site so that the Ground Lease Parcel will be a legally distinct and separate real property parcel with its own Assessor’s Parcel Number in compliance with City’s funding mechanism; and

WHEREAS, the City’s funding mechanism requires the assignment of the Amended Ground Lease to San Pablo Economic Development Corporation, a California public authority as used in Education Code section 10910, and the execution of the Ground Lease Estoppel and Agreement attached hereto; and

WHEREAS, City's use of the Ground Lease Parcel for the Community Center will not interfere with the use of the buildings, grounds, and equipment for any other District purpose on the School Site; and

WHEREAS, the development, use, and maintenance of the Community Center on the Ground Lease Parcel is in the vital and best interests of the residents of the City and of the District, and of their health, safety, and welfare, and are in accordance with the public purposes and provisions of applicable federal, State and local law;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Governing Board of the West Contra Costa Unified School District as follows:

1. The form of Amended and Restated Ground Lease and Ground Lease Estoppel Agreement are hereby approved; and
2. The Superintendent or his designee is hereby authorized to execute all documents necessary to give legal effect to the Amended Ground Lease and Ground Lease Estoppel and Agreement and any documents associated thereto; and
3. The Superintendent or his designee is hereby authorized to cause the recordation of the new legal descriptions prepared for both the School Site and the Ground Lease Parcel and any documents associated thereto.

APPROVED, PASSED and ADOPTED by the Governing Board of the West Contra Costa Unified School District this 3rd day of December, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President, Governing Board
West Contra Costa Unified School District

ATTEST:

Secretary, Governing Board
West Contra Costa Unified School District

ATTACHMENTS:

AMENDED AND RESTATED GROUND LEASE; GROUND LEASE ESTOPPEL AGREEMENT;
SEPARATE LEGAL DESCRIPTIONS FOR SCHOOL SITE AND GROUND LEASE PARCEL

EXHIBIT "A"
PARCEL A
Ground Lease Parcel
Legal Description

All that real property situated in the City of San Pablo, Contra Costa County, State of California, being a portion of that 18.152 acre parcel of land as shown on that certain Record of Survey entitled "W. T. HELMS JUNIOR HIGH SCHOOL SITE", filed October 19, 1951, in Book 15 of Licensed Surveyors Map, at Page 7, in the Office of the County Recorder of Contra Costa County, more particularly described as follows:

COMMENCING at the Northwesterly corner of said 18.152 acre parcel of land, being a point on the Southerly line of Road No. 20, formerly known as San Pablo Rancho Road as shown on said Record of Survey; thence along said Southerly line, South 88°25'00" East, 459.19 feet; thence leaving said Southerly line at a right angle, South 01°35'00" West, 89.43 feet to the POINT OF BEGINNING; thence South 88°25'19" East, 193.34 feet; thence South 01°28'32" West, 112.07 feet; thence North 88°25'19" West, 193.54 feet; thence North 01°34'44" East, 112.07 feet to the POINT OF BEGINNING.

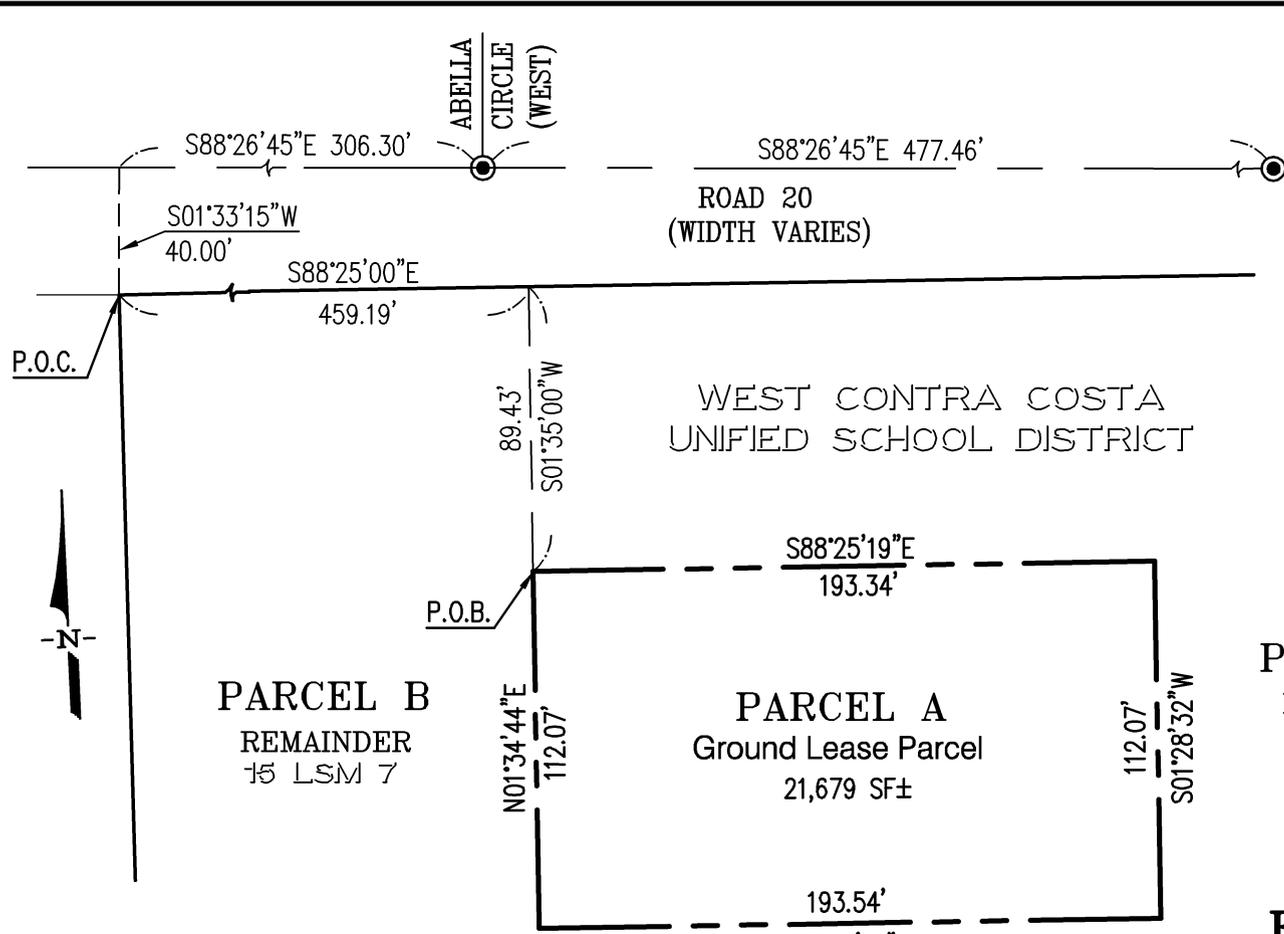
CONTAINING 21,679 square feet, more or less.

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

Jacqueline Luk
P.L.S. 8934

DATE _____





LEGEND

- BOUNDARY LINE
- LEASE LINE
- MONUMENT LINE
- ADJOINER LOT LINE
- TIE
- FOUND MONUMENT
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- SF SQUARE FEET

PARCEL B
REMAINDER
15 LSM 7

PARCEL A
Ground Lease Parcel
21,679 SF±

PARCEL B
REMAINDER

EXHIBIT "A-1"
PARCEL A
LEASE PARCEL

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
SAN PABLO, CA
PLAT TO ACCOMPANY DESCRIPTION
LUK & ASSOCIATES
CIVIL ENGINEERS – LAND PLANNERS – LAND SURVEYORS
738 ALFRED NOBEL DRIVE
HERCULES, CALIFORNIA 94547
(510) 724-3388
SCALE: 1" = 60'



JACQUELINE LUK, PLS 8934

DATE

EXHIBIT "B"
PARCEL B
Remainder Parcel
Legal Description

All that real property situated in the City of San Pablo, Contra Costa County, State of California, being all of that 18.152 acre parcel of land as shown on that certain Record of Survey entitled "W. T. HELMS JUNIOR HIGH SCHOOL SITE", filed October 19, 1951, in Book 15 of Licensed Surveyors Map, at Page 7, in the Office of the County Recorder of Contra Costa County.

EXCEPTING THEREFROM the interest conveyed to the City of San Pablo by that certain Document entitled "BEFORE THE GOVERNING BOARD OF THE RICHMOND UNIFIED SCHOOL DISTRICT OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA, RESOLUTION NO. 85-6970", recorded September 22, 1970, in Book 6218, at Page 187, Official Records of Contra Costa County.

ALSO EXCEPTING THEREFROM that parcel of land described as follows:

COMMENCING at the Northwesterly corner of said 18.152 acre parcel of land, being a point on the Southerly line of Road No. 20, formerly known as San Pablo Rancho Road as shown on said Record of Survey; thence along said Southerly line, South 88°25'00" East, 459.19 feet; thence leaving said Southerly line at a right angle, South 01°35'00" West, 89.43 feet to the POINT OF BEGINNING; thence South 88°25'19" East, 193.34 feet; thence South 01°28'32" West, 112.07 feet; thence North 88°25'19" West, 193.54 feet; thence North 01°34'44" East, 112.07 feet to the POINT OF BEGINNING.

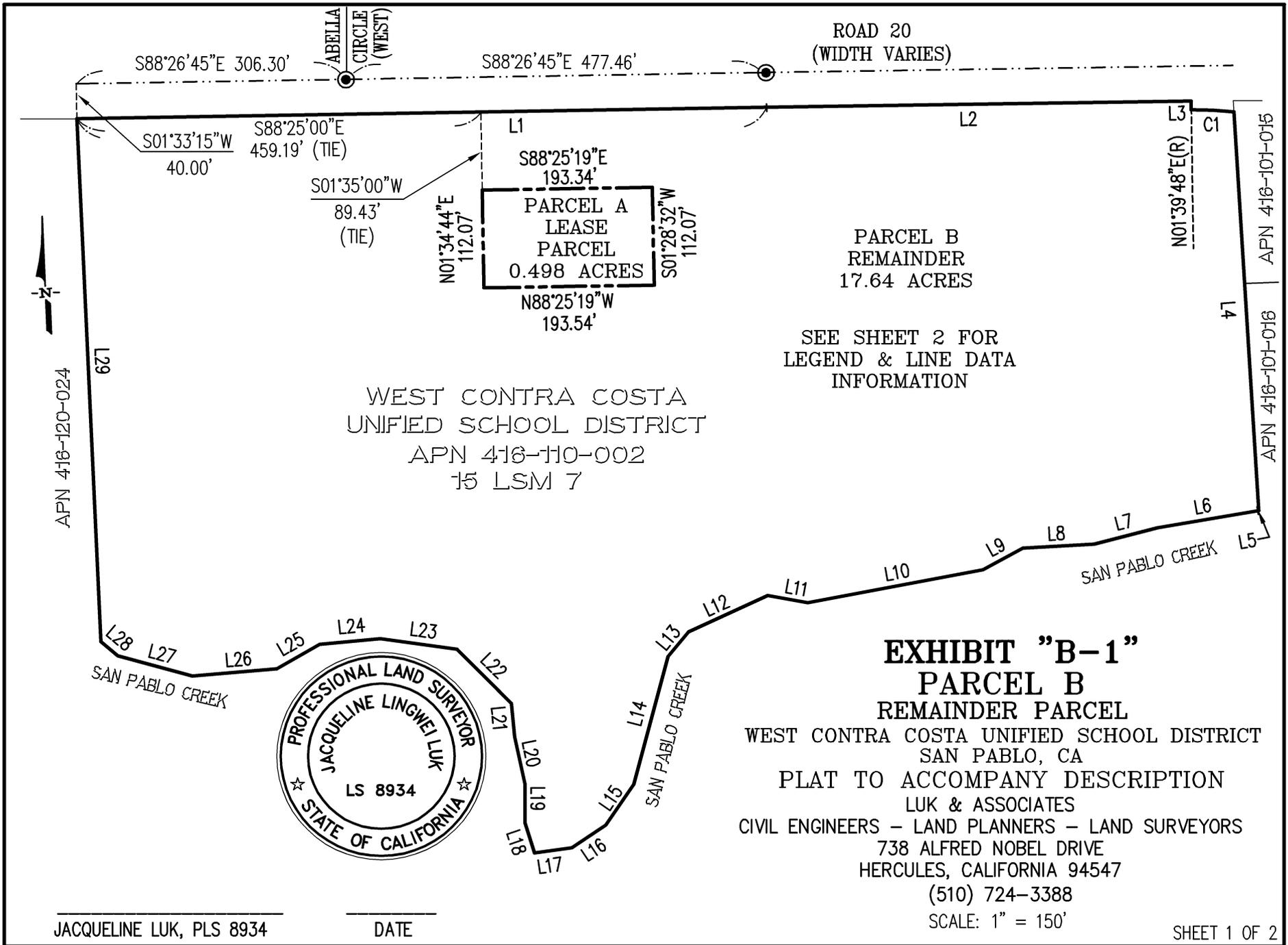
CONTAINING 17.64 acres, more or less.

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors Act.

Jacqueline Luk
P.L.S. 8934

DATE _____





JACQUELINE LUK, PLS 8934

DATE

PROPERTY LINE DATA

LINE TABLE		
LINE	LENGTH	BEARING
L1	783.73'	N88°25'00"W
L2	482.53'	N88°20'00"W
L3	10.00'	N01°40'00"E
L4	457.66'	N00°58'30"W
L5	1.06'	N69°45'00"E
L6	115.50'	N82°45'00"E
L7	74.58'	N78°00'00"E
L8	81.18'	N89°15'00"E
L9	51.48'	N64°00'00"E
L10	202.62'	N81°45'00"E
L11	46.20'	N77°15'00"W
L12	99.00'	N67°45'00"E
L13	36.30'	N42°15'00"E
L14	151.80'	N17°30'00"E
L15	56.76'	N36°45'00"E
L16	46.20'	N58°45'00"E
L17	42.90'	N84°30'00"E

LINE TABLE		
LINE	LENGTH	BEARING
L18	36.30'	N15°00'00"W
L19	44.88'	N02°30'00"E
L20	54.78'	N09°30'00"W
L21	38.28'	N03°15'00"W
L22	87.78'	N42°15'00"W
L23	87.78'	N79°45'00"W
L24	69.30'	N87°15'00"E
L25	56.10'	N62°30'00"E
L26	96.36'	N87°45'00"E
L27	87.78'	N72°15'00"W
L28	25.16'	N47°15'00"W
L29	599.79'	N00°05'00"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	48.64'	390.00'	07°08'43"

LEGEND

- BOUNDARY LINE
- LEASE LINE
- . - . - . MONUMENT LINE
- ADJOINER LOT LINE
- - - - - TIE
- FOUND MONUMENT

JACQUELINE LUK, PLS 8934

DATE



EXHIBIT "B-2"

PARCEL B

REMAINDER PARCEL

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
SAN PABLO, CA

PLAT TO ACCOMPANY DESCRIPTION

LUK & ASSOCIATES

CIVIL ENGINEERS – LAND PLANNERS – LAND SURVEYORS

738 ALFRED NOBEL DRIVE
HERCULES, CALIFORNIA 94547

(510) 724-3388

NO SCALE

PCLA&B. TXT

Lot name: PCLA

North: 2178321.0220 East: 6031128.8707
Line Course: S 88-25-19 E Length: 193.34
North: 2178315.6976 East: 6031322.1374
Line Course: S 01-28-32 W Length: 112.07
North: 2178203.6648 East: 6031319.2515
Line Course: N 88-25-19 W Length: 193.54
North: 2178208.9947 East: 6031125.7849
Line Course: N 01-34-44 E Length: 112.07
North: 2178321.0221 East: 6031128.8728

Perimeter: 611.02 Area: 21,678.90 sq. ft. 0.50 acres

Mapcheck Closure - (Uses listed courses and chords)
Error Closure: 0.0021 Course: N 86-44-26 E
Error North: 0.00012 East: 0.00212
Precision 1: 287,338.09

Lot name: PCLB

North: 2178423.1058 East: 6030672.3226
Line Course: S 88-25-00 E Length: 783.73
North: 2178401.4507 East: 6031455.7533
Line Course: S 88-20-00 E Length: 482.53
North: 2178387.4164 East: 6031938.0792
Line Course: S 01-40-00 W Length: 10.00
North: 2178377.4206 East: 6031937.7884
Curve Length: 48.64 Radius: 390.00
Delta: 7-08-43 Tangent: 24.35
Chord: 48.61 Course: S 84-45-50 E
Course In: S 01-39-48 W Course Out: N 08-48-31 E
RP North: 2177987.5850 East: 6031926.4680
End North: 2178372.9845 East: 6031986.1955
Line Course: S 00-58-30 E Length: 457.66
North: 2177915.3907 East: 6031993.9831
Line Course: S 69-45-00 W Length: 1.06
North: 2177915.0239 East: 6031992.9886
Line Course: S 82-45-00 W Length: 115.50
North: 2177900.4479 East: 6031878.4121
Line Course: S 78-00-00 W Length: 74.58
North: 2177884.9418 East: 6031805.4618
Line Course: S 89-15-00 W Length: 81.18
North: 2177883.8792 East: 6031724.2888
Line Course: S 64-00-00 W Length: 51.48
North: 2177861.3119 East: 6031678.0189
Line Course: S 81-45-00 W Length: 202.62
North: 2177832.2374 East: 6031477.4957
Line Course: N 77-15-00 W Length: 46.20
North: 2177842.4336 East: 6031432.4349
Line Course: S 67-45-00 W Length: 99.00
North: 2177804.9474 East: 6031340.8064
Line Course: S 42-15-00 W Length: 36.30
North: 2177778.0775 East: 6031316.3995
Line Course: S 17-30-00 W Length: 151.80
North: 2177633.3032 East: 6031270.7523

PCLA&B.TXT

Line	Course: S 36-45-00 W	Length: 56.76	
	North: 2177587.8241		East: 6031236.7914
Line	Course: S 58-45-00 W	Length: 46.20	
	North: 2177563.8568		East: 6031197.2945
Line	Course: S 84-30-00 W	Length: 42.90	
	North: 2177559.7450		East: 6031154.5920
Line	Course: N 15-00-00 W	Length: 36.30	
	North: 2177594.8081		East: 6031145.1968
Line	Course: N 02-30-00 E	Length: 44.88	
	North: 2177639.6454		East: 6031147.1545
Line	Course: N 09-30-00 W	Length: 54.78	
	North: 2177693.6741		East: 6031138.1132
Line	Course: N 03-15-00 W	Length: 38.28	
	North: 2177731.8925		East: 6031135.9430
Line	Course: N 42-15-00 W	Length: 87.78	
	North: 2177796.8689		East: 6031076.9226
Line	Course: N 79-45-00 W	Length: 87.78	
	North: 2177812.4888		East: 6030990.5435
Line	Course: S 87-15-00 W	Length: 69.30	
	North: 2177809.1639		East: 6030921.3233
Line	Course: S 62-30-00 W	Length: 56.10	
	North: 2177783.2598		East: 6030871.5620
Line	Course: S 87-45-00 W	Length: 96.36	
	North: 2177779.4767		East: 6030775.2763
Line	Course: N 72-15-00 W	Length: 87.78	
	North: 2177806.2377		East: 6030691.6750
Line	Course: N 47-15-00 W	Length: 25.16	
	North: 2177823.3163		East: 6030673.1995
Line	Course: N 00-05-00 W	Length: 599.79	
	North: 2178423.1057		East: 6030672.3271

Perimeter: 4072.43 Area: 790,175.80 sq. ft. 18.14 acres

Mapcheck Closure - (Uses listed courses and chords)
Error Closure: 0.0045 Course: S 88-30-37 E
Error North: -0.00012 East: 0.00453
Precision 1: 899,031.36

Recording Requested By and
When Recorded, Mail To:

Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116
Attention: Douglas Banghart, Esq.

GROUND LEASE ESTOPPEL AND AGREEMENT

This Ground Lease Estoppel and Agreement (this "**Agreement**"), is made and entered into as of this ____ day of _____, 2012, by and among **WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT** ("**Ground Lessor**"), and **SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, INC.**, a California nonprofit public benefit corporation ("**Tenant**"), and **NEW MARKETS COMMUNITY CAPITAL XI, LLC**, a Delaware limited liability company ("**Lender**"), with reference to the following:

RECITALS

A. Ground Lessor is the owner of fee title to that certain real property located in the City of San Pablo, County of Contra Costa, State of California more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Premises**"). The Premises and the improvements now and in the future located thereon (the "**Improvements**") are collectively referred to herein as the "**Property.**"

B. Ground Lessor has leased the Premises to Tenant pursuant to that certain Amended and Restated Ground Lease Agreement dated as of _____, 2012, between Ground Lessor and the City of San Pablo (the "**City**"), as subsequently assigned to Tenant pursuant to that certain Assignment and Assumption Regarding Ground Lease (Helms Community Center) dated as of _____, 2012 (the "**Ground Lease Assignment**") of even date herewith (as assigned, the "**Ground Lease**"), and recorded concurrently herewith in the Official Records of Contra Costa County, California (the "**Official Records**").

C. Concurrently herewith, pursuant to that certain Credit Agreement dated as of _____, 2012, by and between Tenant and Lender (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**Credit Agreement**"), Lender is making a (a) loan to Tenant in the principal amount of [Three Million One Hundred Ten Thousand Four Hundred Ten and No/100 Dollars (\$3,110,410.00)] (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**A1 Loan**"), which A1 Loan is evidenced by that certain QLICI Loan A1 Note dated _____, 2012, executed by Tenant in favor of Lender (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**A1 Note**"), (b) loan to Tenant in the principal amount of [One Million Three Hundred Twenty-One Thousand Nineteen and No/100 Dollars (\$1,321,019.00)] (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**B1 Loan**"), which B1 Loan is evidenced by that certain QLICI Loan B1 Note dated _____, 2012, executed by Tenant in favor of Lender (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**B1 Note**"), (c) loan to Tenant in the principal amount of [Three Million Four Hundred Twenty-One Thousand Four Hundred Fifty and No/100 Dollars (\$3,421,450.00)] (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**A2 Loan**"), which A2 Loan is evidenced by that certain QLICI Loan A2 Note dated _____, 2012, executed by Tenant in favor of Lender (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**A2 Note**"), (d) loan to Tenant in the principal amount of [One Million Four Hundred Fifty-Three Thousand One Hundred Twenty-One and No/100 Dollars (\$1,453,121.00)] (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**B2 Loan**", and together with the A1 Loan, B1 Loan and A2 Loan, the "**Loan**"), which B1 Loan is evidenced by that certain QLICI Loan B1 Note dated _____, 2012, executed by Tenant in favor of Lender (together will all amendments, modifications, supplements, renewals and extensions thereof, the "**B1 Note**", and together with the A1 Note, B1 Note and A2 Note, the "**Note**"). The Note is secured by, among other things, that

certain Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of _____, 2012, executed by Tenant, as trustor, to the trustee named therein, in favor of Lender as beneficiary, recorded concurrently herewith in the Official Records and encumbering Tenant's leasehold interest under the Ground Lease in the Property (together with all amendments, modifications, supplements, renewals and extensions thereof, the "**Deed of Trust**"). As used herein, "Loan Documents" shall mean the Credit Agreement, Note, Deed of Trust and all other documents or instruments executed in connection with or securing the Loan.

D. As a condition precedent to the making of the Loan, Lender has required the execution and delivery of this Agreement by the parties hereto.

E. The parties hereto understand that in the event of a Loan default, the remedies afforded the Lender, and any permitted designee, as defined hereunder, are subject to the provisions of California Education Code sections 10905 and 10910 regarding community recreation joint use purposes and section(s) 17455, *et seq.* regarding the sale or lease of District real property. All references in this Agreement which state that provisions hereunder are enforceable "to the extent permitted by applicable law" or "to the maximum extent permitted by applicable law" are particularly focused on, but not limited to, these specific provisions.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Consent to Assignment and Certain Other Transfers.

A. Ground Lessor (a) has consented to the assignment and transfer of the Ground Lease by City to Tenant pursuant to the Ground Lease Assignment, and (b) hereby consents to the assignment, transfer, and hypothecation of the leasehold interest created by the Ground Lease as security for the Loan and, to the extent permitted by applicable law, whether or not a default then exists under the Ground Lease, to any future assignment of the Ground Lease by Tenant to a designee of Lender that satisfies all legal requirements necessary to lawfully hold the Tenant's leasehold estate (a "**Permitted Designee**") in lieu of foreclosure in the event of a default by Tenant under the Loan Documents.

B. Neither the existence of the Deed of Trust nor the other Loan Documents, nor the exercise of any of Lender's remedies thereunder to the extent that such remedies are exercised in accordance with applicable law, shall require the Ground Lessor's consent or, constitute an assignment or transfer restricted by the Ground Lease provided that such assignment or transfer complies with applicable law, or a default under the Ground Lease. Notwithstanding anything to the contrary set forth in the Ground Lease, any Permitted Designee that acquires the Tenant's leasehold estate under the Ground Lease in accordance with applicable law may, without the consent of the Ground Lessor, sell and assign the Ground Lease on such terms and to such persons and organizations as are acceptable to Lender and permitted to hold the leasehold estate under applicable law, and thereafter the Permitted Designee shall be relieved of all obligations under the Ground Lease.

2. Rights of Lender. From and after the occurrence of an Event of Default under the Loan Documents, Lender shall have the right (but not the obligation) to perform or cause a third party to perform any of the obligations of Tenant under the Ground Lease, and take any and all actions, and exercise any and all other rights, reasonably necessary or desirable to cause any of such obligations to be satisfied (and Ground Lessor agrees that agreements entered into at any time in connection with any of Tenant's obligations under the Ground Lease shall (where applicable) expressly provide that Lender shall have such rights, and shall include such provisions as are reasonably necessary or desirable to ensure that Lender has the ability to exercise such rights) and exercise any or all of the rights, privileges and benefits of Tenant under the Ground Lease to the maximum extent permitted by applicable law, and upon any such exercise the Ground Lessor will perform its obligations under the Ground Lease for the

benefit of Lender. The foregoing shall in no event be deemed causing Lender to be deemed to have acquired the Property or to have assumed any of the obligations under the Ground Lease.

3. Defaults by Tenant.

A. For the purpose of curing any default by Tenant under the Ground Lease or the Loan Documents, Ground Lessor and Tenant hereby authorize Lender to enter upon the Property and, to the maximum extent permitted by applicable law, to exercise any of the rights and powers granted to Lender under the Ground Lease or this Agreement and, subject to the provisions of the Ground Lease and this Agreement, under the Deed of Trust. Ground Lessor agrees that any notice of default, termination of the Ground Lease or termination of Tenant's right to possession delivered to Tenant shall not be valid or of any force or effect unless a duplicate copy thereof shall be delivered to Lender concurrently therewith. As long as the Deed of Trust encumbers any portion of the Property, Ground Lessor shall not require Tenant to remove any Improvements pursuant to Section 5.04 of the Ground Lease.

B. For the purpose of curing defaults by Tenant under the Loan Documents, Ground Lessor shall have all of the rights set forth in Section 8.4 of the Credit Agreement.

4. Cure of Defaults by Lender. In the event of any default by Tenant under the Ground Lease and if prior to the expiration of ninety (90) days after Ground Lessor's notice to Tenant and Lender that it intends to terminate the Ground Lease, Lender shall give Ground Lessor written notice that it intends to undertake the curing of such default, or to cause the same to be cured, if such default is reasonably susceptible of being cured, or to the extent permitted by applicable law, to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and, to the extent permitted by applicable law, shall promptly commence and then proceed with all due diligence to do so, whether by performance on behalf of Tenant of its obligations under the Ground Lease, or by entry on the Property pursuant to the Deed of Trust or otherwise, and shall keep or cause to be kept all rent current during the period in which Lender is curing such default or effecting the acquisition of the leasehold estate, then Ground Lessor will not terminate or take any action to effect the termination of the Ground Lease or re-enter, take possession of, or relet the Property or similarly enforce performance of the Ground Lease in a mode provided by law so long as Lender is with due diligence and in good faith engaged in the curing of such default, or, to the extent permitted by law, effecting such acquisition of the leasehold estate and keeping or causing to be kept all rent current; provided, however, that Lender shall not be required to continue such possession, or continue such acquisition of the leasehold estate or keep or cause to be kept all rent current if such default shall be cured. Any cure period granted to Lender under this Agreement shall be extended by any period of time during which Lender is prevented from exercising its rights and remedies under the Loan Documents by reason of the bankruptcy of Tenant, an injunction, court order, other similar prohibition or applicable law.

5. Termination of Ground Lease. In the event of the termination of the Ground Lease as to Tenant by reason of the bankruptcy of Tenant and rejection of the Ground Lease by the trustee in bankruptcy or by Tenant as debtor in possession, or by operation of law, or pursuant to the express terms of the Ground Lease (other than the expiration at the completion of the term thereof) or for any other reason, Ground Lessor agrees that the Ground Lease shall not terminate as to a Permitted Designee and that the Ground Lease shall, without any further act or action, automatically continue upon the same terms in favor of such Permitted Designee as the Tenant under the Ground Lease provided that Lender or such Permitted Designee then cures or engages in good faith to cure any then existing default of Tenant under the Ground Lease which is reasonably susceptible of cure by Lender or such Permitted Designee; and Lender or a Permitted Designee, in its own name or the name of Ground Lessor, may take all appropriate steps necessary to remove Tenant from the Property. Without limiting the foregoing, (a) the parties agree to execute such additional documents as may be desirable from time to time to confirm or carry out the intent of this Section, including entering into a new ground lease (between Ground Lessor and a Permitted Designee) if Lender so elects upon the terms described in Section 6 hereof; and (b) Ground Lessor agrees that Lender shall have standing and shall be a party in interest in any case under Title 11 of the United States Code (the "**Bankruptcy Code**") in which Tenant is the debtor, and in any contested matter or adversary proceeding in any such case, including, without limitation, with respect to

any motions under Bankruptcy Code Sections 363, 365, or 1123 to sell the Property free and clear of any interest of an entity other than the estate, to designate a Permitted Designee to assume the Ground Lease, to assign or sell the Ground Lease to a third party that satisfies all legal requirements necessary to hold the tenant's leasehold estate under the Ground Lease in accordance with applicable law, or to reject or otherwise affect the rights of the parties (and their successors and assigns) to the Ground Lease.

6. New Ground Lease. If the Ground Lease terminates because of Tenant's default, pursuant to the express terms of the Ground Lease (other than the expiration at the completion of the term thereof) or because the leasehold estate is extinguished for any other reason, then Lender or any assignee of the Deed of Trust may elect to demand a new lease (a "**New Ground Lease**") of the Property by written notice to Ground Lessor within thirty (30) days after such termination provided that such notice also includes the name of a Permitted Designee and evidence reasonably acceptable to Ground Lessor that such Permitted Designee satisfies all legal requirements necessary to hold the tenant's leasehold estate under the Ground Lease in accordance with applicable law. Upon any such election, the New Ground Lease, between Ground Lessor and such Permitted Assignee, shall be for the remainder of the term of the Ground Lease, effective on the date of termination, at the same rent and subject to the same covenants, agreements, conditions, provisions, restrictions and limitations as are then contained in the Ground Lease. Such New Ground Lease shall be subject to all existing subleases. The New Ground Lease shall not be subject to any fee mortgage on the Property.

7. Status of Obligations of Tenant. The Ground Lessor hereby confirms that each and every covenant, condition and obligation contained in the Ground Lease required to be performed or satisfied as of the date hereof, and each and every matter required to be approved by the Ground Lessor as of the date hereof, has been satisfied, waived, or approved, as applicable. In furtherance of the foregoing, the Ground Lessor confirms that:

A. Tenant has commenced preliminary design work required by the Ground Lease, and Ground Lessor no longer has a right to terminate the Ground Lease pursuant to Section 1.04 of the Ground Lease; and

B. Ground Lessor has approved the design of the Community Center Project and determined that it is sufficient to ensure the adequacy and acceptability of the Property for public use.

8. Lender's Approval Rights.

A. No consent, approval or submittal by Tenant, or any agreement, relating to any of Tenant's rights and/or obligations under the Ground Lease, shall be deemed final or binding, or of any force or effect, until Lender, in its sole discretion, has approved the same in writing and in advance or waived its right to approve the same in writing and in advance (which waiver shall relate solely to the specific consent, approval, submittal or agreement provided to Lender and shall not constitute a waiver of Lender's right to consent to any other consent, approval, submittal or agreement); provided, however, that in issuing or waiving such approvals, Lender shall not incur any liability or assume any obligations with respect thereto; and

B. Ground Lessor and Tenant shall not amend or alter any of the provisions of the Ground Lease without Lender's prior written consent, which may be withheld in Lender's sole discretion. Any such amendments or modifications without Lender's prior written consent shall be invalid and of no force or effect.

9. Future Financing. Upon the request of any creditor unrelated to Tenant that may provide financing that is secured by a lien on any portion of the Property, Ground Lessor shall enter into an estoppel and agreement with such creditor pursuant to which such creditor is granted at least the same rights as are granted to Lender hereunder (with such changes as may be reasonably necessary based on the facts existing at the time of such request).

10. Provisions of Loan Documents. Ground Lessor hereby consents to the provisions of the Deed of Trust and other Loan Documents; provided, however that the foregoing shall not be deemed to constitute the consent of the Ground Lessor to the transfer of Tenant's leasehold interest under the Ground Lease except to the extent that the same is in compliance with applicable law. Ground Lessor hereby acknowledges and agrees that the appointment by Lender of a receiver for the Property shall not constitute a default under the Ground Lease.

11. Casualty and Condemnation. So long as the Deed of Trust encumbers Tenant's interest under the Ground Lease, in the event of any casualty or condemnation affecting all or any portion of the Property, the insurance or condemnation proceeds shall be disbursed upon the terms and subject to the conditions set forth in the Deed of Trust.

12. Surrender and Subordination. For the benefit of Lender, Ground Lessor agrees not to accept a voluntary surrender of the Ground Lease at any time while the Deed of Trust shall remain a lien on the leasehold estate thereunder. Ground Lessor and Tenant further agree for the benefit of Lender, that, so long as the Deed of Trust shall remain a lien on the leasehold estate under the Ground Lease, Ground Lessor and Tenant will not subordinate the Ground Lease, or any new lease entered into pursuant to this Agreement, to any mortgage or deed of trust that may hereafter be placed on Ground Lessor's fee interest in the Property.

13. Legal Proceedings. Ground Lessor and Tenant will provide Lender with prompt written notice of any action, suit, proceeding, arbitration or judicial reference relating to the Ground Lease (a "**Proceeding**"). Ground Lessor and Tenant hereby agree that Lender shall have the right, but not the obligation, to intervene in any Proceeding to protect its interest and to be made a party thereto, and Ground Lessor and Tenant hereby consent to any such intervention.

14. Request for Notices. After the recording of the Deed of Trust, Ground Lessor may cause to be recorded in the office of the County Recorder of Contra Costa County, California, a written request duly executed and acknowledged by Ground Lessor for a copy of any notice of default and of any notice of sale under the Deed of Trust as provided by the statutes of the State of California.

15. Insurance Policies. Any policy of hazard insurance insuring Ground Lessor shall contain an endorsement waiving the insurer's right of subrogation as against Lender and Tenant.

16. Modifications to Ground Lease. Ground Lessor and Tenant shall not amend or alter any of the provisions of the Ground Lease without Lender's prior written consent. Any such amendments or modifications without Lender's prior written consent shall be invalid and of no force or effect.

17. Lender's Liability Under the Ground Lease. A Permitted Designee, or any purchaser, assignee or transferee of Tenant's leasehold interest under the Ground Lease that satisfies legal requirements necessary to hold such leasehold interest, as the case may be, shall be liable to perform the obligations imposed on the Tenant under the Ground Lease only for and during the period it is in ownership of the leasehold estate created by the Ground Lease. Notwithstanding anything contained in this Agreement to the contrary, the liability of a Permitted Designee (and its permitted successors and assigns) in acquiring title to the Property shall be limited to such party's interests therein together with any rents actually received by such party therefrom and not used to pay costs or expenses related to the Property.

18. Notices. All notices to be given pursuant to this Agreement or the Ground Lease shall be sufficient if mailed, postage prepaid, certified or registered mail, return receipt requested to the addresses set forth below or such other address as a party may request in writing.

To Ground Lessor:

Office of Superintendent of Schools
West Contra Costa Unified School District
1108 Bissell Avenue

Richmond, California 94801-3135
Email: Bharter@wccusd.net

To Tenant: San Pablo Economic Development Corporation, Inc.
13830 San Pablo Avenue, Suite D
San Pablo, CA 94806
Attention: Kelsey D. Worthy, Assistant Executive Director
Facsimile: 510-215-3031
Email: kelseyw@sanpabloca.gov

With a copy to: Nixon Peabody LLP
555 West Fifth Street
Los Angeles, CA 90013
Attention: Aleks S. Frimershtein
Facsimile: 866-771-9454
Email: afrimershtein@nixonpeabody.com

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, 19th Floor
Mail Code: IL1-0953
Chicago, IL 60603-5506
Attention: NMTC Asset Manager
Facsimile: 312-325-5050
Email: nmtc.reporting@chase.com

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
New Markets Tax Credit Group
560 Mission Street
San Francisco, CA 94105
Attention: Elizabeth Tracey
Facsimile: 415-644-2257
Email: elizabeth.tracey@chase.com

With a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: Douglas R. Banghart, Esq.
Facsimile: 617-523-6850
Email: douglas.banghart@hklaw.com

To Lender: New Markets Community Capital XI, LLC
c/o New Markets Community Capital, LLC
5400 East Olympic Boulevard, Suite 300
Los Angeles, California 9002
Attention: José Villalobos
Email: jvillalobos@telacu.com

With a copy to: Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036
Attention: Neil S. Faden
Facsimile: (212) 790-4545

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, 19th Floor
Mail Code: IL1-0953
Chicago, IL 60603-5506
Attention: NMTC Asset Manager
Facsimile: 312-325-5050
Email: nmtc.reporting@chase.com

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
New Markets Tax Credit Group
560 Mission Street
San Francisco, CA 94105
Attention: Elizabeth Tracey
Facsimile: 415-644-2257
Email: elizabeth.tracey@chase.com

With a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: Douglas R. Banghart, Esq.
Facsimile: 617-523-6850
Email: douglas.banghart@hklaw.com

19. Status of Ground Lease. Ground Lessor hereby certifies, agrees and represents to Lender that as of the date of this Agreement: (i) Ground Lessor has delivered to Lender a true, correct and complete copy of the Ground Lease; (ii) the Ground Lease is in full force and effect and has not been modified, supplemented, altered or superseded in any way except pursuant to documents delivered by Ground Lessor to Lender prior to the date hereof; (iii) Tenant is not in default in the payment, performance or observance of any covenant or condition to be performed or observed by Tenant under the Ground Lease nor has any event occurred which with the giving of notice or the passage of time or both would constitute such a default; (iv) no event has occurred which authorizes or, with the giving of notice or the passage of time or both, will authorize Ground Lessor to terminate the Ground Lease, (v) during the term of the Ground Lease, title to all of the Improvements is vested in Tenant, (vi) the execution and delivery by Tenant of the Loan Documents will constitute neither a breach of Tenant's obligations as "City" under the Ground Lease nor an event of default thereunder, or, to the extent that the execution and delivery by Tenant of the Loan Documents does constitute a breach of Tenant's obligations as "City" under the Ground Lease, Ground Lessor hereby irrevocably and unconditionally waives any and all such events of default and breaches; (vii) there is no mortgage, deed of trust, security interest or similar encumbrance encumbering the fee estate in the Property; (viii) there are no material agreements, consents, or approvals in effect relating to the Ground Lease other than those delivered by Ground Lessor to Lender prior to the date hereof; and (ix) at the time that Ground Lessor delivered the Property to Tenant, the Property were in compliance with all applicable laws, including, but not limited to subdivision and environmental laws.

20. Estoppel Certificates. Upon Lender's written request, Ground Lessor shall provide Lender with an estoppel certificate which shall certify to Lender (a) as to the amount and status of all rent payments and security deposits under the Ground Lease, (b) as to the full satisfaction and compliance by Tenant of any other conditions required under the Ground Lease, (c) that Tenant is not in default in the payment, performance or observance of any other condition or covenant to be performed or observed by Tenant thereunder, (d) that there are no offsets or counterclaims on the part of Ground Lessor, and (e) as to such other matters related to the Ground Lease as Lender may reasonably request from time to time.

21. No Merger. There shall be no merger of the Ground Lease or any interest in the Ground Lease or of the leasehold estate created thereby, with the fee estate in the Property, by reason of the fact that the Ground Lease or such interest therein, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created by the Ground Lease may be conveyed or mortgaged in a leasehold mortgage or deed of trust to a mortgagee or beneficiary who shall hold the fee estate in the Property or any interest of Ground Lessor under the Ground Lease.

22. Subleases. Upon any termination of the Ground Lease for any reason whatsoever, Ground Lessor shall not disturb the possession of any sublessee of the Property so long as such sublessee is not in default under its sublease.

23. Transfer of Loan. Lender may assign its rights and delegate its obligations under the Deed of Trust or any of the other Loan Documents and further may assign, or sell participations in, all or any part of the Loan and the Loan Documents to any person or entity, all without the consent of the Ground Lessor or Tenant and the Ground Lessor shall grant such assignee all of the rights afforded to Lender hereunder. To the extent of any such assignment, Lender shall be relieved of any obligations hereunder and under the Loan Documents provided that the assignee assumes the obligations hereunder and under the Loan Documents, and the assignee shall have the same rights, benefits and obligations as it would if it were the original "Lender" hereunder. Lender may furnish any information (including, without limitation, financial information) concerning the Property, Tenant and the Ground Lease to third parties from time to time for legitimate business purposes.

24. Agency and Authority of Ground Lessor. Pursuant to any necessary corporate, legislative, governmental or political action, the Ground Lessor has full power and authority to enter into and to perform its obligations under the Ground Lease and this Agreement.

25. Successors and Assigns. The terms hereof shall inure to the benefit of all of the respective heirs, executors, administrators, successors and assigns of Ground Lessor, Tenant and Lender including, but not limited to, heirs, executors, administrators, successors and assigns as owners of the leasehold estate that have satisfied all legal requirements necessary to hold such leasehold estate, and shall survive any foreclosure or acceptance of a deed or assignment in lieu of foreclosure in accordance with applicable law or any other exercise of Lender's rights under the Deed of Trust or any of the other documents evidencing, securing, or pertaining to the Loan.

26. Entire Agreement. This is the full and final agreement of the parties hereto with respect to the subject matter hereof and, in executing this Agreement, Ground Lessor and Tenant represent and acknowledge to Lender that Ground Lessor and Tenant are not relying on, and there are no other, statements, promises, or representations, either oral or written, not expressly contained herein.

27. Term and Effect of Agreement This Agreement shall remain in full force and effect, and shall be binding on Ground Lessor so long as (a) all or any portion of the Property is encumbered by the Deed of Trust, or (b) any Permitted Designee retains title to all or any portion of the leasehold interest under the Ground Lease or any New Ground Lease. This Agreement shall survive any exercise of Lender's rights under the Loan Documents. The terms and conditions of this Agreement shall be binding upon the Ground Lessor, the extent permitted by applicable law, as if fully set forth in the Ground Lease (or, if applicable, any New Ground Lease), and, to the extent of any inconsistency between the express terms of the Ground Lease (or, if applicable, any New Ground Lease), and the terms of this Agreement, the terms of this Agreement shall control.

28. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which may be recorded.

29. Attorneys' Fees. If any lawsuit or other proceeding is commenced which arises out of, under or in connection with, or which relates to, this Agreement, including, without limitation, any alleged tort action, the prevailing party shall be entitled to recover from each other party to such lawsuit or proceeding such sums as the court or other party presiding over such lawsuit or proceeding may adjudge to be reasonable attorneys' fees and costs in the lawsuit or proceeding, in addition to costs and expenses otherwise allowed by law. Any such attorneys' fees and costs incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment and shall survive and not be merged into any such judgment. The obligation to pay such attorneys' fees and costs is intended to be severable from the other provisions of this Agreement.

30. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

31. Reliance by Lender. This Agreement is given to Lender with the understanding that Lender and its successors and assigns will rely on the representations and agreements made by City herein. The persons executing this Agreement on behalf of Ground Lessor have full power and authority to execute and deliver this Agreement.

[signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease Estoppel and Agreement to be executed as of the day and year first written above.

GROUND LESSOR

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

By: _____
Its: _____

TENANT

SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, INC.,
a California nonprofit public benefit corporation

By: _____
Name: Bradley J. Ward
Title: Treasurer

LENDER

NEW MARKETS COMMUNITY CAPITAL XI, LLC, a
Delaware limited liability company

By: New Markets Community Capital, LLC,
a Delaware limited liability company
its Managing Member

By: _____
Name: José Villalobos
Title: Senior Vice President

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Premises

ASSESSOR'S PARCEL NO. _____.



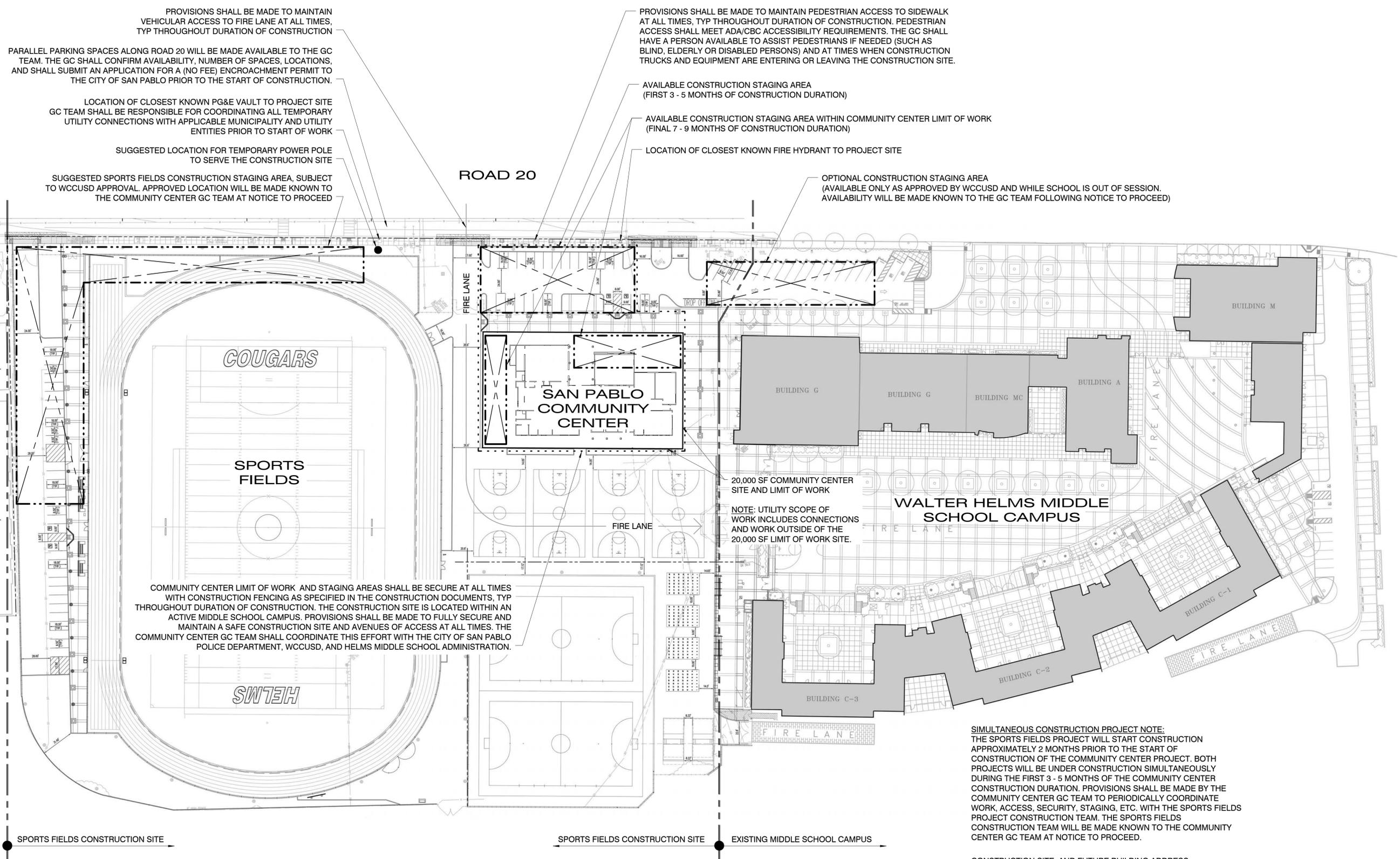
CONSTRUCTION DOCUMENTS

SHEET TITLE
STAGING DIAGRAM AND OVERALL CAMPUS SITE PLAN

REVISIONS		
NO.	DATE	DESCRIPTION
A	5/03/2012	ADDENDUM 1

DATE	04/16/2012
DRAWN	Author
CHECKED	Checker
SCALE	1" = 50'-0"
JOB NO.	21107
SHEET NUMBER	

GO.03



CAMPUS SITE PLAN - WCCUSD
2500 ROAD 20 - CITY OF SAN PABLO
1
60.03 1" = 50'-0"

5/2/2012 8:35:54 AM C:\Users\lad\Desktop\Local Revit Model\HCC-2012-LOCAL.rvt

**AMENDED AND RESTATED GROUND LEASE AGREEMENT BETWEEN THE WEST
CONTRA COSTA UNIFIED SCHOOL DISTRICT AND THE CITY OF SAN PABLO
REGARDING THE CONSTRUCTION AND USE OF A COMMUNITY CENTER AT HELMS
MIDDLE SCHOOL**

The West Contra Costa Unified School District, ("District") and the City of San Pablo ("City"), collectively, the "Parties," hereby enter into this Amended and Restated Ground Lease Agreement (the "Ground Lease Agreement") as of December 3, 2012.

Recitals

- A. Chapter 10 of Division 1 of the California Education Code, commencing with Section 10900, authorizes public entities to cooperate with one another to organize, promote, and conduct programs for community recreation that will contribute to the attainment of general recreational and educational objects for children and adults of this State.
- B. Educational Code Section 10905 specifically authorizes public entities to cooperate with one another to establish, improve, or maintain recreation facilities.
- C. Education Code Section 10910 authorizes the governing body of any school district to grant the use of any building, grounds, or equipment of the district to any other public authority for community recreational purposes if such use will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system.
- D. The City is in need of a community center which may be used by the public and by the District for community purposes ("Community Center").
- E. The District has determined that there is space for a Community Center adjacent to an existing school known as Helms Middle School, located at [2500 Road 20, San Pablo, CA. 94806] ("School Premises"). This adjacent parcel of real property that the proposed Community Center at Helms Middle School will be built on is depicted on Attachment A, attached hereto and incorporated in full by this reference ("Premises").
- F. City has funds or intends to pursue funds as opportunities arise to fund the Community Center at Helms Middle School project ("Project"). This Agreement allows the City to pursue such funds and is not to be construed as a commitment to construct the Project, should City be unable to secure or expend adequate funding.
- G. The purpose of this Agreement is to facilitate and effectuate the desires of City to jointly develop a Community Center located on the Premises owned by the District and to set forth the terms and conditions agreed to by the Parties for the funding, construction, operation, and use of the Community Center.
- H. City desires to enter into this Ground Lease Agreement with District and to lease the Premises for the purpose of constructing and operating the Community Center.

- I. It will be beneficial to District and City to accept improvements made by City within the leased Premises for enjoyment by District students outside of school hours and the general public.
- J. The Parties desire to work collaboratively to design and construct such Community Center on the Premises and agree to cooperate in the construction and operation of the Community Center in order to maximize use of the Community Center for community purposes as more fully set-forth herein.
- K. The development, use, and maintenance of the Premises and the fulfillment generally of this Agreement are in the vital and best interests of the residents of the City and of the District, and of their health, safety, and welfare, and are in accordance with the public purposes and provisions of applicable federal, State and local law. An additional purpose of this Agreement is to ensure a cooperative effort by and between City and District to enable each entity to provide for public use and benefit in the most cost-effective manner.

THEREFORE, DISTRICT AND CITY AGREE AS FOLLOWS:

Section 1: LEASE OF PREMISES AND TERM OF LEASE

Agreement to Lease

1.01. For and in consideration of the rents to be paid and covenants to be performed by City under this Lease, District agrees to lease Premises to City, and City agrees to lease Premises from District, on the terms and conditions set forth in this Lease. Except as expressly otherwise provided in this Lease Agreement, the leased premises includes the real property plus any appurtenances and easements.

Status of Title

1.02. Title to the leasehold estate created by this Lease Agreement is subject to all exceptions, easements, rights, rights-of-way, and other matters of record which are in effect at the time of the execution of this Lease Agreement. District represents that Premises is not subject to any superior liens.

Term of Lease

1.03. The term of this Lease shall commence on the date on which the Board of Education executes this Agreement and shall continue for a period of sixty (60) years, until 2070, and be irrevocable for that period except only by mutual consent or for cause as set forth herein. At the termination of this agreement, City shall have the right to renew for an additional term of up to fifteen (15) years, at City's discretion. Upon expiration of this period, renewal of the terms may be executed by mutual agreement of the parties.

Upon expiration of the lease and before the City exercises its right to renew for the additional fifteen (15) year term, District and its authorized representatives shall have the right to enter Premises to determine whether Premises are in good condition and whether City is complying with its obligation under the Lease; 2) to perform any acts that may be necessary to protect District's interest in Premises; and 3) to perform District's duties under the Lease.

Termination by Parties

1.04 City shall have the right to terminate this lease if adequate funding for Project cannot be attained or budgeted. District shall have the right to terminate this lease if City fails or is unable to commence construction within five years of the effective date of this Lease.

Section 2: RENT

City agrees to pay to District annual rent of One Dollar (\$1.00) ("Minimum Rent") for each year during the term of this Lease. Rent shall be due and payable in a lump sum payment of \$60.00 at the commencement of the Lease Term.

Section 3: USE OF PREMISES

3.01. City shall use the Leased premises for the purpose of constructing and operating a public Community Center and other necessary improvements and buildings which shall be necessary for the efficient operation of a public Community Center. City may determine in its sole discretion that portions of the facility may be devoted to other uses deemed necessary or desirable by City, so long as the uses remain recreational in nature and do not interfere with the educational programs or activities of the District on the School Premises.

3.02. District covenants and agrees that throughout the term of this Ground Lease Agreement, the City may peaceably and quietly enjoy the Premises, subject, however, to zoning and land use restrictions, permitted encumbrances and the City's fulfillment of the covenants and agreements contained in this Ground Lease Agreement. The exercise and enjoyment of any rights, licenses, and easements under this Ground Lease Agreement are subject to any applicable governmental laws and restrictions, including without limitation, zoning restrictions, and any vehicular parking requirements of any governmental agency for the Premises and the School Premises.

3.03. District shall have the right to use the Premises for parking purposes until such time as City notifies District that the Premises are required for the commencement of construction activities; provided that such use by District shall not interfere with soils boring or other necessary pre-construction activities by City.

3.04. Due to the fact that the construction of the Community Center is not a Department of State Architect compliant project, unless otherwise agreed to by the parties in writing, the students of Helms Middle School shall not have access to the Community Center during recognized school hours.

Section 4: UTILITIES AND TAXES

4.01. City agrees to pay charges for cable, electricity, gas, heat, cooling, telephone, sewer use, water, refuse collection and other utilities used in or for the Community Center.

4.02 City agrees to pay (to the extent such amounts are due) during the term of this Ground Lease Agreement, without abatement, deduction, or offset, any real and personal

property taxes, general and special assessments, and other charges assessed during the term of this lease by any governmental agency or entity on or against the Premises, the Improvements located on the Premises, and the leasehold estate created hereunder.

Section 5: CONSTRUCTION BY CITY

Construction of Improvements

5.01. At City's sole cost and expense, City shall construct on Premises, improvements as set forth in its construction documents, and in accordance with applicable State, local and federal law; provided, however, that City Council has exercised its discretion to budget sufficient funds to complete and maintain such facility.

Consultation with District

5.02. City shall consult with District on the design of the Community Center Project to ensure the adequacy and acceptability of Premises for public use.

Zoning and Use Permits

5.03. Should City deem it necessary or appropriate to obtain any use permit, variance, or rezoning of Premises to operate the Community Center facility, District agrees to execute any documents, petitions, applications, and authorizations that may be reasonably necessary or appropriate to that end.

Ownership of Improvements

5.04. Title to all improvements at the Premises, including the Helms Community Center Project constructed on Premises by City shall be owned by City until expiration of the term of this Lease. All improvements on Premises at the expiration of the term of this Lease, or any mutually agreed to extensions shall, with compensation to City in an amount to be determined via a valuation method to be agreed upon by the parties, become District's property; provided, that the building can be utilized for adaptive re-use under the standards set-forth in the Division of State Architect's "FEASIBILITY GUIDELINES FOR SELECTION OF EXISTING NON-CONFORMING FACILITIES FOR REHABILITATION TO PUBLIC SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES".¹ The regulations of Title 24, C.C.R. apply to any existing non-conforming building for purchase or lease by a district for use as a public school. If the improvements are non-suitable for adaptive re-use, City shall remove improvements and return the property to the District in its pre-lease condition.

Time for Construction

5.05. City and District understand that any work of construction on Premises will take place during school hours and may take place on evenings or weekends. The parties agree to coordinate with each other to schedule such work and arrange for appropriate precautions to ensure that the work may be performed safely, without unreasonable delay, and with minimal disruption to District's operation of the public school at Helms Middle School and on Premises. All City Project scheduling and coordination shall be done through the District's construction manager. The District's construction manager shall have final authority on issues of coordination and conflict between the two construction projects. The

¹ http://www.documents.dgs.ca.gov/dsa/pubs/feasibility_guidelines_pub_dsa_reh_01.pdf

District's construction manager shall use its reasonable discretion when making decisions on the coordination of construction activities undertaken by the City and the District.

5.06. Due to existing grade differentials at the site, it is necessary for earthwork and utility services, per the District's construction documents, to be completed by the District before City can begin work on the Community Center. District shall make every effort to begin construction on its Fields Project no later than Fall of 2012. District shall schedule the Fields Project work so that the retaining wall, building pad for the Community Center, and utility services to the building pad, are completed as a first order of work of the Fields Project. District shall grant to City all necessary and reasonable utility easements to service the Community Center, including but not limited to gas, electric, water, and cable.

5.07. Construction of the building pad shall comply with the recommendations of the soils engineer, as presented in the report, "Revised Geotechnical Investigation Update and Geologic Hazards Study / Helms Middle School Fields Project and Community Center / West Contra Costa Unified School District / Contra Costa County, California", dated March 29, 2012. City may perform concurrent inspection of the building pad and utility work that is being completed by the District's contractor. District shall provide to City copies of all testing and inspection reports from the building site.

5.07. a. All costs associated with the construction of the building pad, including change orders for additional work, impact or delay, shall be the sole responsibility of the City. District shall specifically identify in its Fields Project bid solicitation that the costs to complete the building pad be priced as an add alternate to the base contract. The lowest bid shall be determined by the lowest total of the base contract and additive alternates.

5.07. b. Upon award of bid on the Fields Project to the lowest responsive bidder, District shall present to City an invoice for the cost of constructing the building pad, based upon the add alternate pricing for the building pad, as identified on the awarded contractor's bid form. City shall pay District within 30 days of receipt of the invoice for building pad construction.

5.08.a. For purposes of this Section 5.08.a., City's construction of its Community Center Project shall be deemed to commence on the date the District delivers the building pad to City. District shall allow City full and unrestricted use of the area in front of the Community Center site as a staging area for construction, as set forth and laid out in Attachment 'C', "Available Construction Staging Area," which is incorporated by reference into this agreement as though fully set forth herein. City shall vacate the Available Construction Staging Area, per Attachment 'C'. City shall be responsible for any delay or impact to the District's Project associated with City's continued use of the Available Construction Staging Area beyond times referenced Attachment 'C.' When school is out of session, District shall, in addition to the "Available Construction Staging Area," allow use of the "Optional Construction Staging Area" (see Attachment 'C'). City shall restore Optional Construction Staging Area to its original condition. District shall allow City's contractor to erect a temporary utility pole at such location deemed acceptable to City, District and utility company.

City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements for persons entering the Premises for any work of construction during school hours and described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California

Code of Regulations. City shall provide executed certificates in the form attached hereto as Attachment D as written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of any work of construction on the Premises and prior to permitting contact with any pupils.

California Environmental Quality Act

5.09. The parties to the Agreement recognize and acknowledge that this agreement does not constitute a commitment to construct any project, and that adequate funding must be obtained and the project defined. Once the project is defined, such activities will require an environmental review and compliance with the California Environmental Quality Act ("CEQA"). City shall be responsible for complying with all requirements of CEQA with regard to this agreement and this project. The parties recognize that, as a result of information obtained by means of the CEQA process, the parties may decide to modify, condition, or disapprove the activities set forth in this Agreement. City shall defend, indemnify and hold District harmless from any claims or lawsuits, or damages or attorney's fees arising therefrom, challenging the CEQA approval process.

Water Quality

5.10.a City shall be responsible for ensuring that all Work at the Community Center, including work performed on the Available Staging Areas per Section per 5.08.a., is performed in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit issued for the District's Walter Helms Middle School Sports Fields and Landscaping Project, as required by applicable law.

5.10.b City and District are committed to the implementation of the programs to manage activities on the property in a manner which aids in the protection of Contra Costa County's water quality. All maintenance and construction activities shall comply with the Environmental Protection Agency's National Pollution Discharge Elimination System program and the Clean Water Act to prevent storm water pollution and a Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.

Section 6: HAZARDOUS MATERIALS, REPAIRS AND RESTORATION

Maintenance by City

6.01. Premises shall be maintained by City at the sole cost and expense of City. City shall pay for all costs not expressly covered by this Ground Lease Agreement. If adequate funding cannot be obtained in City's sole discretion, City shall have the right to terminate this Lease and all improvements upon the Premises shall become District's property.

6.02. City shall maintain any and all fencing and gates on and surrounding Premises and keep the fencing and gates in a good and safe condition for public and school use., 6.03. City shall not use, store or dispose of on the Premises, any solid, liquid, or gaseous matter, or any combination thereof, which is, or may become, hazardous, toxic or radioactive including, but not limited to those materials listed in Section 66680 through 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30 (as may be amended from time to time), in violation of applicable law.

6.04 City shall not keep any trash, garbage, waster or other refuse on the Premises except in sanitary containers and shall regularly and frequently remove the same from the Property. City shall keep all containers and other equipment used for the storage or disposal of such matter in a clean and sanitary condition.

City's Duty to Restore the Premises

6.05.a. If any time during this lease term, any Improvements now or hereafter on the on the Premises are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of District, this Ground Lease Agreement shall continue in full force and effect and City, at City's own cost and expense, if financially feasible, shall repair and restore the damaged Improvements. Any restoration by City shall comply with original plans for the Improvements, except as may be modified by City and approved by writing by District. The work of repair and restoration shall be commenced by City within one hundred twenty (120) days after the damage or destruction occurs and shall be completed no later than one year after the work has commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises.

6.05.b. City shall indemnify and hold harmless District from any damage to the School Premises caused by City's activities authorized in this Ground Lease Agreement. City shall either reimburse District for any damage or destruction to the School Premises, or other property, occurring by reason of City's construction activities, or to replace or restore School Premises to its preexisting condition.

Option to Terminate Lease for Destruction

6.06. City shall have the right to terminate this Lease if, during the Lease's term, the improvements are damaged or destroyed by a casualty for which City is not required to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the fair market value of the improvements immediately before the damage or destruction.

Application of Insurance Proceeds

6.07. Any and all fire and other insurance proceeds that become payable at any time during the term of this Ground Lease because of damage to or destruction of any Improvements on the Premises shall be paid to City and applied by City toward the costs of repairing and restoring the damaged or destroyed Improvements in the manner required herein, or if this Ground Lease Agreement is terminated under Section 6.06, applied by City towards the payment of any leasehold encumbrance.

Section 7: INDEMNITY AND INSURANCE

Indemnity Agreement

7.01. City agrees to indemnify, reimburse, hold harmless, and defend District, its trustees, officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of City's negligence or willful misconduct; unless

due in whole or in part, directly or indirectly, from the negligence or willful misconduct of District, its employees or agents. This indemnification shall not apply in those instances where District had actual knowledge and failed to inform City of an actual hazardous condition of the premises.

7.02. District agrees to indemnify, reimburse, hold harmless, and defend City, its trustees, officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of District's negligence or willful misconduct; unless due in whole or in part, directly or indirectly, from the negligence or willful misconduct of City, its employees or agents. This indemnification shall not apply in those instances where City had actual knowledge and failed to inform District of an actual hazardous condition of the premises.

Liability Insurance

7.03. Each party acknowledges that it is permissibly self-insured under the applicable Government Code provision and agrees to provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall provide to the other a Certificate of Insurance naming the other as an additional insured with respect to the obligations under this Agreement and the use of Premises. Each party shall provide a letter of self-insurance and give a copy to the other party. City shall also maintain insurance required by any third party lender in connection with a leasehold encumbrance.

Subrogation

7.04. Except as provided in the Certificate of Insurance obtained per Section 7.03 above, neither City nor District shall be liable to the other or to any insurance company (by way of subrogation) insuring the other party for any loss or damage to the Premises, if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage.

Section 8: EMINENT DOMAIN

If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by condemnation; this Lease shall terminate on the date of taking. If any portion of Premises is taken by condemnation, City shall have the right to either terminate this Lease or to continue in possession of the remainder of Premises under the terms of this Lease or to continue in possession of the remainder Premises under the terms of this Lease. Such right to terminate must be exercised by notifying District within ninety (90) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and is the property of District; provided, however, that City, not District, shall be entitled to any portion of the award made for loss of installations or improvements made by City in accordance with this Lease.

Section 9: ENTRY, EASEMENTS AND PARKING

Entry

9.01. District and its authorized representatives shall have the right to enter Premises at all reasonable times for any of the following purposes: 1) to determine whether Premises are in good condition and whether City is complying with its obligation under the Lease; 2) to perform any acts that may be necessary to protect District's interest in Premises; and 3) to perform District's duties under the Lease.

Access

9.02. District does hereby establish, grant and convey to City, and its assigns, a non-exclusive easement for ingress and egress on, over, across the School Premises for the common passage of persons and motor vehicles for the term of this Lease, as further described on Attachment E attached hereto and incorporated by reference.

Parking Cooperation Between the City and District on the School Premises

9.03. It is understood and recognized by City that the designated parking areas on the School Premises, including the parking area directly in front of the Community Center, will regularly be used by District and City, and City shall cooperate with the District in reaching amicable arrangements concerning shared use of the parking areas.

In scheduling the use of parking on School Premises for special events, District events and programs shall have first priority over City events and programs. For purposes of this Ground Lease Agreement, the term "District events and programs" shall mean those events and programs conducted by District staff on behalf of students enrolled in District programs or as part of District business. In cases of an emergency or errors in scheduling, District shall have first priority for use over all parking spaces on the School Premises. Every reasonable attempt will be made by District to avoid such conflicts.

In scheduling the use of parking on School Premises for City sponsored special events for the Community Center, City shall provide District with prior notice of such events. The City will schedule special events at the Community Center during non-school hours and will avoid scheduling an event that conflicts with any District events and programs.

Utilities

9.04. District does hereby establish, grant and convey to City, and its assigns, a non-exclusive easement to connect to and use such utility poles, lines, cables, mains, sewers, and appurtenances for the term of this Lease, that from time to time are located on, over, or under the School Premises as further described on Attachment F attached hereto and incorporated by reference. City's use of such utility easements shall not interfere with the District's use of such utility poles, lines, cables, mains, sewers, and appurtenances and shall be at the City's sole cost.

Construction

9.05. District does hereby establish, grant and convey to City, and its assigns, a non-exclusive easement for the purpose of constructing the Community Center located on the School Premises for a duration of twelve months commencing with the completion of the building pad by the District. The District acknowledges and agrees that there will be

construction activities, traffic noises, dust, odors, and vibrations and District hereby waives any right to object to such construction activities.

Maintenance and Repairs

9.06. District does hereby establish, grant and convey to City, and its assigns, non-exclusive easement for ingress and egress on, over and under the School Premises solely to the extent reasonably needed to maintain and repair any portion of the Community Center for the term of this Lease. City shall provide District with forty-eight (48) hours prior notice regarding any maintenance or repairs, with the exception of emergencies which threaten the School Premises or the Community Center, whereby the City will provide notice to the District as soon as reasonably possible.

Section 10: DEFAULT AND REMEDIES

Breach and Default

10.01. The occurrence of any of the following shall constitute a default:

- a. Failure to perform any other material provision of this Lease if the failure to perform is not cured within 30 days after notice has been given to the Party. If the default cannot reasonably be cured within 30 days, Party shall not be in default of this Lease if Party commences to cure the default within the 30 day period and diligently and in good faith continues to cure the default.
- b. Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that the defaulting Party perform the provisions of this Lease within the applicable period of time, or pay to the non-defaulting Party just compensation for such default. The purpose of the notice requirement set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

Remedies

10.02. The Parties shall have the following remedy if the other Party commits a default. This remedy is not exclusive; however, during the term of this Lease, unless otherwise specified, Parties shall not have the right to terminate this Lease.

Right to Cure or Seek Specific Performance

10.03. A Party, at any time after the other Party commits a default, can cure the default at the other Party's cost or seek specific performance of the terms of this Lease by the defaulting Party. If the Party at any time, by reason of the other Party's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the Party shall be due immediately from the defaulting Party to the Party at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate individual is permitted by law to charge from the date the sum is paid by the Party until the Party is reimbursed by defaulting Party.

Waiver of Breach

10.04. The waiver by a Party of any breach by the other Party of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by the other Party of either the same or a different provision of this Lease.

Section 11: OTHER PROVISIONS

Force Majeure

11.01. Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either District or City is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by City as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

Notices to District

11.02. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to District by City or any Lender described in this Lease shall be in writing and shall be deemed duly served and given when personally delivered to District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at: Superintendent of Schools, West Contra Costa County Unified School the District, 1108 Bissell Avenue, Richmond, CA 94801-3136. District may change District's address for the purpose of this section by giving written notice of that change to City in the manner provided in Section 11.03.

Notices to City

11.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to City by District shall be in writing and shall be deemed duly served and given when personally delivered to City, any managing employee of City, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to City at: City of San Pablo, City Manager, 13831 San Pablo Avenue San Pablo, CA 94806. City may change its address for the purpose of this section by giving written notice of that change to District in the manner provided in Section 11.02 of this Lease.

Governing Law

11.04. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

Binding on Successors and Assigns

11.05. This Lease shall not be assigned without the prior written consent of the District. This Lease shall be binding on and shall inure to the benefit of the executors, administrators, successors, and assigns of the parties hereto. District hereby acknowledges that City intends to assign this Ground Lease Agreement to San Pablo Economic Development Corporation, Inc., ("EDC") a public authority as defined by California Education Code Section 10910, pursuant to the terms of that certain Assignment and Assumption Agreement regarding Ground Lease by and among District, City and EDC.

Third Party Beneficiaries

11.06. The parties acknowledge that, except as expressly stated herein, no third party is a beneficiary of this Lease agreement.

Partial Invalidity

11.07. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Time of Essence

11.08. Time is expressly declared to be of the essence of this Lease.

Memorandum of Lease for Recording

11.09. The District and City shall record a Memorandum of Ground Lease which shall describe the parties, set forth a description of the leased premises, specify the term of this Lease and incorporate this Lease by reference.

Resolution of Disputes

11.10. Before resorting to mediation, arbitration or other legal process, the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Lease Agreement, subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within fifteen (15) days after provision of that written notice by the party desiring to meet and confer, the parties shall meet in person and attempt to amicably resolve their dispute. Each party shall send to the meeting a person with full authority to resolve the dispute, and shall be prepared to devote at least an entire day thereto. If any dispute remains unresolved at the end of the meeting, any party to this Agreement shall have the right to invoke the mediation process provided for in Paragraph 11.11.

11.11. Subject to the provisions of Paragraph 11.10, any dispute that remains unresolved after the meet and confer shall immediately be submitted to non-binding neutral mediation, before a mutually acceptable, neutral retired judge or justice at the San Francisco Office of the Judicial Arbitration and Mediation Service (JAMS). If within five days after the meet and confer the parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at the San Francisco office of JAMS shall serve as the neutral mediator. The parties agree to commit to at least one full day to the mediation process. The costs of the mediator, if any, will be paid for by each Party on an equal basis. If a mediated settlement is reached, no Party will be the prevailing Party for the purposes of

the resolution of the dispute. No Party will be permitted to file legal action without first meeting in mediation and maintain a good faith attempt to reach a mediation resolution.

Execution in Counterparts

11.12. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Interpretation

11.13. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof. To the extent there is any inconsistency between the terms of this Ground Lease and the terms of any financing or loan agreement with any third party lender under which this Ground Lease is pledged as secured collateral, the terms of this Lease Agreement shall control.

Amended and Restated Agreement

11.14. This Amended and Restated Ground Lease Agreement shall replace in its entirety that certain Ground Lease Agreement by and between the District and the City dated June 8, 2010, as amended by that certain Amended Ground Lease Agreement executed in July 2012.

Estoppel Certificates

11.15. The District and the City each covenants, warrants and represents as follows:

- (a) Validity of the Ground Lease Agreement: that this Ground Lease Agreement is unmodified and in full force and effect (or if there have been modifications, that this Ground Lease Agreement is in full force and effect, as modified, and stating the modifications);
- (b) Payment of Rent: that the dates through which the Minimum Rent under this Ground Lease Agreement shall have been paid;
- (c) Defaults by the City: that no notice has been given by the District to the City of any failure to comply under this Ground Lease Agreement that has not been cured and, to the best of its knowledge, no event of default exists (or, if there has been any notice given or an event of default exists, describing the same).
- (d) Assignment and Mortgage: District (a) has consented to the assignment and transfer of the Ground Lease by City to EDC pursuant to the Assignment and Assumption Regarding Ground Lease, and (b) hereby consents to the assignment, transfer, and hypothecation of the leasehold interest created by the Ground Lease as security for that certain loan ("Loan"), made by New Markets Community Capital XI, LLC ("Lender"), which loan shall be secured by that certain Leasehold Deed of Trust, Security Agreement and Fixture Filing ("Deed of Trust").
- (e) Neither the existence of the Deed of Trust nor the other loan documents evidencing the Loan shall require the Ground Lessor's consent or constitute an assignment or transfer restricted by the Ground Lease, or a default under the Ground Lease.

- (f) For the purpose of curing any default by EDC under this Lease, District, City and EDC hereby authorize Lender to enter upon the Premises and to exercise any of the rights and powers granted to Lender under the Ground Lease, subject to the provisions of the Ground Lease. City and EDC agree to provide Lender with any notice of default, termination of the Ground Lease or termination of City's or EDC's right to possession with five (5) business days of receipt of the same.
- (g) The District hereby confirms that each and every covenant, condition and obligation contained in the Ground Lease required to be performed or satisfied as of the date hereof, and each and every matter required to be approved by the District as of the date hereof, has been satisfied, waived, or approved, as applicable. In furtherance of the foregoing, the District confirms that:
 - a. City has commenced preliminary design work required by the Ground Lease, and District; and
 - b. District has approved the design of the Community Center and determined that it is sufficient to ensure the adequacy and acceptability of the Premises for public use, and
- (h) District and City shall not amend or alter any of the provisions of the Ground Lease without Lender's prior written consent, which may be withheld in Lender's reasonable discretion.

Encumbrance of Leasehold Estate

11.16.

- (a) The City may, with the prior written consent of District, during the term of this Ground Lease Agreement, encumber to any third party lender the City's interest under this Ground Lease Agreement and its interest in the Premises. However, in no event shall the City be permitted to encumber the School Premises and in no event shall the District be permitted to encumber the Premises (without the prior written consent of City). Any leasehold encumbrance shall be subject to all covenants, conditions and restrictions set forth in this Ground Lease Agreement and to all rights and interest of the District.
- (b) The City agrees that in the event such leasehold encumbrance is granted, then:
 - (a) the Ground Lease Agreement shall not be modified in a manner that would impair the District's interests in the School Premises or the Premises without the District's prior written consent, (b) such third party lender shall provide written notice to District of any default arising under any financing or loan, to which the Ground Lease Agreement has been pledged as secured collateral, on the part of City concurrently with provision of such notice to City, and (c) District shall have the right to cure said defaults of City under any such financing or loan, as it affects the Ground Lease Agreement, within the same period provided under such financing or loan document, extended by sixty (60) days."

Agreement Runs With the Land

11.17. This Ground Lease Agreement shall run with the Premises and, with respect to the easements set forth in Section 9, the School Premises, and shall apply to and be binding upon District, City, and their successors and assigns and subsequent owners of the Premises

and School Premises and shall not be affected by a conveyance of all or any part of the properties.

No Merger of Estates

11.18. For as long as any leasehold encumbrance is in existence, there shall be no merger of the leasehold estate created by this Ground Lease Agreement and the fee estate of District in the Premises due to the fact that both estates have been acquired or become vested in the same person or entity unless approved in writing by all third party lenders.

Lender Protection

11.19. No third party lender under any leasehold encumbrance shall be liable to District as an assignee of this Ground Lease Agreement unless and until such third party lender acquires all rights of City under this Ground Lease Agreement through foreclosure or an assignment in lieu of foreclosure.

IN WITNESS WHEREOF, DISTRICT and CITY have executed this Lease Agreement as of the date written on the first paragraph of this Lease.

DATED: _____

DISTRICT:
West Contra Costa Unified School District

By: William Fay
Its: Associate Superintendent - COO

DATED: _____

CITY:
City of San Pablo

By: Matt Rodriguez
Its: City Manager

**ATTACHMENT A
Property Map**

ATTACHMENT B

Sections of the California Education Code Cited in Lease

Excerpted from the website: <http://www.leginfo.ca.gov/calaw.html>

PART 25 - Employees

CHAPTER 5 – Classified Employees

ARTICLE 1 - Employment

SECTION 45125.2

45125.2.

(a) A school district contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

- (1) The installation of a physical barrier at the worksite to limit contact with pupils.
- (2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.
- (3) Surveillance of employees of the entity by school personnel.

ATTACHMENT C
Construction Staging Map

**ATTACHMENT D
CERTIFICATE**

**ATTACHMENT E
ACCESS AND PARKING SITE MAP**

**ATTACHMENT F
UTILITIES**