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**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education
Timothy White, Deputy Chief, Facilities Planning and Management

Board Meeting Date October 24, 2018

Subject Amendment No. 2 to the Facilities Lease with ADCo/Turner Group/Alten Joint Venture for the Glenview Elementary -Increment 3 Project

Action Requested Approval by the Board of Education of Amendment No. 2, to the Facilities Lease with Glenview Elementary School Increment 3 Project ("Project"), located at 4215 La Cresta Avenue, Oakland, CA 94602.

Background California Education Code section 17406 permits the governing board of a school district to lease property to a developer, who constructs tenant improvement to the property and leases back the completed improvement to the district. The lease terminates after payments are completed.

Discussion Amendment No. 1 establishing the Guaranteed Maximum Price was approved on October 11, 2017, Amendment No. 2 (Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions to the First Amended Facilities Lease) is provided to amend such that section 17.7 of the existing Exhibit D is struck and replaced with the amended Section 17.7, set forth as follows:

Amendment No. 2 provides that the JV will construct Increment 3 of the project in accordance with the Facilities Lease for the GMP to include corrected percentage markup to the Cost of Work as described in Section 2.1.1, 2.1.2, and 2.1.3 as amended for potential additional construction costs for District requested changes, unforeseen conditions that occur over the course of construction and/or scope gaps between the subcontract categories of the work shall be completed as shown in revised Section 17.7 of Exhibit D. There is no changed in the GMP.

LBP (Local business participation percentage) 50.00%

Recommendation Approval by the Board of Education of Amendment No. 2, to the Facilities Lease with Glenview Elementary School Increment 3 Project ("Project"), located at 4215 La Cresta Avenue, Oakland, CA 94602.

Fiscal Impact Fund 21, Measure J

Attachments

- Amendment No. 2 with revised Section 17.7 of Exhibit D



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With Every Consent Agenda Contract.

Legislative File ID No. _____

Department: Facilities Planning and Management

Vendor Name: _____

Project Name: Glenview Elementary School Inc 3 **Project No.: Contract** 13134

Term: Intended Start: 10-24-2018 Intended End: _____

Annual (if annual contract) or Total (if multi-year) Cost: \$0.00 _____

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this Vendor selected?

This an an Amendment. Vendor previously selected by competitive selection of the following Ed Code Section 17406. Vendor received bids form sub contractors and selected based on best value pursuant to Ed Code section 17406.

Summarize the services this Vendor will be providing.

Lease Leaseback delivery of the Tenant Improvements for construction of the Glenview Elementary School, Increment 3, Project. Amendment 2 is GMP and other Project Cost, Funding, and Payment Provisions to the First Amended Facilities Lease) is provided to amend paragraph 2.1.9 of the existing Exhibit D. Exhibit D section 17.7. There is no change in the GMP.

Was this contract competitively bid? Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

The Facilities Lease approved by the Board on June 28, 2017, pertaining to the Glenview Elementary School New Construction - Increment 3 Project, included an approved process to establish the GMP.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
- Emergency** contracts
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3) **Not Applicable - no exception - Project was competitively bid**

**AMENDMENT NO. 2 TO FACILITIES LEASE BY AND BETWEEN OAKLAND
UNIFIED SCHOOL DISTRICT AND ADCO/ TURNER GROUP/ALTEN JV**

This Amendment No. 1 to the Facilities Lease ("First Amendment") is made and entered into this 25th day of October, 2018 ("Effective Date") by and between the Oakland Unified School District ("District") and ADCo/Turner Group/Alten JV ("Developer") (collectively, the "Parties") as follows:

RECITALS

WHEREAS, the Parties entered into a Facilities Lease, dated on or about June 28, 2017, pertaining to the Glenview Elementary School Project-Increment 3 ("Project") at Glenview Elementary School, located at 4215 La Cresta Avenue, Oakland CA 94602, ("Project Site"); and NOW, THEREFORE, the Parties agree as follows:

Section I. Second Amendment of Facilities Lease. Exhibit 1 (Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions) to the First Amended Facilities Lease is amended such that paragraph 2.1.9 of the existing Exhibit D is struck and replaced with the amended Section 17.7, set forth below:

2.1.9 Contingency

2.1.9.1 The Guaranteed Maximum Price includes a Developer Contingency of fifteen percent (15%) of the Cost of the Work as described in Section 2.1.1, 2.1.2, and 2.1.3 for potential additional construction costs for District requested changes, unforeseen conditions that occur over the course of construction and/or scope gaps between the subcontract categories of the Work.

2.1.9.2 The Developer Contingency is not intended for such things as scope changes.

2.1.9.3 The Contingency shall not be used without the agreement of the District.

2.1.9.4 The unused portion of the Developer Contingency shall be considered as cost savings and retained by the District at the end of the Project.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to the Facilities 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: October 24, 2018

Dated: October 24, 2018

Oakland Unified School District

ADCo/Turner Group/Alten JV

Aimee Eng

By: _____
Aimee Eng
President of Board of Education

By: _____

Kyla Johnson-Trammell

By: _____
Kyla Johnson-Trammell
Superintendent &
Secretary of Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: *Marion McWilliams*
Marion McWilliams, General Counsel

17.7 Format for Change Order Request and Proposed Change Order

The following format shall be used as applicable by the District and the Developer (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract Documents, supported by attached documentation. Any spaces left blank will be deemed no change to cost or time.

	TRADECONTRACTOR PERFORMED WORK	ADD	DEDUCT
(a)	Material (attach supplier's invoice or itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered)		
(c)	Add Equipment (attach suppliers' invoice)		
(d)	<u>Subtotal</u>		
(e)	Add Tradecontractor's overhead and profit , not to exceed ten percent (10%) of Item (d)		
(f)	<u>Subtotal</u>		
(g)	Add Developer's overhead and profit , not to exceed five percent (5%) of Item (f)		
(h)	<u>Subtotal</u>		
(i)	Add Bond and Insurance , at Developer's Cost, not to exceed two percent (2%) of Item (h)		
(j)	<u>TOTAL</u>		
(k)	Time (zero unless indicated ; "TBD" not permitted)	_ Calendar Days	

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

	DEVELOPER PERFORMED WQRK		
(a)	Material (attach supplier's Invoice or itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach Itemized hours and rates, fully encumbered)		
(c)	Add Equipment (attach suppliers' invoice)		
(d)	Subtotal		
(e)	Add Developer's overhead and profit , not to exceed fifteen (15%) of Item (d).		
(f)	Subtotal		
(g)	Add Bond and Insurance , at Developer's Cost, not to exceed two percent (2%) of Item (h)		
(h)	TOTAL		
(i)	Time (zero unless indicated; "TBD" not permitted)	_	Calendar Days

17.8 Change Order Certification

17.8.1 All Change Orders, CORs, and PCOs must include the following certification by the Developer:

The undersigned Developer approves the foregoing as to the changes, if any, and to the Guaranteed Maximum Price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. and U.S. Criminal Code, 18 U.S.C. § 1001. It is understood that the changes herein to the Contract Documents shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Developer is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.