



AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	May 17 2016 10:15AM - Regular School Board Meeting
AGENDA ITEM	OPEN ITEMS
CATEGORY	LL. OFFICE OF PORTFOLIO SERVICES
DEPARTMENT	Facility Planning and Real Estate

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input checked="" type="radio"/> Yes <input type="radio"/> No

ITEM No.:
LL-5.

TITLE:
Second Amendment to Modular Classroom Agreement

REQUESTED ACTION:
Approve the Second Amendment to Modular Classroom Agreement.

SUMMARY EXPLANATION AND BACKGROUND:
The City of Parkland (City) and The School Board of Broward County, Florida (School Board) respectively approved the original Modular Classroom Agreement on March 3, 2014 and March 17, 2014 to help accommodate for the increase in students from planned residential development in the City. See Supporting Docs for Continuation of Summary Explanation and Background. This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel and will be executed by the City after School Board approval.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
The source of these funds is the City of Parkland and is identified in the Amendment to the Adopted District Educational Facilities Plan (AADEFP), Fiscal Year 2015-16 to 2019-20, Addendum No. 2, Page No. 263.

EXHIBITS: (List)
(1) Continuation of the Summary Explanation and Background (2) Executive Summary (3) Second Amendment to Modular Classroom Agreement (4) Second Amendment to Modular Classroom Agreement REDLINE (5) Collaboration Form (6) AADEFP Fiscal Year 2015-16 to 2019-20 Addendum No 2 - Page No 263

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:	
Name: Chris O. Akagbosu	Phone: 754-321-2162
Name:	Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title

Leslie M. Brown - Chief Portfolio Services Officer

Signature
Leslie M. Brown
5/13/2016, 3:43:15 PM

Approved In Open Board Meeting On: **MAY 17 2016**

By: *Roalind Orjuel*
School Board Chair

Continuation of the Summary Explanation and Background

The Modular Classroom Agreement stated that in exchange for the City's payment to the School Board in the amount of two million twenty-five thousand dollars (\$2,025,000) ("Contribution Payments"), the School Board would construct, maintain, and operate eight (8) permanent modular classrooms at public school(s) within the corporate limits of the City and remove eight (8) portable classrooms. A first amendment to the Modular Classroom Agreement was approved by the City on July 17, 2015 and by the School Board on July 28, 2015 to reduce the number of permanent modular classrooms to be constructed to seven (7) and to extend the date to complete the modular classrooms to March 21, 2016. The reason for the amendment was in response to the escalation of construction costs and the time necessary for construction of the modular classrooms. The first amendment also reflected a reduction in the total Contribution Payments to the School Board by the City to one million nine hundred five thousand dollars (\$1,905,000). These terms were further changed by mutual consent of the parties on August 28, 2015 to require the construction of six modular classrooms with the completion date changed to July 20, 2016.

On September 8, 2015, the School Board awarded a construction contract for the six (6) modular classrooms to JWR Construction, Inc. However, JWR Construction, Inc. stated it would be unable to deliver the six (6) modular classrooms by the required completion date and cited a budget shortfall exceeding Seven Hundred Ninety Six Thousand Dollars (\$796,000) as the reasons for failure to fulfill the construction contract. Therefore, this Second Amendment modifies the Agreement to reflect the intent of the School Board to place, maintain and operate six (6) used modular classrooms at one or more public schools within the corporate limits of the City for at least ten (10) years from the new completion date of December 31, 2016, or until the City and the School Board mutually determine that the modular classrooms are no longer needed.

Executive Summary

Second Amendment to Modular Classroom Agreement

In order to accommodate for the increase in students in the City of Parkland (City) from the planned residential development of various properties in the City, the City and The School Board of Broward County, Florida (School Board) entered into the original Modular Classroom Agreement. The Modular Classroom Agreement stated that in exchange for payment of funds in the amount of \$2,025,000 from the City to the School Board, the School Board would construct, maintain, and operate eight (8) modular classrooms at one or more public schools located within the corporate limits of the City, and remove eight (8) portable classrooms located within the North School Impact Fee Service Area, which also includes the corporate limits of the City. The Modular Classroom Agreement also included a Modular Classroom Schedule that required payments to be made in three installments: 1) upon execution of the Agreement by the School Board, 2) by May 15, 2014, and 3) by February 15, 2015, to fund the completion of three modular classrooms by September 29, 2015 and five modular classrooms prior to the opening day of school in the 2016/17 school year.

Subsequently, the School Board received \$1,905,000 (Contribution Payments) from the City. It should be noted that there was a \$120,000 shortfall due to the loss of a contract purchaser to one of the properties originally anticipated to participate towards the Contribution Payments. In accordance with the Modular Classroom Agreement, the School Board utilized \$33,439 of the Contribution Payments to remove eight (8) portable classrooms at Riverglades Elementary School. With regard to the construction of the 8 modular units, the Office of Facilities and Construction staff advertised the construction project three times. The first time, there were no respondents and subsequently, modifications were made to the location of the units. The second time, a single firm successfully qualified for the project but due to a cone of silence violation, the proposal was rejected. With the third request for proposals, the School Board awarded the construction contract to JWR, Construction, Inc.

The First Amendment to Modular Classroom Agreement ("First Amendment") was processed in response to the funding shortfall, increased construction costs and delays. The First Amendment reduced the number of modular classrooms to be constructed to seven (7) modular classrooms and extended the completion date to March 21, 2016. The First Amendment included a provision which allowed the School Board to contract for less than seven (7) modular classrooms by mutual written consent of the parties. At the August 28, 2015, City Commission meeting, the School Board and the City mutually agreed to further reduce the number of modular classrooms to be constructed by the School Board from seven (7) to six (6) modular classrooms due to the continued escalation of costs and extended the date to complete construction of the modular classrooms to July 20, 2016.

The School Board utilized \$196,666.70 of the Contribution Payments for design services provided by the JWR Construction, Inc., leaving a balance of \$1,674,894.30 to complete the Modular Classrooms. After several months of being awarded the construction contract, JWR Construction, Inc. indicated that it would be unable to deliver the six (6) modular classrooms by July 20, 2016 and cited a budget shortfall exceeding Seven Hundred Ninety Six Thousand Dollars (\$796,000) as the reasons for failure to fulfill the contract provisions. Therefore, in order to still provide the needed modular classrooms, the District is proposing the Second Amendment to Modular Classroom Agreement to reflect the intent to relocate six (6) existing modular classrooms (from Martin Luther King Elementary School and place three (3) classrooms at Heron Heights Elementary School and three (3) classrooms at Park Trails Elementary School) with a new completion date of December 31, 2016. It should be noted that the Second Amendment to Modular Classroom Agreement states that if the six (6) modular classrooms are not installed, completed and in operation in accordance with the Modular Classroom Schedule contained in the Agreement, as amended, if after receipt of seven (7) days' written notice and opportunity to cure the School Board fails to correct such delay, the Agreement may be terminated by the City after an additional three (3) days' written notice, and the School Board shall return the balance, if any, of the unused or unapplied payments to the City within one month of the termination date.

Return to: (enclose self-addressed stamped envelope)

Name:

This Instrument Prepared by:

Address:

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SECOND AMENDMENT
TO
MODULAR CLASSROOM AGREEMENT

THIS SECOND AMENDMENT TO MODULAR CLASSROOM AGREEMENT ("Second Amendment") made this 17 day of May, 2016, by **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**, a body corporate existing under the laws of the State of Florida ("School Board"), with an address of 600 SE Third Avenue, Fort Lauderdale, FL 33301, and the **CITY OF PARKLAND**, a municipal corporation of the State of Florida ("City"), with an address of 6600 University Drive, Parkland, FL 33067. The "Effective Date" of this Second Amendment shall be the date on which the last party to this Second Amendment signs.

WITNESSETH:

WHEREAS, the School Board and the City entered into a Modular Classroom Agreement, with an Effective Date of ("Agreement") March 17, 2014; and

WHEREAS, the Agreement was entered into to enable the construction of eight (8) permanent modular classrooms by the School Board to accommodate for the increase of students anticipated from approved residential development within the City; and

WHEREAS, in response to escalating construction costs and unforeseen delays, the School Board and the City entered into a First Amendment to the Agreement with an Effective date of July 28, 2015 ("First Amendment") which reduced the number of modular classrooms to be constructed by the School Board, from eight (8) to seven (7) modular classrooms and extended the completion date to March 21, 2016; and

WHEREAS, due to the continued escalation of construction costs, the City, at its August 28, 2015 City Commission Meeting, agreed to further reduce the number of permanent modular classrooms to be constructed from seven (7) to six (6) modular classrooms, and extended the completion date to construct the modular classrooms from March 21, 2016 to July 20, 2016; and

WHEREAS, on September 8, 2015, the School Board approved a contract with a Design Builder for the design and construction of the six (6) permanent modular classrooms for a Guaranteed Maximum Price ("GMP") not to exceed One Million Eight Hundred Seventy One Thousand Five Hundred Sixty-One Dollars (\$1,871,561) by July 20, 2016; and

39 **WHEREAS**, on March 2, 2016, the Design Builder notified the School Board that it
40 could not deliver the six (6) modular classrooms for the GMP amount by July 20, 2016, citing a
41 construction cost shortfall exceeding Seven Hundred Ninety-Six Thousand Dollars (\$796,000);
42 and
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44 **WHEREAS**, on May 3, 2016, as a result of the Design Builders inability to deliver the
45 required number of classrooms by the required date, the School Board terminated its contract
46 with the Design Builder; and
47

48 **WHEREAS**, the School Board and the City have worked collaboratively to identify a
49 means, (as further described below), to still provide additional permanent capacity at one or more
50 public schools which are within the corporate limits of the City; and
51

52 **WHEREAS**, the School Board shall place, maintain and operate six (6) used modular
53 classrooms (“Modular Classrooms”) within the corporate limits of the City as provided in this
54 Second Amendment for at least ten (10) years or until the City and the School Board mutually
55 determine that the Modular Classrooms are no longer needed; and
56

57 **WHEREAS**, each of the subject Modular Classrooms shall provide at least 18 student
58 stations of permanent capacity, defined as the number of student stations in concrete buildings
59 that physically sit on the ground as calculated by the Florida Department of Education; and
60

61 **WHEREAS**, the parties acknowledge that the City has delivered One Million Nine
62 Hundred Five Thousand Dollars (\$1,905,000) to the School Board and that no additional monies
63 are due pursuant to the Agreement, as amended; and
64

65 **WHEREAS**, the proposed Modular Classrooms are intended to supplement any
66 otherwise required public school concurrency or school impact fee requirements and are not and
67 shall not be in lieu of any such requirements; and
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69 **WHEREAS**, the City is not incurring any independent financial obligations pursuant to
70 this Second Amendment but has agreed to provide to the School Board with only those payments
71 received from developers within the City who earmark said payments for the purposes set forth
72 herein and only on the condition that the monies be used solely to provide Modular Classrooms;
73 and
74

75 **WHEREAS**, the City and School Board desire to further amend the Agreement, as
76 amended, to reflect the changed conditions described above, while implementing and restating
77 the Agreement, as amended, to the fullest extent possible, subject to these changed conditions
78 and terms as set forth herein.
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80 **NOW THEREFORE**, in consideration of the payments, promises, covenants and
81 undertakings hereinafter set forth, the parties hereto, intending to be legally bound, agree as
82 follows:
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84 Section 1. Recitations. The recitals set forth above are true and correct and are
85 incorporated into this Second Amendment by this reference as if fully set forth herein.
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87 Section 2. Paragraph 2 of the Agreement, as amended, is hereby further amended to
88 read as follows:

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2. Payment and Placement of Modular Classrooms.

- a. Developers' and City's Payment for Modular Classrooms. Pursuant to the terms and conditions contained in separate agreements between the Developers, City, and County (as applicable), the Developers have paid funds to the City in the amount of One Million Nine Hundred and Five Thousand Dollars (\$1,905,000) ("Contribution Payments"). Such Contribution Payments were paid by the City to the School Board and shall be used by the School Board to place, maintain and operate the Modular Classrooms to be located at one or more public schools which are within the corporate limits of the City for at least ten (10) years or until the City and the School Board mutually determine that the Modular Classrooms are no longer needed. The City's payments to the School Board shall provide funding for a total of six (6) Modular Classrooms. Except as noted, the Contribution Payments shall be exclusively for said purpose.

In addition to the School Board's placement of the Modular Classrooms, the School Board utilized the Contribution Payments to remove eight (8) existing portable classrooms from Riverglades Elementary School, which is within the corporate limits of the City ("Portable Classroom Removals"). The School Board utilized Thirty-Three Thousand, Four Hundred and Thirty-Nine Dollars (\$33,439) of the Contribution Payments towards the Portable Classroom Removals and One Hundred Ninety-Six Thousand, Six Hundred Sixty-Six Dollars and Seventy Cents (\$196,666.70) of the Contribution Payments for design services provided by the JWR Construction, Inc., leaving a balance of One Million Six Hundred Seventy-Four Thousand, Eight Hundred Ninety-Four Dollars and Thirty Cents (\$1,674,894.30) to complete the Modular Classrooms.

It is understood and agreed that the Contribution Payments have been made by the City and accepted by the School Board solely for the purpose of providing the Modular Classrooms. Therefore, the School Board shall return the balance, if any, of the unused or unapplied Contribution Payments to the City within one month of the completion date provided that, the School Board shall not be required to refund the One Hundred Ninety-Six Thousand, Six Hundred Sixty-Six Dollars and Seventy Cents (\$196,666.70) expended on design services unless funds are recovered from JWR Construction Inc. as a part of any lawsuit or settlement.

- b. School Board's Placement of Modular Classrooms. In accordance with the Modular Classroom Schedule, the School Board shall place six (6) Modular Classrooms as stated herein. Except for the payment of the Contribution Payments from the Developers to the City, and from the City to the School Board, the Developers and City shall not be responsible for the costs or expenses associated with the School Board's placement, maintenance, and/or operation of the Modular Classrooms or the Portable Classroom Removals, other than those included in this Second Amendment.
- c. The School Board shall be responsible for maintaining and operating the Modular Classrooms in the same manner as other public schools located within the City's municipal limits, at its sole cost and expense for a period of at least ten (10) years from the Modular Classroom completion date, or until the City and the School Board

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mutually determine that the Modular Classrooms are no longer needed. Once placed in the City, the Modular Classrooms shall not be relocated to another school campus without the City’s approval and will include covered walkways.

- d. The School Board’s obligation to place the Modular Classrooms and the Portable Classroom Removals pursuant to this Second Amendment, was conditioned upon the receipt of the Contribution Payments by the City to the School Board, of which the School Board acknowledges receipt of the Contribution Payments.
- e. The “Modular Classroom Schedule” is as follows:

Modular Classroom Schedule

Due Date	Deliverable
August 1, 2016	Issuance of building permit by Broward County Public Schools Building Department
September 16, 2016	Completion of site preparation and building pad
October 9, 2016	Arrival of existing Modular Classrooms onsite
December 9, 2016	Substantial completion date
December 31, 2016	Final completion date

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- f. Should the School Board fail to provide a deliverable by its associated due date as set forth in the Modular Classroom Schedule, and if after receipt of seven (7) days’ written notice and opportunity to cure the School Board fails to correct such delay, the Agreement may be terminated by the City after an additional three (3) days’ written notice, and the School Board shall return the balance, if any, of the unused or unapplied payments to the City within one month of the termination date together with an accounting of expenditures. Notwithstanding the foregoing, the School Board may deliver less or more than six (6) Modular Classrooms or extend the completion date specified in the Modular Classroom Schedule, by mutual written acknowledgement (which may be evidenced by email) between both parties, whereupon the Agreement, as amended (and this Second Amendment thereto) shall continue in full force and effect. Any reductions in the number of classrooms, delays in the completion date, or changes to the Modular Classrooms once approved, are subject to the approval of the City Commission.

Section 3. Further Assurances. The parties shall execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and shall perform such acts as shall reasonably be requested of them in order to carry out this Second Amendment.

173 Section 4. Amendments. No modification, further amendment, or release of the
174 terms or conditions contained herein shall be effective unless executed by the School Board and
175 the City.

176
177 Section 5. Counterparts. This Second Amendment may be executed in counterparts,
178 each of which may be deemed to be an original. It shall be fully executed when each party
179 whose signature is required has signed at least one counterpart even though no one counterpart
180 contains the signatures of all of the parties of this Second Amendment.

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182 Section 6. Joint Effort. The parties acknowledge that they have sought and
183 obtained whatever competent advice and counsel as was necessary for them to form a full and
184 complete understanding of all rights and obligations herein. The preparation of this Second
185 Amendment has been a joint effort of the parties and the resulting documents shall not, solely as
186 a matter of judicial construction, be construed more severely against one of the parties than the
187 other.

188
189 Section 7. Merger Clause. This Second Amendment, the First Amendment and
190 the Agreement and all the exhibits referenced herein and annexed hereto sets forth the entire
191 agreement among the parties hereto, and it supersedes all prior and contemporaneous
192 negotiations, understandings and agreements, written or oral, among the parties.

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194 Section 8. Severability. If any provision of this Second Amendment is declared
195 invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable
196 provision will be stricken from the Second Amendment, and the balance of the Second
197 Amendment will remain in full force and effect as long as doing so would not affect the overall
198 purpose or intent of the Second Amendment.

199
200 Section 9. Authority. Each person signing this Second Amendment on behalf of a
201 party individually warrants that he or she has full legal power to execute this Second
202 Amendment on behalf of the party for whom he or she is signing, and to bind and obligate such
203 party with respect to all provisions contained in this Second Amendment.

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205 Section 10. The parties hereby agree that the Agreement as amended by the First and
206 this Second Amendment remains in full force and effect. To the extent of any inconsistency
207 between the terms of this Second Amendment and the terms of the Agreement, or the First
208 Amendment, the terms of the Second Amendment shall supersede and control to the extent of
209 such inconsistency.

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212 SIGNATURE PAGES FOLLOW]

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Witnesses:

Betty McClary
Signature

BETTY MCCLARY
Print Name

Mollie L. Copeland
Signature

Mollie L. Copeland
Print Name

ATTEST: [Signature]
Superintendent of Schools

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

By: Rosalind Osgood
(Signature)

Print Name: Dr. Rosalind Osgood
Title: School Board Chair

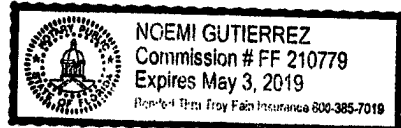
Dated: 3/17/14

235 STATE OF FLORIDA)
236) SS
237 COUNTY OF BROWARD)

238 The foregoing instrument was acknowledged before me this ____ day of _____,
239 2016, by Dr. Rosalind Osgood, as School Board Chair of THE SCHOOL BOARD OF
240 BROWARD COUNTY, FLORIDA.

241 He or she is:
242 [] personally known to me, or
243 [] produced identification. Type of identification produced _____

244 (Seal)



NOTARY PUBLIC: [Signature]
Print Name: NOEMI GUTIERREZ
My commission expires: 5/3/19

248 Approved as to form: [Signature]
249 Office of the General Counsel

250 Witnesses:
251 Kimberly Skaggs
252
253 Signature

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255 Kimberly Skaggs
256 Print Name

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258 Samuel Lee
259 Signature

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262 Laurie Anderson
263 Print Name

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265 ATTEST: Jennifer Johnson
266 City Clerk

267 STATE OF FLORIDA)
268) SS
269 COUNTY OF BROWARD)

270 The foregoing instrument was acknowledged before me this 18 day of May,
271 2016, by Michael Udine as Mayor of THE CITY OF PARKLAND.
272 He or she is:
273 [] personally known to me, or
274 [] produced identification. Type of identification produced _____.

275 (Seal)



THE CITY OF PARKLAND
By: [Signature]
(Signature)
Print Name: Michael Udine
Title: Mayor
Dated: May 18, 2016

NOTARY PUBLIC: Marilyn Blancett
Print Name: Marilyn Blancett
My commission expires:

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279 Approved as to form: [Signature]

280 Andrew S. Maurodis, City Attorney

Return to: (enclose self-addressed stamped envelope)

Name:

This Instrument Prepared by:

Address:

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SECOND AMENDMENT
TO
MODULAR CLASSROOM AGREEMENT

THIS SECOND AMENDMENT TO MODULAR CLASSROOM AGREEMENT ("Second Amendment") made this _____ day of _____, 2016, by **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**, a body corporate existing under the laws of the State of Florida ("School Board"), with an address of 600 SE Third Avenue, Fort Lauderdale, FL 33301, and the **CITY OF PARKLAND**, a municipal corporation of the State of Florida ("City"), with an address of 6600 University Drive, Parkland, FL 33067. The "Effective Date" of this Second Amendment shall be the date on which the last party to this Second Amendment signs.

WITNESSETH:

~~WHEREAS, the School Board and the City entered into original a Modular Classroom Agreement, with an Effective Date of dated March 17, 2014 ("Agreement") was executed by the City on March 3, 2014 and the School Board on March 17, 2014; and~~

~~WHEREAS, the Agreement was entered into; and~~

~~WHEREAS, since the Agreement was approved by the City and the School Board, the School Board has determined that the cost of to enable the construction of eight (8) permanent modular classrooms has increased beyond that which was originally anticipated by the School Board to accommodate for the increase of students anticipated from approved residential development within the City; and~~

~~WHEREAS, in response to escalating construction costs and unforeseen delays, the School Board and the City entered into since a First Amendment to the Agreement with an Effective date of was dated July 15, 2015 and approved by the City on July 17, 2015 and the School Board on July 28, 2015 ("First Amendment") which reduced the number of modular classrooms to be constructed by approved by the City and the School Board, from eight (8) to seven (7) modular classrooms and extended the completion date of the modular classrooms to March 21, 2016 in response to escalating costs and unforeseen delays; and~~

~~design and the School Board has determined that time necessary for construction of the eight (8) permanent modular classrooms has increased beyond that which was originally~~

38 ~~anticipated by the School Board together with the loss of a contract purchaser which reduced the~~
39 ~~anticipated funds available for the construction of the modular classrooms; and~~

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41 WHEREAS, due to the continued escalation of construction costs, at the August 28,
42 2015 City Commission Meeting, the School Board and the City, at its August 28, 2015 City
43 Commission Meeting, mutually agreed to further reduce the number of permanent modular
44 classrooms to be constructed from seven (7) to six (6) modular classrooms, due to the continued
45 escalation of costs and extended the completion date to construct the modular classrooms from
46 March 21, 2016 to July 20, 2016; and

47
48 WHEREAS, on September 8, 2015, the School Board approved a contract with a Design
49 Builder for the design and construction of met the September 16, 2015 deadline and awarded a
50 construction contract to a contractor, but the contractor selected by the School Board was unable
51 to deliver the six (6) permanent modular classrooms for a Guaranteed Maximum Price ("GMP")
52 not to exceed One Million Eight Hundred Seventy One Thousand Five Hundred Sixty-One
53 Dollars (\$1,871,561) by within the required completion date (July 20, 2016; and

54
55 WHEREAS, on March 2, 2016, the Design Builder) notified the School Board that it
56 could not deliver the six (6) modular classrooms for the GMP amount by July 20, 2016, citing a
57 construction cost and cited an initial budget shortfall of approximately exceeding Seven Hundred
58 Ninety-Six Thousand Dollars (- Eight Hundred Thousand Dollars (\$796800,000)) as the reason
59 for failure to fulfill the contract provisions in order to accommodate for the projected increase in
60 new additional students into the City, the City and School Board have agreed that in exchange
61 for the City transferring and the School Board's receipt of the funds in the amount of One
62 Million Nine Hundred Five Thousand Dollars (\$1,905,000), the School Board shall construct,
63 maintain and operate seven (7) permanent modular classrooms ("Modular Classrooms") in the
64 corporate limits of the City as provided in this Amendment for at least five (5) years; and

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66 WHEREAS, on May 3, 2016, as a result of the Design Builders inability to deliver the
67 required number of classrooms by the required date, the School Board terminated its contract
68 with the Design Builder; and

69
70 WHEREAS, the School Board and the City have worked collaboratively to identify a
71 means, (as further described below), to still provide additional permanent capacity at one or more
72 public schools which are within the corporate limits of the City; and

73
74 WHEREAS, the School Board shall will now place, maintain and operate six (6) used
75 modular classrooms ("Modular Classrooms") within the corporate limits of the City as provided
76 in this Second Amendment for at least ten (10) years or until the City and the School Board
77 mutually determine that the Modular Classrooms are no longer needed; and

78
79 WHEREAS, each of the subject mModular eClassrooms shall provide at least 18 student
80 stations of permanent capacity, defined as the number of student stations in concrete buildings
81 that physically sit on the ground as calculated by the Florida Department of Education; and

82
83
84 WHEREAS, the parties acknowledge that the City has delivered One Million Nine
85 Hundred Five Thousand Dollars (\$1,905,000) to the School Board and that no additional monies
86 are due pursuant to the Agreement, as amended; and

88 **WHEREAS**, the proposed Modular Classrooms are intended to supplement any
89 otherwise required public school concurrency or school impact fee requirements and are not and
90 shall not be in lieu of any such requirements; and
91

92 **WHEREAS**, the City is not incurring any independent financial obligations pursuant to
93 this Second Amendment but has agreed to provide to the School Board with only those payments
94 received from developers within the City who earmark said payments for the purposes set forth
95 herein and only on the condition that the monies be used solely to provide Modular Classrooms;
96 and
97

98 **WHEREAS**, the City and School Board desire to further amend the Agreement, as
99 amended, to reflect the changed conditions described above, while implementing and restating
100 the Agreement, as amended, to the fullest extent possible, subject to these changed conditions
101 and terms as set forth herein.
102

103 **NOW THEREFORE**, in consideration of the payments, promises, covenants and
104 undertakings hereinafter set forth, the parties hereto, intending to be legally bound, agree as
105 follows:
106

107 Section 1. Recitations. The recitals set forth above are true and correct and are
108 incorporated into this Second Amendment by this reference as if fully set forth herein.
109

110 Section 2. Paragraph 2 of the Agreement, as amended, is hereby further amended to
111 read as follows:
112

113 2. Payment and ~~Location~~ Placement of Modular Classrooms.
114

115 a. Developers' and City's Payment for Modular Classrooms. Pursuant to the terms
116 and conditions contained in separate agreements between the Developers, City, and
117 County (as applicable), the Developers have paid funds to the City in the amount of
118 One Million Nine Hundred and Five Thousand Dollars (\$1,905,000) ("Contribution
119 Payments"). Such Contribution Payments were paid by the City to the School Board
120 and shall be used by the School Board to ~~construct~~place, maintain and operate the
121 Modular Classrooms to be located at one or more public schools which are within the
122 corporate limits of the City for at least ~~five-ten~~ (\$10) years or until the City and the
123 School Board mutually determine that the Modular Classrooms are no longer needed.
124 The City's payments to the School Board ~~are anticipated to~~shall provide funding for
125 a total of ~~seven (7)~~ six (6) Modular Classrooms. Except as noted, the Contribution
126 Payments shall be exclusively for said purpose.
127

128 In addition to the School Board's ~~construction~~ placement of the Modular Classrooms,
129 the School Board utilized the Contribution Payments to remove eight (8) existing
130 portable classrooms from Riverglades Elementary School, which is within the
131 corporate limits of the City ("Portable Classroom Removals"). ~~Subsequent to the~~
132 ~~Portable Classroom Removals, the remaining Contribution Payments balance is One~~
133 ~~Million Eight Hundred Seventy One Thousand Five Hundred Sixty One Dollars~~
134 ~~(\$1,871,561). The School Board utilized Thirty-Three Thousand, Four Hundred and~~
135 ~~Thirty-Nine Dollars (\$33,439) of the Contribution Payments towards the Portable~~
136 ~~Classroom Removals and One Hundred Ninety-Six Thousand, Six Hundred Sixty-Six~~
137 ~~Dollars and Seventy Cents (\$196,666.70) of the Contribution Payments for design~~

138 services provided by the JWR Construction, Inc., leaving a balance of One Million
139 Six Hundred Seventy-Four Thousand, Eight Hundred Ninety-Four Dollars and Thirty
140 Cents (\$1,674,894.30) to complete the Modular Classrooms.

141
142 It is understood and agreed that the Contribution Payments have been made by the
143 City and accepted by the School Board solely for the purpose of providing the
144 Modular Classrooms.

145 ~~The actual number of modular classrooms that will be constructed will be based upon~~
146 ~~the remaining Contribution Payments balance as received by the City from Developer~~
147 ~~payments; however, the maximum possible number of modular classrooms will be~~
148 ~~constructed for the amount of money paid to the School Board by the City. In the~~
149 ~~event the payments are insufficient to construct a complete modular classroom the~~
150 ~~City shall not be required to pay the additional payments to the School Board and~~
151 ~~therefore, the School Board shall return the balance, if any, of the unused or~~
152 ~~unapplied Contribution Payments to the City within one month of the completion~~
153 ~~date, or by no later than July 30, 2016. Any such returned funds may be used by the~~
154 ~~City for a community project or other municipal purposes as determined in the sole~~
155 ~~discretion of the City Commission to accommodate and benefit the City provided~~
156 ~~that, the School Board shall not be required to refund the One Hundred Ninety-Six~~
157 ~~Thousand, Six Hundred Sixty-Six Dollars and Seventy Cents (\$196,666.70) expended~~
158 ~~on design services unless funds are recovered from JWR Construction Inc. as a part~~
159 ~~of any lawsuit or settlement.~~

- 160
161
162 b. School Board's Construction-Placement of Modular Classrooms. In accordance
163 with the Modular Classroom Schedule, the School Board shall ~~construct~~ place six (6)
164 ~~(or cause to be constructed) the~~ Modular Classrooms as stated herein. Except for the
165 payment of the Contribution Payments from the Developers to the City, and from the
166 City to the School Board, the Developers and City shall not be responsible for the
167 costs or expenses associated with the School Board's ~~construction~~ placement,
168 maintenance, and/or operation of the Modular Classrooms or the Portable Classroom
169 ~~removals~~ Removals, other than those included in this Second Amendment.
- 170
171 c. The School Board shall be responsible for maintaining and operating the Modular
172 Classrooms in the same manner as other public schools located within the City's
173 municipal limits, at its sole cost and expense for a period of at least ten (10) five-years
174 from the Modular Classroom completion of construction date, or until the City and the
175 School Board mutually determine that the Modular Classrooms are no longer needed.
176 Once placed in the City, the Modular Classrooms shall not be relocated to another
177 school campus without the City's approval and will include covered walkways.
- 178
179 ~~d. The School Board's construction of the Modular Classrooms shall be done in a good~~
180 ~~and workmanlike manner, free of material defects, and shall comply with all the State~~
181 ~~of Florida Requirements for Educational Facilities (SREF) and applicable School~~
182 ~~Board policies and procedures.~~
- 183
184 e.d. The School Board's obligation to ~~construct~~ place the Modular Classrooms—and the
185 Portable Classroom Removals pursuant to this Second Amendment, was conditioned

upon the receipt of the Contribution Payments by the City to the School Board, of which the School Board acknowledges receipt of the Contribution Payments.

f.e. The “Modular Classroom Schedule” is as follows:

Modular Classroom Schedule

Completion—Due Date—of Modular Classrooms—by School Board	Deliverable Antieipated Number of Modular Classrooms to be constructed
<u>August 1, 2016</u>	<u>Issuance of building permit by Broward County Public Schools Building Department</u>
<u>September 16, 2016</u>	<u>Completion of site preparation and building pad</u>
<u>October 9, 2016</u>	<u>Arrival of existing Modular Classrooms onsite</u>
<u>December 9, 2016</u>	<u>Substantial completion date</u>
<u>March 21, 2016, or as otherwise extended by mutual agreement of the City Manager and Superintendent of Schools</u> <u>December 31, 2016:</u>	<u>7Final completion date</u>

g.f. ~~If Should a contract for the seven (7) the School Board fail to provide a deliverable by its associated due date as set forth in the Modular Classroom Schedule, and if six (6) Modular Classrooms as provided for herein is are not installed, completed and in operation in accordance with the Modular Classroom Schedule, executed by the School Board no later than September 16, 2015, the Agreement, as amended (including this Second Amendment thereto) may, upon ten (10) days written notice~~ after receipt of seven (7) days’ written notice and opportunity to cure the School Board fails to correct such delay, the Agreement may be immediately terminated by the City after an additional three (3) days’ written notice either party, and the School Board shall return the balance, if any, of the unused or unapplied payments to the City within one month of the termination date together with an accounting of expenditures. and the sum of \$1,871,561, the remaining balance of the \$1,905,000 (which the City paid to the School Board pursuant to the Agreement together with any addition funds paid by the City of Parkland pursuant to the Agreement (or this Amendment thereto) shall be returned to the City of Parkland within 30 days from the date of cancellation and the Agreement (and this Amendment thereto) shall become void and of no further force and effect upon receipt of said payment to the City and to the School Board. Notwithstanding the foregoing, the School Board may ~~contract for~~ deliver less or more than seven (7) six (6) Modular Classrooms (by no later than the date specified above) or extend the completion date specified in the Modular Classroom Schedule, by mutual written acknowledgement (which may be evidenced by email) between both parties, whereupon the Agreement, as amended (and this Second Amendment thereto) shall continue in full force and effect. Any reductions in the number of classrooms, delays in the completion date, or

217 changes to the Modular Classrooms once approved, are subject to the approval of the
218 City Commission.

219
220 Section 3. Further Assurances. The parties shall execute, acknowledge and deliver
221 and cause to be done, executed, acknowledged and delivered all further assurances and shall
222 perform such acts as shall reasonably be requested of them in order to carry out this Second
223 Amendment.
224

225 Section 4. Amendments. No modification, further amendment, or release of the
226 terms or conditions contained herein shall be effective unless executed by the School Board and
227 the City.
228

229 Section 5. Counterparts. This Second Amendment may be executed in counterparts,
230 each of which may be deemed to be an original. It shall be fully executed when each party
231 whose signature is required has signed at least one counterpart even though no one counterpart
232 contains the signatures of all of the parties of this Second Amendment.
233

234 Section 6. Joint Effort. The parties acknowledge that they have sought and
235 obtained whatever competent advice and counsel as was necessary for them to form a full and
236 complete understanding of all rights and obligations herein. The preparation of this Second
237 Amendment has been a joint effort of the parties and the resulting documents shall not, solely as
238 a matter of judicial construction, be construed more severely against one of the parties than the
239 other.
240

241 Section 7. Merger Clause. This Second Amendment, the First Amendment and
242 the Agreement and all the exhibits referenced herein and annexed hereto sets forth the entire
243 agreement among the parties hereto, and it supersedes all prior and contemporaneous
244 negotiations, understandings and agreements, written or oral, among the parties.
245

246 Section 8. Severability. If any provision of this Second Amendment is declared
247 invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable
248 provision will be stricken from the Second Amendment, and the balance of the Second
249 Amendment will remain in full force and effect as long as doing so would not affect the overall
250 purpose or intent of the Second Amendment.
251

252 Section 9. Authority. Each person signing this Second Amendment on behalf of a
253 party individually warrants that he or she has full legal power to execute this Second
254 Amendment on behalf of the party for whom he or she is signing, and to bind and obligate such
255 party with respect to all provisions contained in this Second Amendment.
256

257 Section 10. The parties hereby agree that the Agreement ~~and the First Amendment,~~ as
258 amended by the First and this Second Amendment remains in full force and effect. To the extent
259 of any inconsistency between the terms of this Second Amendment and the terms of the
260 Agreement, or the First Amendment, the terms of the Second Amendment shall supersede and
261 control to the extent of such inconsistency.
262

263 [REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

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Witnesses:

**THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA**

Signature

By: _____

(Signature)

Print Name

Print Name: Dr. Rosalind Osgood

Title: School Board Chair

Signature

Dated: _____

Print Name

ATTEST: _____
Superintendent of Schools

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____,
~~2015~~2016, by Dr. Rosalind Osgood, as School Board Chair of THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA.

He or she is:
[] personally known to me, or
[] produced identification. Type of identification produced _____.

(Seal) NOTARY PUBLIC:

Print Name: _____

My commission expires:

Approved as to form: _____
Office of the General Counsel

302 Witnesses:

THE CITY OF PARKLAND

303

304

305 _____
Signature

By: _____

306

307

308

309 _____
Print Name

(Signature)

Print Name: Michael Udine

310

311

312 _____
Signature

Title: Mayor

Dated: _____

313

314

315 _____
Print Name

316

317 ATTEST: _____

318 City Clerk

319 STATE OF FLORIDA)

320) SS

321 COUNTY OF BROWARD)

322 The foregoing instrument was acknowledged before me this ____ day of _____,
323 ~~2015~~2016, by Michael Udine as Mayor of THE CITY OF PARKLAND.

324 He or she is:

325 [] personally known to me, or

326 [] produced identification. Type of identification produced _____.

327 (Seal)

NOTARY PUBLIC:

328

Print Name: _____

329

My commission expires:

330

331 Approved as to form: _____

332

Andrew S. Maurodis, City Attorney

COLLABORATION

SIGN-OFF FORM

Title of Agenda Request Item: Second Amendment to Modular Classroom Agreement with the City of Parkland

School Board Meeting Date: 05-17-2016

- All projects have been appropriated in the Adopted District Educational Facilities Plan (September 8, 2015) and in the District's Capital Budget.
- The following project(s) have not been appropriated in the Adopted District Educational Facilities Plan (September 8, 2015) and in the District's Capital Budget.

Comments: The source of these funds is the City of Parkland and is identified in the Adopted District Educational Facilities Plan (ADEFP), Fiscal Year 2015-16 to 2019-20, Addendum #4, Page #275.


Department Name

Capital Budget

Department Head Name

Omar Shim
Director

Department Head Signature



5/16/2016

Note: By signing this collaboration the Capital Budget Department is acknowledging that the budget impact as stated is correct. Other aspects of the agenda item are the responsibility of the department submitting the item.

Modular Classroom Agreement – City of Parkland

This addendum is attached to and made a part of the Amendment to the Adopted District Educational Facilities Plan.

On March 17, 2014 the School Board approved a Modular Classroom Agreement with the City of Parkland (LL-5). Per the Agreement Parkland is paying for:

- Construction of up to 8 permanent modular classrooms within the City limits *
- Removal of 8 portable classrooms within the North School Impact Fee Service Area

The maximum funding included in the Agreement is \$2,025,000, however as of April 2015, the School Board has only received \$1,905,000 from the City of Parkland.

Funding Summary

<u>Date</u>	<u>Action</u>	<u>Amount</u>
04/03/2014	Payment Received	\$425,000
07/14/2014	Payment Received	450,000
02/11/2015	Payment Received	1,030,000
Sub-Total		\$1,905,000
Less:		
	Demolition of 8 Portables at Riverglades Elementary	(33,439)
Balance of Funds available for construction of up to 8 permanent modular classrooms		\$1,871,561 *

The Facilities Department is actively seeking proposals to construct the modular classrooms. The current plan is to build 4 modular classrooms at Heron Heights Elementary, and 2 to 4 classrooms at Park Trails Elementary. The final determination for the number of classrooms is dependent on the prices of the construction bids.

The Adopted District Educational Facilities Plan is amended by this addendum to remove the 8 modular classroom addition at Riverglades Elementary (page 197), add a 4 classroom modular addition at Heron Heights Elementary, and add a 2 to 4 classroom modular classroom addition at Park Trails Elementary. The \$1,871,561 will be split between Heron Heights and Park Trails when more information is available based on the construction bids.

* The School Board is only obligated to construct the maximum number of modular classrooms that can be fully funded by the payments covered in the Agreement.