

F.08. Agreement with the City of San Diego for the Incorporation of an Educational Facility in the New Main Downtown Library (Board Governance Policy: OE-13)

Meeting: 06/23/2009
Category: F. OPERATIONAL MATTERS RESERVED FOR THE BOARD
Agenda Type: Action Preferred Date:
Fiscal Impact: Yes Absolute Date:
Dollar \$20,000,000.00 Budgeted: Yes
Amount: Budget Source: Proposition S Funds

Agenda Item Content

RECOMMENDATION: Approve a Letter of Intent (LOI) agreement with the City of San Diego for the placement of a charter school in the new central library to support downtown educational requirements.

FISCAL IMPACT: The district will enter into a 40-year, \$20 million lease to acquire use of two floors of the central library for a secondary school. This amount will be paid to the City in installments during the course of construction of the shell building. Proposition S funds will cover the lease costs. The Prop S ballot measure earmarked \$20 million dollars to provide support educational opportunities in the downtown area.

BACKGROUND: For several weeks, district and city staff, and supporting real estate, legal brokerage experts have been negotiating a library-high school partnership. At the June 9, 2009 closed session, the board agreed to pursue a 40-year, \$20 million lease with the City.

The agreement before the board is between the district and the City of San Diego for two contiguous floors (sixth and seventh) to be used as a charter school educational facility. The planned development of the new main library building is located at 11th Street, Park Boulevard, J Street, and K Street in downtown San Diego. The lease term is for 40 years, with the option to purchase the premises at the end of the 10th, 20th, 30th, and 40th years of the lease term. The purchase price will be the greater of: (a) the fair market value; or (b) tenant's proportionate share (estimated at 23 percent) of actual building shell construction costs with land value incorporated at \$200 per square foot. The method for determining fair market value will be agreed to and contained in the lease document. Either party has the ability to terminate prior to construction as outlined in the agreement. See attachment A.

Additionally, the Legal Services Office has prepared an assenting opinion confirming language contained in the Proposition S ballot measure, under the headings "Joint Use" and "Additional Projects," which permits the district to "Enter into agreements with the City of San Diego, County of San Diego, or other public agencies for nonprofit organizations for joint use of school facilities financed with the proceeds of the bonds" and, "Provide matching funds to construct classrooms and schools in the downtown area to meet educational needs of the district." See attachment B.

[Originator/Contact: William Kowba, Chief Special Projects Officer, 619.725.8190, wkowba@sandi.net]

ICOC Prop S, Exhibit 3.2
June 22, 2009



Attachment A-Letter of Intent, New Main Library, FINAL.pdf 062309 Attach B Legal Opinion re PropS Central Library Use.pdf

Created on 06/10/2009 at 06:00 PM by Vira Villarreal. Last update on 06/17/2009 by Josefina Viorato.



San Diego Unified School District

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Legal Services
Sandra T.M. Chong
Assistant General Counsel

[VIA EMAIL ONLY]

DATE: June 8, 2009

TO: Stu Markey, Executive Director
2008 Capital Improvement Bond Program

FROM: Sandra T.M. Chong, Assistant General Counsel

SUBJECT: Use of Proposition S funds relating central library/high school initiative

This confirms that the proposed public high school occupying two high-rise floors of the future downtown public library in the City of San Diego is a Proposition S project and, hence, a permissible use of Proposition S funds.

The Proposition S ballot measure contains language under the heading "Additional Projects" that states, "Provide matching funds to construct classrooms and schools in the downtown area to meet educational needs of the district." The ballot measure does not specify the dollar amount, but our understanding is that District has allocated \$20 million under Proposition S for this purpose.

Under the heading "Bond Authorization" of the Proposition S ballot measure, the text expressly states (emphasis added), "Proceeds for the sale of bonds authorized by this proposition shall only be used for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of schools, or *the acquisition or lease of real property for school facilities, . . .*" In addition, under the heading "Additional Projects" of the ballot measure, it states that costs incidental to and necessary for the completion of the listed Bond projects include, "Acquisition of any of the facilities on the Bond Project List through temporary lease or lease-purchase arrangements, or execute purchase option under a lease for any of these authorized facilities";

Proposition S also permits "joint use." Under the heading "Further Specifications" of the ballot measure, the text states, "The District may enter into agreements with the City of San Diego, County of San Diego, or other public agencies or nonprofit organizations for joint use of school facilities financed with the proceeds of the bonds The District may seek State grant funds for eligible joint-use projects . . ."

Education Code sections 47610 and 47610.5 exempt a charter school facility from the requirements of the Field Act (Education Code sections 17280-17317; 17365-17374) if that facility complies with California Building Code (CBC) standards or is exclusively

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owned or controlled by an entity that is not subject to CBC such as the federal government. Here, a charter high school located in a downtown library would need to comply with CBC.

The vote requirement for construction of a school, which is a public works project that must be competitively bid under Public Contract Code section 20111, is a simple majority (3-2).

The vote requirement for the District (as tenant) to lease land from the City of San Diego (as landlord) is also a simple majority (3-2). The supermajority vote involving real property does not apply because the District does not own the real property.

Please advise if you have further questions.

STMC:bcr

c: Mark Bresee, Terry Grier, Scott Himelstein, Bill Kowba, Chuck Morris, Bernie Rhinerson, Drew Rowlands, Jim Watts

**NON-BINDING LETTER OF INTENT REGARDING THE INCORPORATION
OF A CHARTER SCHOOL IN THE SAN DIEGO NEW MAIN LIBRARY**

Effective Date: _____, 2009

THIS NON-BINDING LETTER OF INTENT REGARDING THE INCORPORATION OF A CHARTER SCHOOL IN THE SAN DIEGO NEW MAIN LIBRARY (“LOI”) is made by and between THE CITY OF SAN DIEGO (“City”), and SAN DIEGO UNIFIED SCHOOL DISTRICT (“District”), collectively be referred to herein as the “Parties,” and individually as a “Party,” as follows:

RECITALS

- A. The City has planned the development of a new main library building (“Building”) on City-owned land bounded by 11th Street, Park Boulevard, J Street, and K Street in Downtown San Diego (APN 535-362-16).
- B. The District would like to incorporate a public charter school in the Building, requiring the use of two floors of the Building.
- C. This LOI is made to express the general willingness of the Parties to negotiate a lease agreement (“School Lease”) between the City, as “Landlord,” and the District, as “Tenant,” whereby the District would lease two floors of the Building from the City for use as a charter school.
- D. THE TERMS PRESENTED IN THIS LOI ARE FOR POTENTIAL NEGOTIATION PURPOSES ONLY, AND SHALL NOT CONFER ANY RIGHT OR OBLIGATION UPON EITHER PARTY IN RELATION TO ANY POTENTIAL SCHOOL LEASE.
- E. THIS LOI SHALL NOT BE A LEGALLY BINDING LEASE AGREEMENT, NOR SHALL IT MODIFY ANY EXISTING LEASE AGREEMENT. HOWEVER, IT CONTAINS SOME INITIAL PRINCIPLES THAT MAY FORM THE FRAMEWORK FOR NEGOTIATING A SCHOOL LEASE.
- F. If the Parties ultimately negotiate a binding lease agreement, they intend to follow any and all adopted laws, regulations, policies and procedures of their respective governing bodies as may be required to finalize a School Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS ABOVE, the Parties support the potential for a School Lease, as follows:

- 1. **Premises:** The sixth and seventh floors of the Building.
- 2. **Use:** Operation of a public charter school.

3. **Term:** Forty (40) years, commencing at the earlier of the completion of tenant improvements or nine months after Landlord delivers the space to Tenant to commence construction of tenant improvements to its premises.
4. **Rent:** Twenty Million Dollars (\$20,000,000), to be paid to the City during the course of construction of the shell building on a schedule to be mutually agreed to by Landlord and Tenant.
5. **Operating Expenses:** Tenant will be responsible for all operating expenses for its premises and its proportionate share of the common area operating expenses for the Building. [Note: This will be a “net, net, net” lease.]
6. **Maintenance:** Tenant will maintain the space it occupies in good order at its own expense. Likewise, Landlord will maintain the space it occupies in good order at its own expense. Common area maintenance will be the responsibility of Landlord with an allocation of Tenant’s share of the cost to be agreed to prior to lease execution.
7. **Modification to Building Shell:** Tenant may propose reasonable modifications to the building’s shell to accommodate its tenant improvements. Landlord may accept or reject the proposed modifications at its sole discretion. Whether Landlord’s discretion may be unreasonable, or the standard of reasonableness applied to Landlord’s discretion, will be an issue to be resolved through negotiation prior to any final lease agreement.
8. **Tenant Improvements:** Landlord will deliver space to Tenant in shell condition consistent with the proposed plans dated May 8, 2009. Tenant will be responsible for the cost and construction of its tenant improvements to its premises.
9. **Extension Option:** Tenant will have one option to extend the lease for an additional 10 years at the then prevailing market rent.
10. **Parking:** Tenant may use up to 30 parking spaces (subject to approval by the State Librarian), of which up to six (6) may be reserved for Tenants sole use. The cost of parking will be the prevailing rate charged by the City in its other parking structures. Current City parking rate is \$170 per space per month. Landlord will be responsible for all operating expenses of the parking structure.
11. **Subleasing:** Tenant may sublease its space with Landlord’s approval of the subtenant and its use. Subleasing will not extend to any extension options. Landlord will share in 50% of any subleasing profit.
12. **Purchase Option:** Tenant will have the option to purchase the Premises (as a condominium unit) at the end of the 10th, 20th, 30th, and 40th years of the lease term. The purchase price will be the greater of: (a) the fair market value; or (b) Tenant’s proportionate share (estimated at 23%) of actual building shell construction costs with

land value incorporated at \$200 per square foot. The method for determining fair market value will be agreed to and contained in the lease document.

13. **Termination Prior to Construction:** Landlord and Tenant will be able to terminate the lease agreement prior to commencement of construction. Reasons for termination could include but are not limited to actual construction costs in excess of budget, the inability of fund raising efforts to achieve the cost of construction, or a delay in the start of construction beyond a date to be determined by the parties.
14. This LOI shall not be construed as a commitment to lease or as an approval of any lease terms by any Party. The Parties represent they have not entered or agreed to enter into any agreement to negotiate a definitive agreement pursuant to this LOI. Any Party may, at any time prior to the execution and delivery of any such definitive agreement, propose different terms from those summarized here, and may unilaterally terminate all negotiations without any liability whatsoever to the other Party. Each Party shall pay its own fees, costs and other expenses incurred in conjunction with the negotiation and preparation of this LOI and the negotiation and preparation of any definitive agreement(s) made following this LOI.
15. The Parties reserve their rights to exercise their discretion as to all matters which they are by law entitled or required. In addition, any agreements, amendments, or approvals processed by a party's governing authority shall be subject to and considered in accordance with all applicable legal requirements.
16. This LOI may be executed in any number of counterparts, each of which shall be deemed an original, and shall collectively constitute one and the same document.
17. This LOI represents the entire understanding of the Parties regarding the subject matter herein. Any modification of this LOI shall be in writing and signed by the Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

18. Each individual executing this LOI on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this LOI on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement. Each person executing this LOI on behalf of another person or legal entity shall, upon request of another Party, provide satisfactory evidence that such authority is valid.

IN WITNESS WHEREOF, this LOI shall be effective as of the Effective Date.

Date: _____ SAN DIEGO UNIFIED SCHOOL DISTRICT

BY: _____

Name: _____

Title: _____

Date: _____ THE CITY OF SAN DIEGO, a California
municipal corporation

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____ JAN I. GOLDSMITH, San Diego City Attorney

BY: _____

Name: _____

Title: _____

Date: _____

BRUCE R. WALLACE, Attorney for District