



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item 10.1e

Meeting Date: March 15, 2018

Subject: Approve Exclusive Negotiating Agreement – Old Marshall School,
2718 G Street

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Facilities Support Services

Recommendation: Board to approve the Exclusive Negotiating Agreement with Mogavero/Bardis for the Old Marshall School site.

Background/Rationale: Following California Department of Education approval of the waiver requested by the District, staff has prepared an Exclusive Negotiating Agreement to provide the developer an opportunity to conduct its due diligence and further investigative work on the feasibility of the proposed project.

Financial Considerations: None at this time.

LCAP Goal(s): Family and Community Empowerment

Documents Attached:

1. Executive Summary
2. Exclusive Negotiating Agreement

Estimated Time of Presentation: N/A

Submitted by: Cathy Allen, Chief Operations Officer

Approved by: Jorge A. Aguilar, Superintendent

Board of Education Executive Summary

Facilities Support Services

Exclusive Negotiating Agreement – Old Marshall School, 2718 G Street
March 15, 2018



I. Overview/History of Department or Program

The California Department of Education approved the District’s waiver request to “waive all or portions of California Education Code sections specific to statutory provisions for the sale or lease of surplus property” for the Old Marshall School property located at 2718 G Street. In conjunction with counsel, staff has prepared an Exclusive Negotiating Agreement to allow the developer, Mogavero/Bardis, to conduct its due diligence in support of the proposed project. The due diligence time period allows the developer the opportunity to more fully investigate the site to determine the feasibility of continuing with the proposed project. If, at the end of the due diligence period, the developer opts to continue pursuing the project the developer and the District would negotiate a Property Development Agreement outlining terms and conditions moving forward.

II. Driving Governance:

BP 7150
Education Code §17385 et seq.
Education Code §17400-17429 et seq.

III. Budget:

N/A at this time.

IV. Goals, Objectives and Measures:

Inform the Board of next steps regarding the use of the Old Marshall School site.

V. Major Initiatives:

N/A

VI. Results:

Significant progress towards the revival of the Old Marshall School property into a community and District asset.

VII. Lessons Learned/Next Steps:

Board to consider and approve Exclusive Negotiating Agreement with Mogavero/Bardis.

**EXCLUSIVE NEGOTIATING AGREEMENT
(2718 G STREET, OLD MARSHALL SCHOOL)**

PREAMBLE

This Exclusive Negotiating Agreement (the “Agreement” or “ENA”) is effective on the date executed by all signatories below (the “Effective Date”) by and between the **Sacramento City Unified School District** (the “District”) and **Bardis Homes, Inc. and Mogavero Architects** (collectively, “Bardis/Mogavero”) (referred to as the “Parties”).

RECITALS

WHEREAS, Bardis/Mogavero has been selected to acquire and develop the Old Marshall School property located at 2718 G Street, Sacramento, California (“Old Marshall” or the “Property”) pursuant to its proposal (“Proposal”) dated September 30, 2016 to the District’s Request for Proposals (the “RFP”); and

WHEREAS, the California Department of Education (“CDE”) issued on January 22, 2018 a waiver of specified Education Code sections which will expire on August 10, 2018; and

WHEREAS, the CDE waiver was approved with conditions that the final acceptance by the governing board of the Sacramento City Unified School District be made within 60 days of the meeting in which the proposal is received, and that the reasons for the acceptance be discussed in public session and included in the minutes of the meeting; and

WHEREAS, it appears that the proposal by Bardis/Mogavero, which will be a long-term lease proposal, should be received by the District no later than its meeting on August 2, 2018; and

WHEREAS, the Parties desire to enter into a Right of Entry agreement to allow Bardis/Mogavero a period of due diligence for the duration of the waiver described above, which agreement may be facilitated by an existing or an extended Right of Entry Agreement; and

WHEREAS, the purpose of this Agreement is for the Parties to agree upon an exclusive negotiating period for the purpose of determining whether terms and conditions can be mutually agreed to, in the form of a long term lease as provided by law.

TERMS AND CONDITIONS

NOW, THEREFORE, the Parties agree as follows:

1. Adoption of Recitals. The foregoing recitals are adopted as true and correct.

2. Duration of Exclusive Negotiating Period. The duration of the exclusive negotiating period shall not exceed the waiver period that expires on August 10, 2018 unless extended, in the sole discretion of the CDE, which is not guaranteed.
3. Scope of Exclusive Negotiations. The Parties agree to meet, as needed, and to negotiate a mutually acceptable project, commencing with the feasibility of the Proposal described in the Bardis/Mogavero response to the District's RFP. The Proposal may be modified depending on market factors, feasibility of the Proposal as of the Effective Date, and the due diligence review by Bardis/Mogavero. Nothing herein shall be construed as a legally enforceable obligation or a contractually binding commitment to a lease or sale of the Property.
4. Costs. The District shall not be responsible for any costs incurred by Bardis/Mogavero for development of plans, due diligence testing, or the engagement of any consultants it considers necessary for feasibility or development of the Property, including, but not limited to, long term lease or leases, entitlements and CEQA compliance.
5. Non-Assignability; No Third Party Beneficiaries. The Agreement is non-assignable as it is unique to the Parties. There are no third party beneficiaries.
6. Indemnity. The Parties shall be responsible for their own acts or omissions giving rise to claims of liability or liability and the Party shall be indemnified, defended and held harmless by the Party whose acts or omissions have resulted in claims of liability or liability.
7. Notice. Any notice to be given shall be provided to the following addressees:

For the District:

Cathy Allen
Chief Operations Officer, Facility Support Services
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Phone: (916) 643-9233
Facsimile: (916) 643-2020
Email: cathy-allen@scusd.edu

For Bardis Homes, Inc.

Katherine Bardis, Co-Founder/Chief Executive Officer
10630 Mather Blvd.
Mather, CA 93655
Phone: (916) 313-3120
Fax: (916) 364-3570
Email: katherine@bardishomes.com

For Mogavero Architects, Inc.
David Mogavero, Principal/Chief Executive Officer
Dominic Mogavero, Development Services
2012 K Street
Sacramento, CA 95811
Phone: (916) 443-1033
Fax: (916) 443-7234
Email: dommogavero@mogaveroarchitects.com

Notice may be provided by personal service, regular mail, certified mail, overnight mail with proof of delivery, facsimile with proof of transmission, or by email provided receipt is acknowledged.

8. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be amended except in writing executed by both Parties.

9. Authority; Execution in Counterparts. The persons designated below shall have the power to authorize and designate an agent or representative to sign on behalf of the signatory below by written acknowledgment which shall not be required to be notarized. Signatures may be executed in counterparts on separate signature pages. Copies of signatures, including facsimile and electronic signatures, shall have the same force and effect as original signatures.

10. Ratification by District. The Agreement shall not be effective until ratified by the Board of Education or delegated for approval to the Superintendent or his authorized designee.

EXECUTION

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the last signature date below.

Dated: _____, 2018 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
By _____
Its:

Dated: _____, 2018 BARDIS HOMES, INC.
By _____
Katherine Bardis,
Co-Founder/Chief Executive Officer

Dated: _____, 2017

MOGAVERO ARCHITECTS

By _____

David Mogavero,
Principal/Chief Executive Officer