



CENTRAL KITCHEN, INSTRUCTIONAL FARM & EDUCATION CENTER



CONSTRUCTION TEAM:

"TRI" VENTURE

- THOMPSON BUILDERS
- DIGITAL DESIGNS COMMUNICATIONS
- ECLIPSE ELECTRIC of OAKLAND



LOCAL BUSINESS PARTICIPATION = 60 %

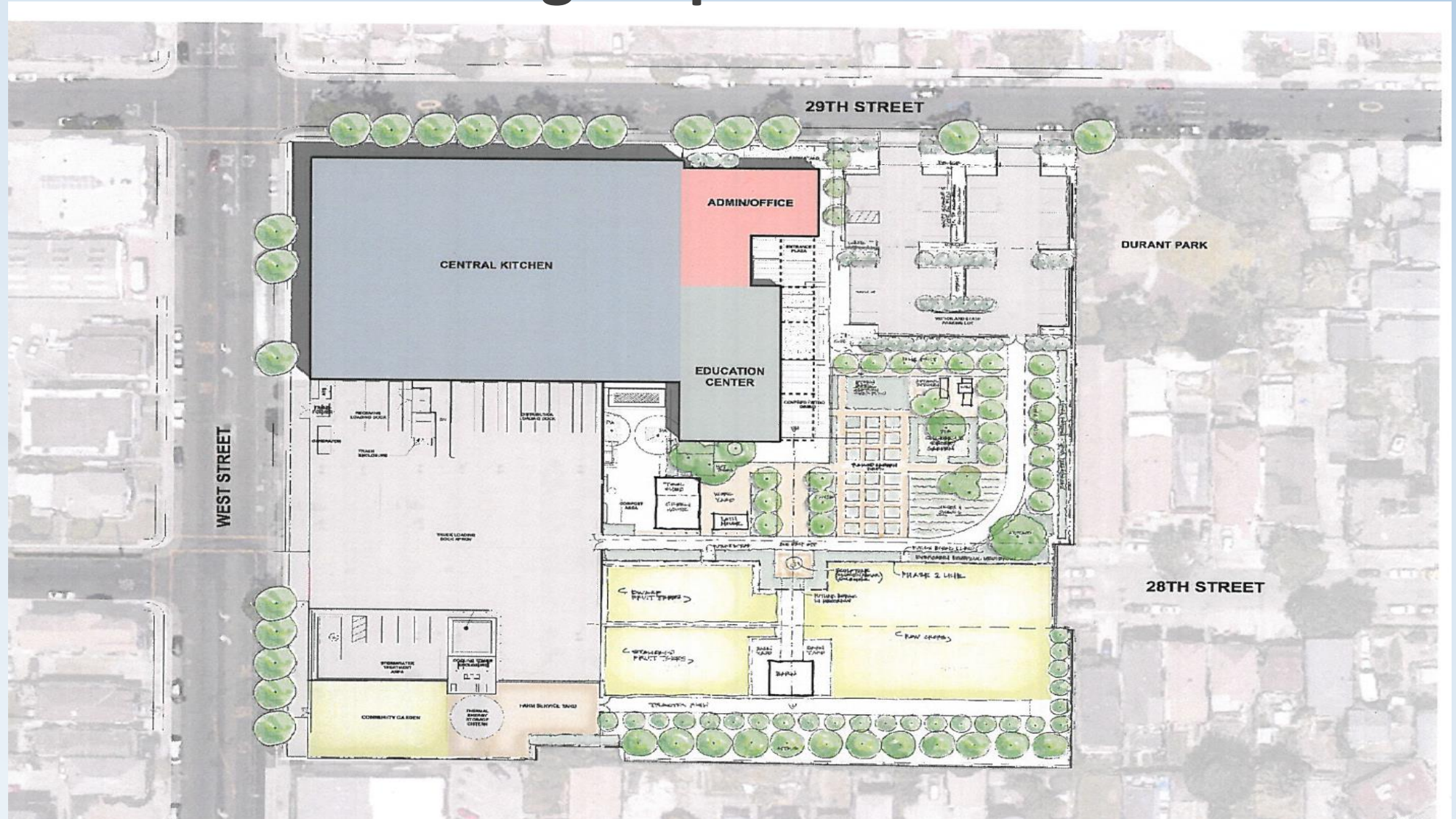
ENTRANCE PLAZA AND OUTDOOR CLASSROOMS
DECEMBER 7, 2015

LEASE LEASE BACK – LOCAL BUSINESS UTILIZATION PROJECTS:

| Project | Joint Venture Team | Local Business Utilization % |
|-----------------------|---|------------------------------|
| Highland | ADCo/Turner Group Construction/Alten | 71% |
| Calvin Simmons | Cahill/Focon | 69% |
| Washington | Overvaa/TGC | 72% |
| Lowell | Arnez/Focon | 70% |
| La Escuelita Phase I | Turner/ADCo | 50% |
| La Escuelita Phase II | McCarthy/TGC | 65% |
| Montclair | Westbay/CAS | 60% |
| Whittier Phase I | Cahill/Focon | 65% |

LEASE LEASE-BACK – CONSTRUCTION DELIVERY

Legal Update



Two Recent Appellate Decisions Impact on LLB's

DAVIS v. FRESNO Unified School District – June 2015

McGee v. Torrance Unified School District – May 2016



DAVIS decision:

- Questioned the legality of lease-leaseback contracts awarded without competitive bidding;
- Created legal concern as to whether a large number of lease-leaseback contracts would be considered void;
- Raised doubts as to the continuing viability of lease-leaseback as a procurement method in common use by school and community college districts.

Davis Court:

- Calling something a lease does not mean it is a lease; a court must look at the “substance of the transaction to determine its true character...”
 - only “true” leases qualified as lease-leasebacks exempted from competitive bidding;
- Leaseback must have a:
 - term during which the school district uses the new buildings;
 - lease payments during the lease term;
 - financing

TORRANCE decision:

- Upheld the legality of lease-leaseback contracts awarded without competitive bidding.
- Refused to follow *Davis*: any “effort to engraft additional requirements – such as the **timing** of the lease payments, the duration of the lease, and the **financing** – are not based on the plain language” of Education Code section 17406.
- So long as the basic requirements of section 17406 were met competitive bidding would not be required.

- LLB's comply with Davis Court requirements:
 - Lease **term** of one (1) year **following occupancy**:
 - **Incremental** Lease payments made on monthly basis
 - Developer **finances** fifteen percent (15%) of the total Project Cost during Lease
 - District pays nominal interest on financing:
 - 2.5% is added to and included in each monthly lease payment

OUSD LEASE LEASEBACK Agreements are "TRUE LEASES"

OUSD LEASE LEASEBACK Agreements follow the McGee Court's analysis:

➤LLB's meet the basic requirements of Education Code section 17406

and

➤OUSD's LLB's are always Competitively Solicited

– Despite no requirement to do so...

plus

• LLB's require a genuine joint-venture partnership with small local contractors serving as **Prime Contractors**

– Enhancing OUSD Local Business Participation Policy

– Ensuring more Measure J Bond dollars are spent locally