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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 February 13, 2019

Subject Lease-Lease Back Agreement and Related and Subsidiary Contract - ADCo/Turner Group/Alten JV, Assignor, and ADCo/Alten, Assignee - Glenview Elementary School, Increment III Project

Action Requested Approval by the Board of Education of the Assignor Lease Leaseback Agreement and Related and Subsidiary Contract Documents (“Lease-Lease Back Contract Documents”) related with the Glenview Elementary School Project - Increment III and between project Lessor and Fee Simple Owner, Oakland Unified School District (“OUSD”, “Lessor” or “Owner”), original Lease-Lease Back Developer ADCo/Turner Group/Alten JV (“Assignor”) and ADCo/Alten JV (“Assignee”).

Discussion OUSD is a public school district and contracted with Assignor as Lease-Lease Back Developer with the Glenview Project. Both parties executed and agreed to the Lease-Lease Back Agreement and Contract Documents, including a Site Lease, a Facilities Lease, and wherein at Exhibit D to the Facilities Lease, at Section 1.1.12, are enumerated the defined “Contract Documents” which definition is incorporated herein by this Reference. Those original Contract Documents were signed and effective as of June 20, 2017, and approved by OUSD at its Board of Trustee’s meeting held on June 20, 2017.

LBP (Local Business Participation Percentage) 50.01%

Current Considerations One of Assignor’s Joint Venture partners, Turner Group, voluntarily dissociated from the Assignor JV at the request of OUSD and the other members of the Assignor JV. Assignor’s CSLB issued contractor’s license is number 956234. That dissociation was approved by OUSD and as the contracting party to the JV. Upon Dissociation, the JV became a joint venture of ADCo and Alten, as its two remaining JV partners. After dissociated of the Turner Group from Assignor’s CSLB issued license, the remaining two JV partners, ADCo/Alten JV, applied for and obtained a new CSLB issued license, CSLB number 1039519.

Recommendation Approval by the Board of Education of the Assignor Lease-Lease Back Agreement and Related and Subsidiary Contract Documents (“Lease-Lease Back Contract Documents”) related with the Glenview Elementary School Project - Increment III and between project Lessor and Fee Simple Owner, Oakland Unified School District (“OUSD”, “Lessor” or “Owner”), original Lease-Lease Back Developer ADCo/Turner Group/Alten JV (“Assignor”) and ADCo/Alten JV (“Assignee”).

Fiscal Impact

Fund 21, Measure J

Attachments

- Lease-Leaseback Agreement
-

**ASSIGNMENT OF LEASE-LEASE BACK AGREEMENT AND RELATED
AND SUBSIDIARY CONTRACT DOCUMENTS – GLENVIEW
ELEMENTARY SCHOOL PROJECT – INCREMENT 3**

(Oakland Unified School District – ADCo/Turner Group/Alten JV, Assignor, and ADCo/Alten,
Assignee) – January 16, 2019

This Assignment of Lease-Lease Back Agreement and Related and Subsidiary Contract Documents (“Lease-Lease Back Contract Documents”) is with respect to the Oakland Unified School District Project known as Glenview Elementary School Project – Increment 3 (“Project”, “Glenview Project”, or “Glenview”) and between project Lessor and Fee Simple Owner, Oakland Unified School District (“OUSD”, “Lessor” or “Owner”), original Lease-Lease Back Developer ADCo/Turner Group/Alten JV (“Assignor”) and ADCo/Alten JV (“Assignee”).

Recitals:

- A. OUSD is a public school district and contracted with Assignor as Lease-Lease Back Developer with respect to the Glenview Project. In that process, those parties executed and agreed to Lease Lease Back Agreement and Contract Documents, including a Site Lease, a Facilities Lease, and wherein at Exhibit D to the Facilities Lease, at Section 1.1.12, are enumerated the defined “Contract Documents” which definition is incorporated herein by this Reference. Those original Contract Documents were signed and effective as of June 20, 2017, and approved by OUSD at its Board of Trustee’s meeting held on ___ 2017.
- B. One of Assignor’s Joint Venture partners, Turner Group, voluntarily dissociated from the Assignor JV at the request of OUSD and the other members of the Assignor JV. Assignor’s CSLB issued contractor’s license is number 956234. That dissociation was approved by OUSD and as the contracting party to the JV. Upon Dissociation, the JV became a joint venture of ADCo and Alten, as its two remaining JV partners.
- C. For administrative convenience, at to comply with CSLB requests, after dissociation of the Turner Group from Assignor’s CSLB issued license, the remaining two JV partners, ADCo/Alten JV, applied for and obtained a new CSLB issued license, CSLB number 1039519.
- D. To comply with CSLB and Business & Professions Code requirements following the consensual dissociation of Turner Group from Assignor, such that work under the Contract Documents continues to be performed at all times by a license contractor, the parties agree that the obligations of Assignor to Lessor and Owner OUSD under the entirety of the Lease-Lease Back Agreement, Site Lease, Facilities, and all incorporated Contract Documents therein, are hereby assigned to Assignee, and shall hereinafter be performed by Assignee and under its own CSLB License. Assignor shall remain secondarily liable to OUSD in the event of any breach, failure or default by Assignee hereunder.

Therefore, in continued working and partnering spirit the parties reach, agree upon and execute this Assignment on the terms and recitals set forth herein.

Terms of Assignment

1. **Assignment.** The parties agree that the obligations of Assignor to Lessor and Owner OUSD under the entirety of the Lease-Lease Back Agreement, Site Lease, Facilities, and all incorporated Contract Documents therein, are hereby assigned to Assignee, and shall hereinafter be performed by Assignee and under its own CSLB License. From the Effective Date of this Assignment, Assignee shall be fully responsible, liable, and obligated to perform all of the obligations of the Lease-Lease Back Developer and Lessee, and of Assignor, without qualification or reservation. Assignor shall remain secondarily liable to OUSD in the event of any breach, failure or default by Assignee hereunder and subject to any notice of default obligations upon OUSD under the Contract Documents.
2. **Effective Date.** The effective date is the date the parties hereto sign this Agreement and otherwise decide as the Effective Date, but with the intent to make the Effective Date on or before January 31, 2019 as part of the obligation and objective of continued licensure. If this Assignment is executed after January 31, 2019, its Effective Date is January 31, 2019.
3. **Additional Insured Certificates.** Promptly, and effective as of the Effective Date, Assignee shall issue an additional insured certificate to OUSD in order to comply with the Contract Documents, including but not limited to Section 13 of Exhibit D to the Facilities Lease, and cause any subcontractors to do the same to the extent necessary, and not already covered by existing additional insured certificates naming OUSD as an additional insured on applicable insurance policies.
4. **Subcontracts.** As of the Effective Date, Assignee shall cause any subcontracts to be assigned from Assignor to Assignee with respect to the Glenview Project.
5. **Re-Affirmation of Contract Documents and Obligations.** The parties confirm and re-affirm the underlying Contract Documents and their validity.
6. **Authorizations.** The parties who execute this Assignment shall have authority to do so, and warrant such authority by their signature hereto.
7. **Acceptance and Consent of Assignment.** OUSD accepts and consents to this Assignment.
8. **Prequalification.** The JV partners of the Assignee, ADCo and Alten Construction, Inc. are prequalified by virtue of the Prequalification of the JV and Assignor ADCo/Turner Group/Alten JV, before Turner Group's consensual dissociation. Nothing herein rescinds, eliminates, or alters that existing prequalification, which continues to apply to the re-constituted JV, the Assignee, for which CSLB required a new license but which is a two-entity JV of the two remaining JV partners of Assignor, the prequalified Developer.
9. **Continuous Project Bonding and Insurance.** Assignor and Assignee each warrant and represent that they will insure, and have taken all necessary steps to insure, continuous project bonding and insurance, including additional insured certificates and endorsements in favor of the District, in conformity with the Contract Documents. Once Assignee's project bonds are in place,

in the required form and amounts in conformity with the contract documents, to District's reasonable satisfaction, District will release Assignor's project bonds.

SO AGREED:

LESSOR OWNER OUSD:

Dated: January, 2019

Oakland Unified School District

By: [Signature]

Name: Kyla Johnson-Trammell

Title: Superintendent

ASSIGNOR:

Dated: January __, 2019

AdCo/Turner Group/Alten JV

By: [Signature]

Name: Robert A ALTEN

Title: Manager

ASSIGNEE:

Dated: January __, 2019

ADCo/Alten JV

By: [Signature]

Name: Robert A ALTEN

Title: manager

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By: [Signature]
Marion McWilliams, General Counsel

Aimee Eng 2/14/2019
Aimee Eng
President, Board of Education

[Signature] 2/14/2019
Kyla Johnson Trammell
Secretary, Board of Education