

MASTER SITE LEASE

This master site lease ("Master Site Lease") dated as of May 6, 2013 ("Effective Date"), is made and entered into by and between the **Mt. Diablo Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and **Bell Products, Inc.** a California company duly organized and existing under the laws of the State of California, as lessee ("Developer") (together, the "Parties").

WHEREAS, the District currently owns a parcel or parcels of land located at:

- 1400 Dina Drive, Concord, CA 94518 (El Monte Elementary School)
- 3841 Larkspur Drive, Concord, CA 94519 (Monte Gardens Elementary School)
- 1860 Silverwood Drive, Concord, CA 94519 (Shadelands Center)
- 1861 Silverwood Drive, Concord, CA 94519 (Sunrise Elementary School)
- 1748 West Street, Concord, CA 94519 (Westwood Elementary School)

and as more particularly described in **Exhibits "A-1" through "A-5"** attached hereto and incorporated herein by this reference ("School Sites"); and

WHEREAS, the District desires to provide for the **HVAC Modernization and appurtenant facilities to be performed on portions of the School Sites** ("Project"); and

WHEREAS, the District determines that a portion of the School Sites are adequate to accommodate the Project, as more particularly described in **"Exhibits "B-1" through "B-5"** ("Project Site") attached hereto and incorporated herein by this reference; and

WHEREAS, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the Master Facilities Lease between the Parties dated as of the Effective Date whereby the Developer agrees to lease the Project Sites back to the District and perform the work of the Project ("Master Facilities Lease"), which Master Facilities Lease is incorporated herein by this reference; and

WHEREAS, the Board of Education of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Sites to Developer and by immediately entering into the Master Facilities Lease under which District will lease back the Project from Developer; and

WHEREAS, the District further determines that it has entered into this Master Site Lease and the Master Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

WHEREAS, the District is authorized under Education Code section 17406 to lease the Project Sites to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project Sites back to the District by means of the Master Facilities Lease, and the Board has duly authorized the execution and delivery of this Master Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Developer as lessee is authorized and competent to lease the Project Sites from District and to develop and cause the construction of the Project on the Project Sites, and has duly authorized the execution and delivery of this Master Site Lease; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened,

and to have been performed prior to and in connection with the execution and entering into this Master Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Master Site Lease;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Master Site Lease.
 - 2.1. **Exhibits A-1 through A-5:** Descriptions of the School Site(s)
 - 2.2. **Exhibits B-1 through B-5:** Descriptions of the Project Site(s)
3. **Lease of the Project Sites.** The District hereby leases to the Developer, and the Developer hereby leases from the District the Project Sites, subject only to Permitted Encumbrances, in accordance with the provisions of this Master Site Lease, to have and to hold for the term of this Master Site Lease. This Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Developer within three (3) days of execution of this Master Site Lease.
4. **Leaseback of the Project Sites.** The Parties agree that the Project Sites will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.
5. **Term.** The term of this Master Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Developer, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.
6. **Payment.** In consideration for the leases of the Project Sites by the District to the Developer and for other good and valuable consideration, the Developer shall pay One Dollar (\$1.00) for each site to the District upon execution of this Master Site Lease.
7. **Termination**
 - 7.1. **Termination Upon Purchase of Project.** If the District exercises its option to purchase the Project pursuant to the Master Facilities Lease, then this Master Site Lease shall terminate concurrently with the District's buy out and termination of the Master Facilities Lease.
 - 7.2. **Termination Due to Default by Developer.** If Developer defaults pursuant to the provision(s) of the Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provision(s) allowing termination, then the Developer shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate at the same time as the Master Facilities Lease.
 - 7.3. **Termination Due to Default by District.** If District defaults pursuant to the provision(s) of the Master Facilities Lease, the Developer, or its assignee, will have the right, for the then remaining term of this Master Site Lease, to:

- 7.3.1. Take possession of the Project Site;
 - 7.3.2. If it deems it appropriate, cause appraisal of the Project Site and a study of the then reasonable uses thereof; and
 - 7.3.3. Relet the Project Site.
8. **Title to School Sites.** During the term of this Master Site Lease, the District shall hold fee title to the School Sites, including the Project Sites, and nothing in this Master Site Lease or the Master Facilities Lease shall change, in any way, the District's ownership interest in the Master School Site.
9. **Improvements.** Title to all improvements made on the Project Sites during the term hereof shall be held, vest and transfer pursuant to the terms of the Master Facilities Lease.
10. **No Merger.** The leaseback of the Project Sites by the Developer to the District pursuant to the Master Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Sites, and the Developer shall continue to have a leasehold estate in the Project Sites pursuant to this Master Site Lease throughout the term hereof.
11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Sites at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Developer.
12. **Quiet Enjoyment.** Subject to any rights the District may have under the Master Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Sites, the District hereby covenants and agrees that it will not take any action to prevent the Developer from having quiet and peaceable possession and enjoyment of the Project Sites during the term hereof and will, at the request of the Developer, to the extent that it may lawfully do so, join in any legal action in which the Developer asserts its right to such possession and enjoyment.
13. **Waste.** The Developer agrees that at all times that it is in possession of the Project Sites, it will not commit, suffer or permit any waste on the Project Sites, and that it will not willfully or knowingly use or permit the use of the Project Sites for any illegal purpose or act.
14. **Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Sites hereby leased or intended so to be or for carrying out the expressed intention of this Master Site Lease and the Master Facilities Lease.
15. **Representations of the District.** The District represents, covenants and warrants to the Developer as follows:
 - 15.1. **Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
 - 15.2. **Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.
 - 15.3. **No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Master Site Lease nor the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby,

conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Sites, except Permitted Encumbrances.

15.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* (“CEQA”) in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

15.5. No Litigation. To the best of the District’s actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Site Lease.

15.6. Condemnation Proceedings.

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Master Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Master Site Lease and the Master Facilities Lease.

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Developer shall be as indicated in the Master Facilities Lease.

15.7. Use and Zoning. To the best of the District’s actual knowledge, the Project Sites are properly zoned for their intended purpose and the use or activities contemplated by this Master Site Lease will not conflict with local, state or federal law.

15.8. Taxes. To the best of the District’s actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

15.9. Hazardous Materials. District is not currently aware of any contamination to the Project Sites by Hazardous Materials. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Developer.

16. Representations of the Developer. The Developer represents, covenants and warrants to the District as follows:

16.1. Due Organization and Existence. The Developer is a California corporation licensed to provide such services in the state of California, has power to enter into this Master Site Lease and the Master Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

16.2. Authorization. The Developer has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.

16.3. No Violations. Neither the execution and delivery of this Master Site Lease or the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Developer is now a party or by which the Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Developer, or upon the Project Sites, except for Permitted Encumbrances.

16.4. No Bankruptcy. Developer is not now nor has it ever been in bankruptcy or receivership.

16.5. No Litigation. There is no pending or, to the knowledge of Developer, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Developer to perform its obligations under this Master Site Lease or the Master Facilities Lease.

17. Insurance and Indemnity. The Developer and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Master Facilities Lease.

18. Assignment and Subleasing. This Master Site Lease may not be assigned and/or the Project Sites subleased, as a whole or in part, by the Developer without the prior written consent of the District to such assignment or sublease..

19. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Sites or any portion thereof during the term of this Master Site Lease in any way that would interfere with or diminish Developer's interests indicated in this Master Site Lease.

20. Liens and Further Encumbrances. Developer agrees to keep the Project Sites and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Sites or the Project. Pursuant to the Master Facilities Lease, Developer further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

21. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below

21.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

21.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

21.3. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

21.4. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for:

If to District:

Mt. Diablo Unified School District
1936 Carlotta Drive

If to Developer:

Bell Products, Inc.
P.O. Box 396

Concord, CA 94519
Attention: Superintendent
Telephone: ()
Facsimile: ()

722 Soscol Avenue
Napa, California 94559
Attention: Paul Irwin
Telephone: (707) 255-1811
FAX: (707) 255-1908

With a copy to:

Orbach Huff & Suarez
1 Kaiser Plaza, Ste. 1458
Oakland, CA 94612
Attention: Philip J. Henderson
Telephone: (510) 999-7908
Facsimile: (510) 999-7918

_____, CA 9_____
Attention: _____
Telephone: () ____ - _____
Facsimile: () ____ - _____

The Developer and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

- 22. Binding Effect.** This Master Site Lease shall inure to the benefit of and shall be binding upon the Developer and the District and their respective successors and assigns.
- 23. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Master Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
- 24. Severability.** In the event any provision of this Master Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Site Lease or the Master Facilities Lease.
- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Master Facilities Lease, this Master Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Obligations Absolute.** The Developer agrees that the obligations of the Developer are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
- 27. Execution in Counterparts.** This Master Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 28. Developer and District Representatives.** Whenever under the provisions of this Master Site Lease approval by the Developer or the District is required, or the Developer or the District is required to take some action at the request of the other, such approval or such request shall be given for the Developer by the Developer Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 29. Applicable Law.** This Master Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
- 30. Attorney's Fees.** If either party brings an action or proceeding involving the School Sites or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

- 31. **Captions.** The captions or headings in this Master Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Site Lease.
- 32. **Prior Agreements.** This Master Site Lease and the corresponding Master Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 33. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Site Lease.
- 34. **Recitals Incorporated.** The Recitals set forth at the beginning of this Master Site Lease are hereby incorporated into its terms and provisions by this reference.
- 35. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.
- 36. **Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Master Site Lease.
- 37. **Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Site Lease or the Master Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Master Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Master Site Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20__

Dated: APRIL 24, 20 13

Mt. Diablo Unified School District

By: _____

By: 

Print Name: _____

Print Name: PAUL D. IMANI

Print Title: Superintendent

Print Title: PRESIDENT

EXHIBIT "A-1"

DESCRIPTION OF SCHOOL SITE

Attached is the Description for: El Monte Elementary School, 1400 Dina Drive, Concord, CA 94518

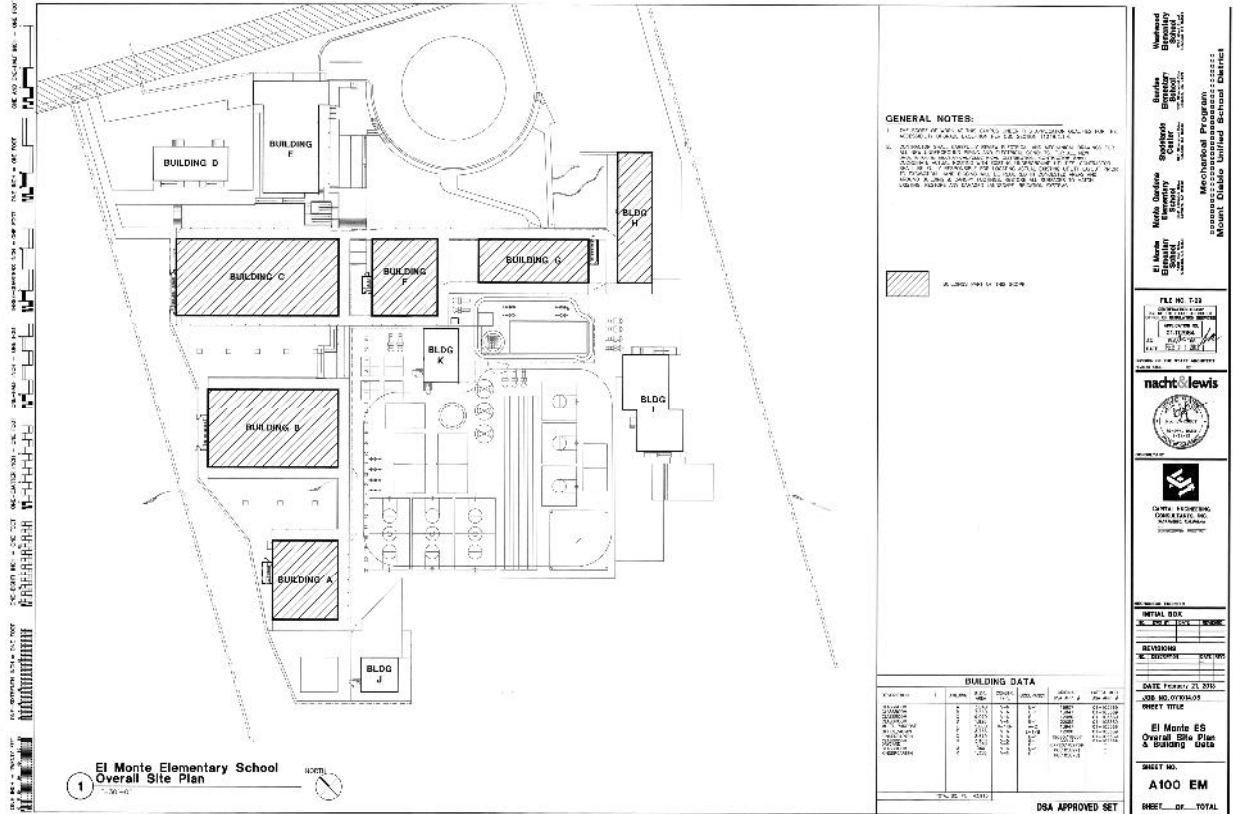


EXHIBIT "A-2"

DESCRIPTION OF SCHOOL SITE

Attached is the Description for: Monte Gardens Elementary School, 3841 Larkspur Drive, Concord, CA 94519

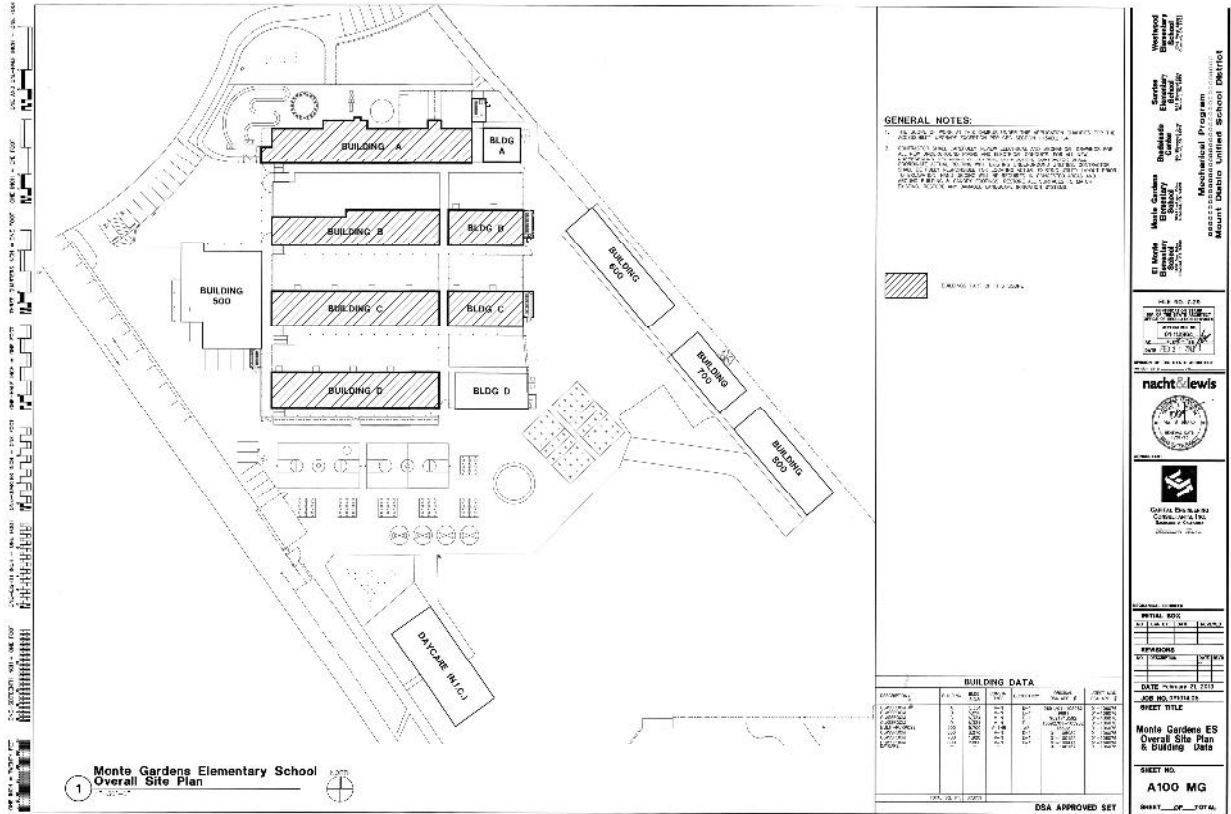


EXHIBIT "A-3"

DESCRIPTION OF SCHOOL SITE

Attached is the Description for: Shadelands Center, 1860 Silverwood Drive, Concord, CA 94519

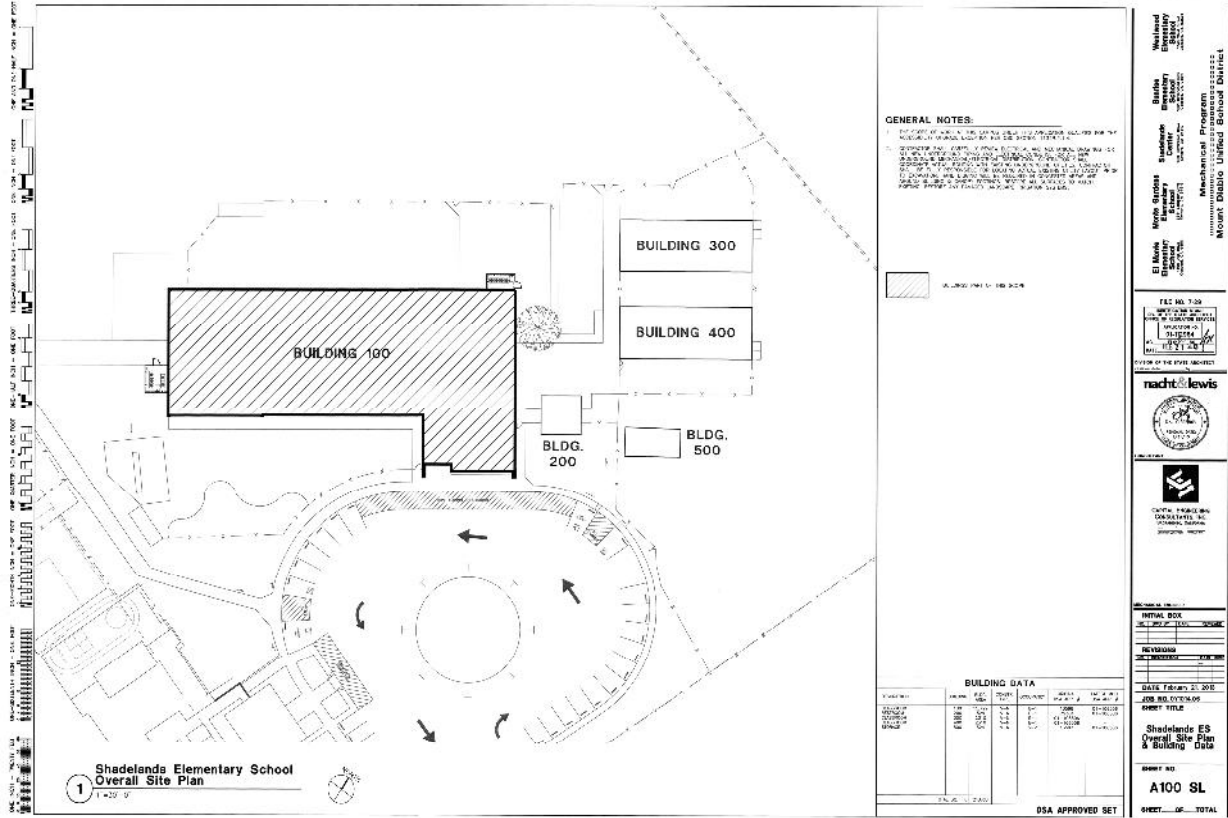


EXHIBIT "A-4"

DESCRIPTION OF SCHOOL SITE

Attached is the Description for: Sunrise Elementary School, 1861 Silverwood Drive, Concord, CA 94519

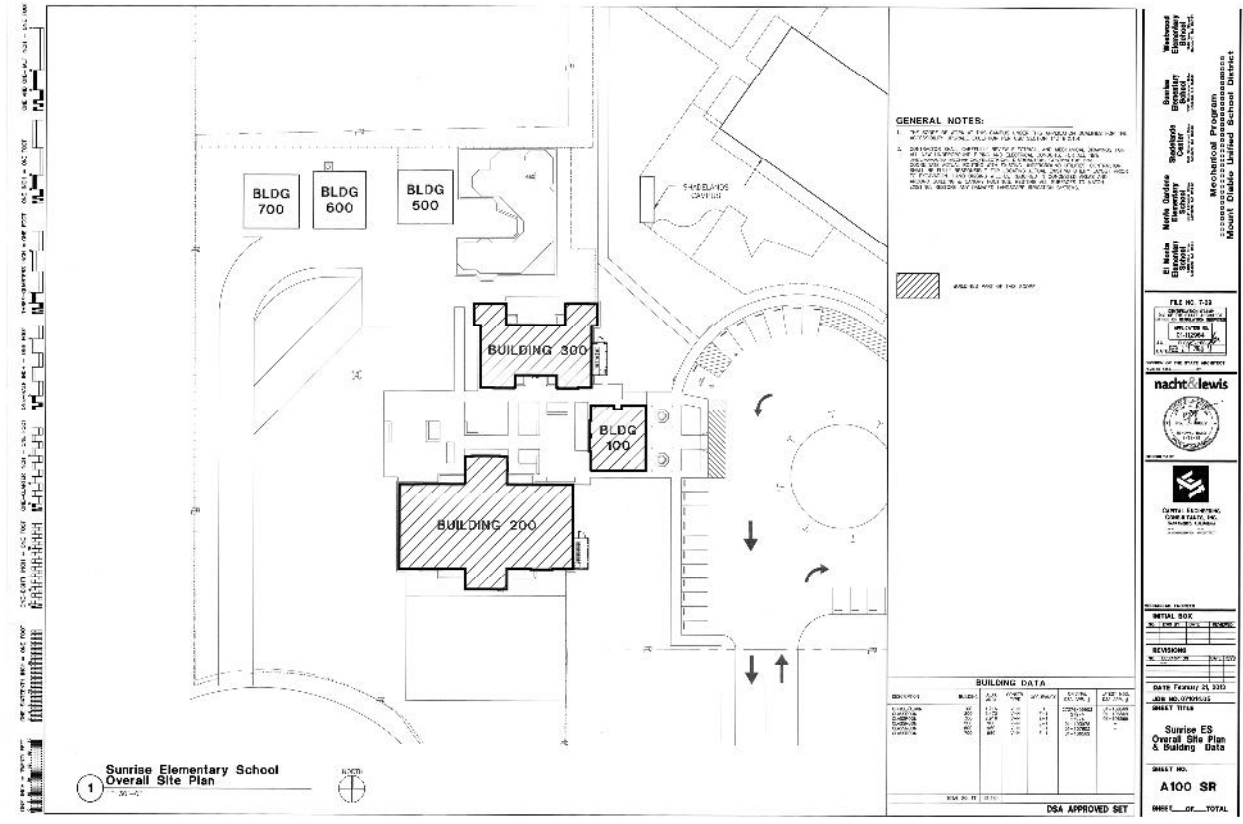


EXHIBIT "A-5"

DESCRIPTION OF SCHOOL SITE

Attached is the Description for: Westwood Elementary School, 1748 West Street, Concord, CA 94519

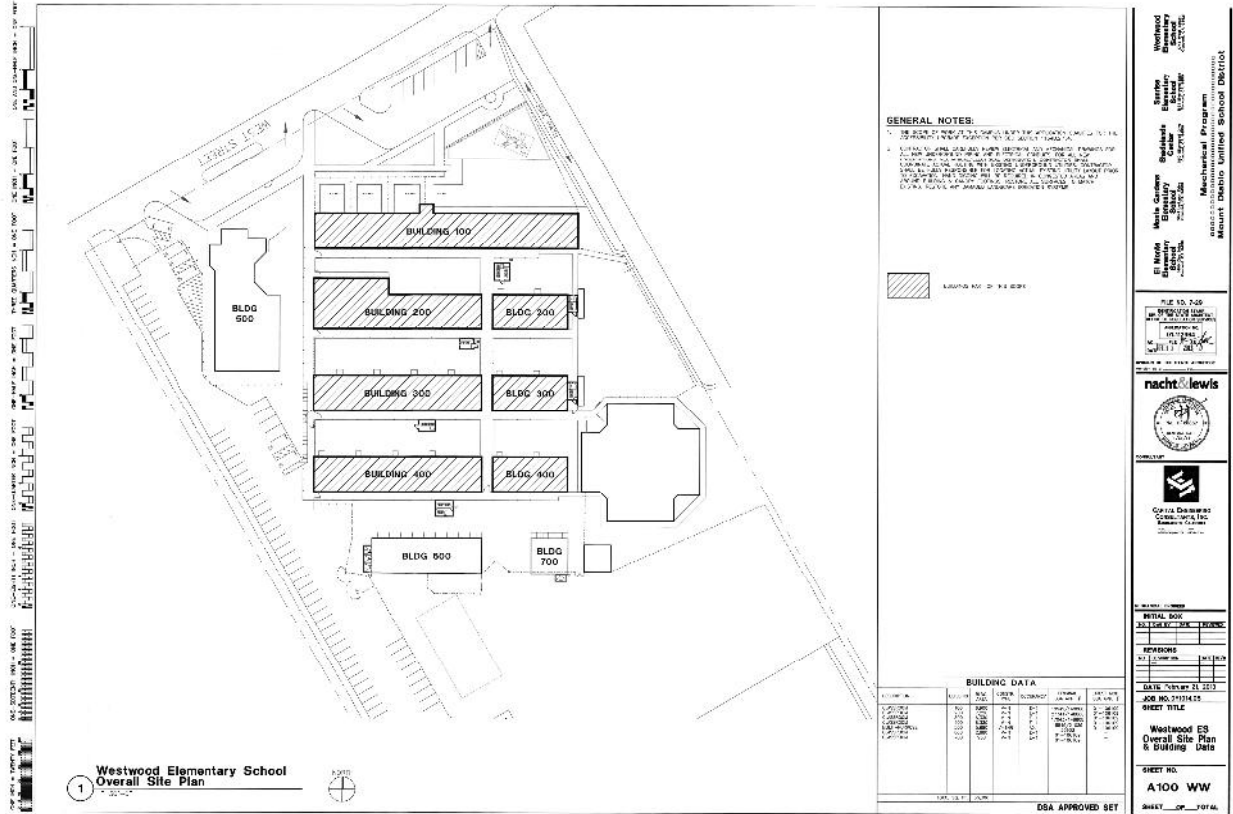


EXHIBIT "B-1"

DESCRIPTION OF PROJECT SITE

Attached is the Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project at:
 El Monte Elementary School, 1400 Dina Drive, Concord, CA 94518

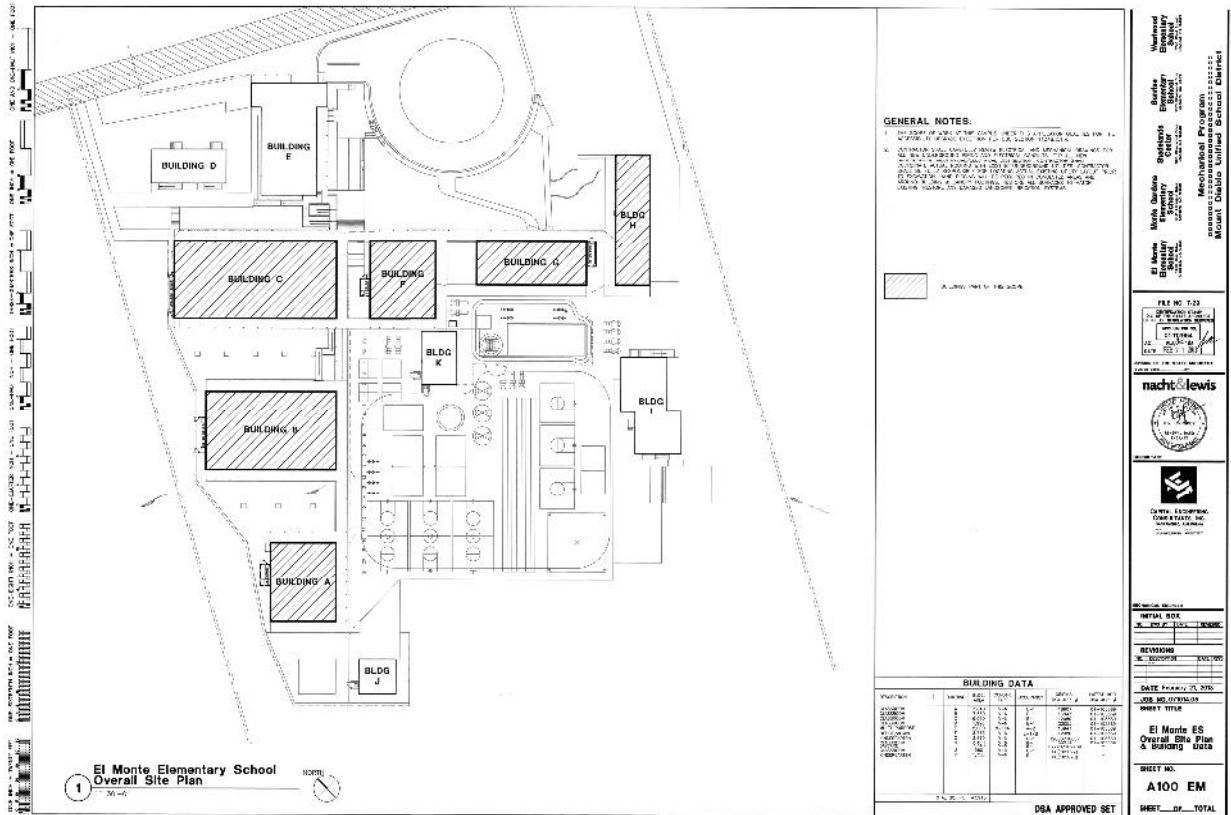


EXHIBIT "B-2"

DESCRIPTION OF PROJECT SITE

Attached is the Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.
 Monte Gardens Elementary School, 3841 Larkspur Drive, Concord, CA 94519

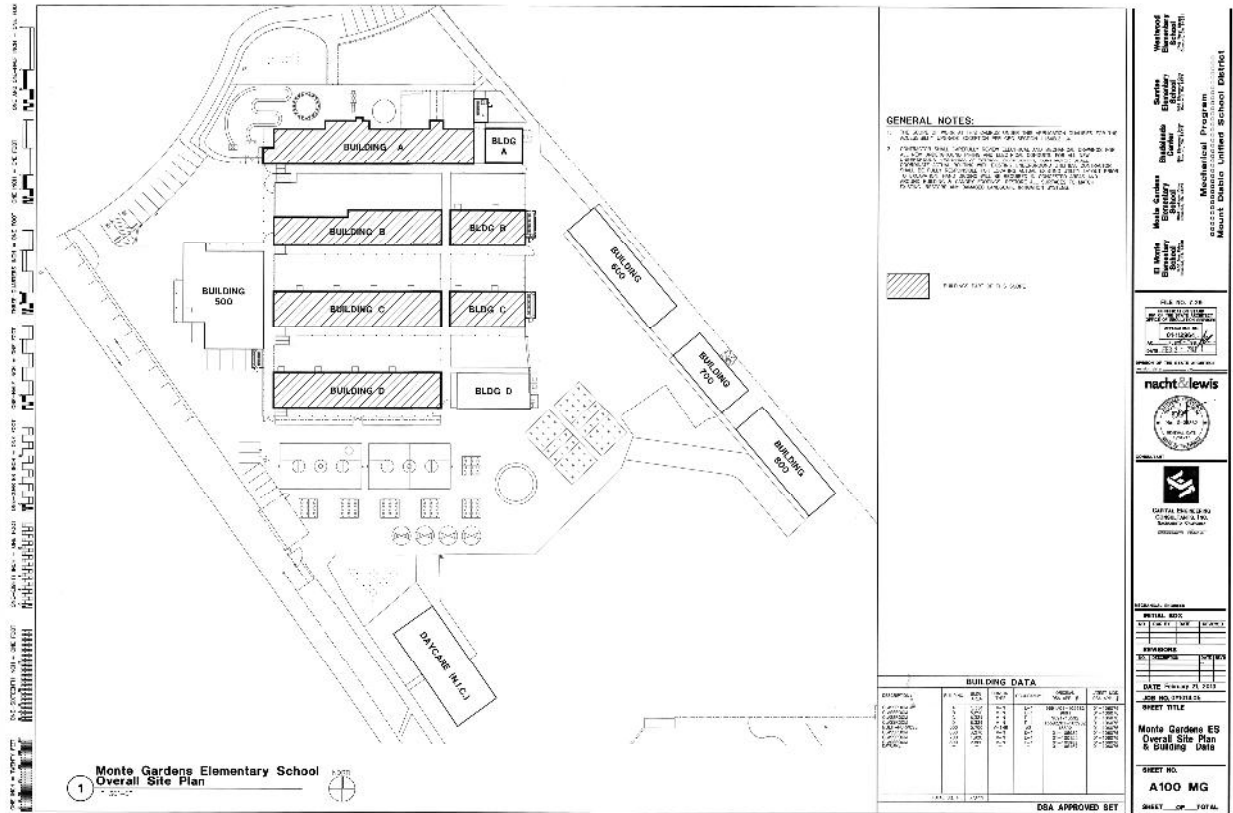


EXHIBIT "B-3"

DESCRIPTION OF PROJECT SITE

Attached is the Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.
 Shadelands Center, 1860 Silverwood Drive, Concord, CA 94519

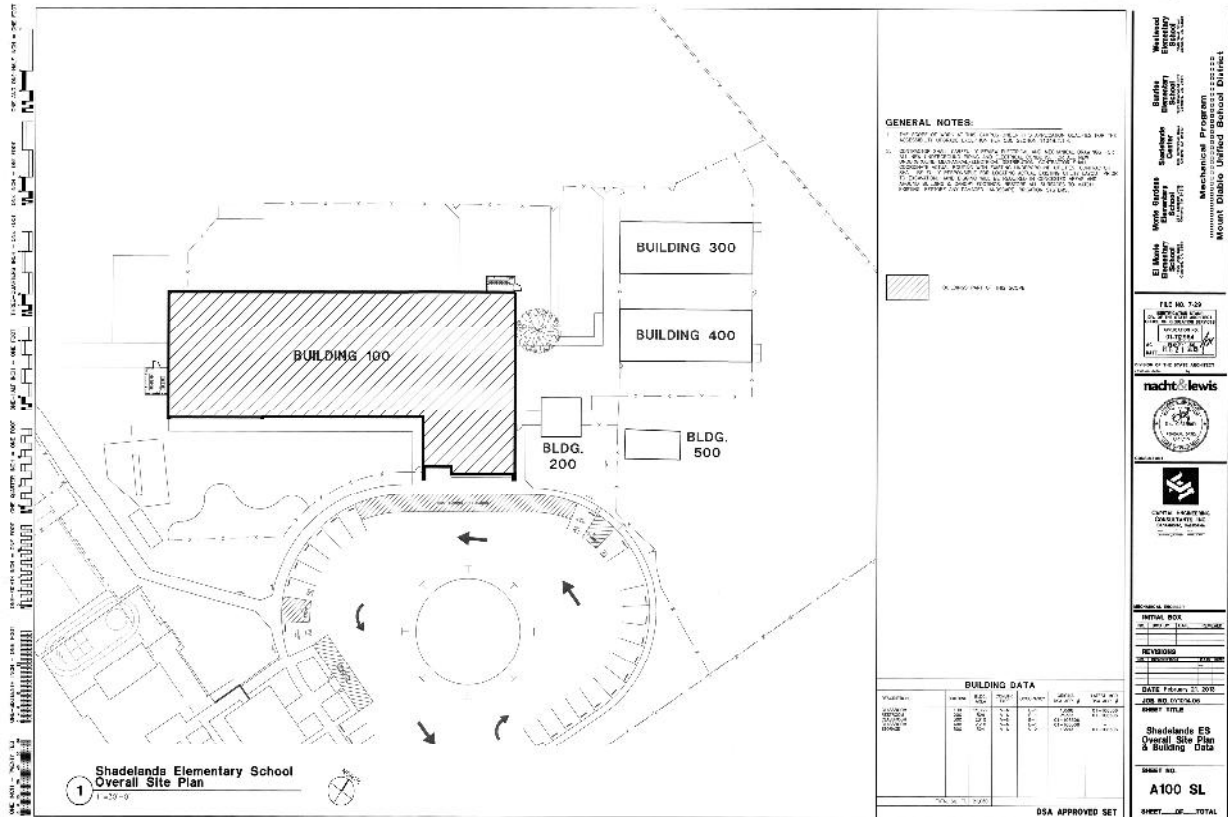


EXHIBIT "B-4"

DESCRIPTION OF PROJECT SITE

Attached is the Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.
 Sunrise Elementary School, 1861 Silverwood Drive, Concord, CA 94519

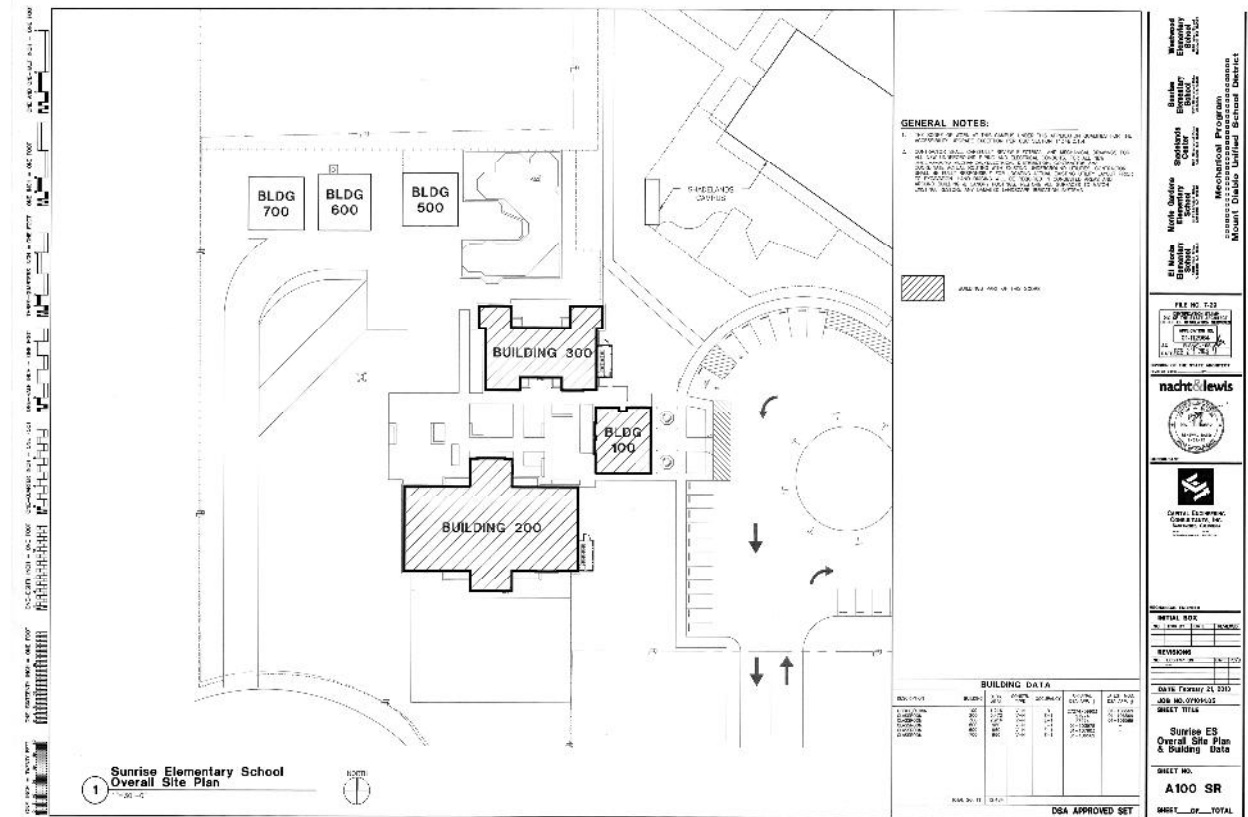


EXHIBIT "B-5"

DESCRIPTION OF PROJECT SITE

Attached is the Description for a portion of the School Site and Description of the Project that is subject to this Site Lease and upon which Developer will construct the Project.
 Westwood Elementary School, 1748 West Street, Concord, CA 94519

