Appendix G:

The Winston School proposal to Del Mar for Land Lease in Accordance with MOU

Dated July 19, 2019
July 19, 2019

VIA E-MAIL AND U.S. MAIL

Scott W. Huth  
City Manager  
City of Del Mar  
1050 Camino Del Mar  
Del Mar, California 92014  
E-Mail: Citymanager@delmar.ca.us

Re: Winston School – Status Update to CPP Meeting and Project Proposal

Dear Mr. Huth:

As you are aware, The Winston School of San Diego (“Winston”) conducted multiple Citizens’ Participation Program (“CPP”) hearings in compliance with Del Mar Municipal Code (“DMMC”) section 23.08.065 et seq. During this CPP process, Winston engaged the community, neighbors and other interested parties to discuss Winston’s development and potential conceptual designs. Following the introductory meeting on April 2, 2019 and subsequent meeting on May 23, 2019, Winston has considered the initial feedback and identification of areas of potential concerns received from attendees as well as comments received separate and apart from the meetings.

Since 1988, Winston has provided the community and the greater San Diego region a specialized education program for those students in middle and high school that learn differently from the curriculum traditionally utilized in the public school system. As discussed previously with the City of Del Mar (“City”) staff, Winston would like continue to run an independent school at its current location at 215 Ninth Street in the City (“School Site”). Specifically, through the submission of this letter, Winston is proposing: (i) redevelopment of the School Site with a modern school and related amenities that integrate into the surrounding neighborhood; and (ii) amendment of the lease agreement dated July 1, 2008 by and between Winston and the City (“Lease”) to a $147,000 land lease. Winston would prefer to keep its target population between approximately 120 to 150 full-time equivalent middle and high school students. As demonstrated herein, expansion of the School Site to accommodate additional students would be necessary in order to generate the additional revenue required to compensate for the increased land and improvements lease rates currently in the Lease. Additionally, with the proposed Lease amendment, preserving the current population level will ensure the school maintains low traffic and noise impacts on the surrounding properties.
Starting in 2007, the City and Winston communities rallied to support and fund the City’s acquisition of the 5.3-acre Del Mar Shores School and Park property to preserve and protect the only recreational playing fields and school in the City. Over 400 donors personally contributed $5,000,000.00, including $3,000,000.00 from Winston, based on the August 6, 2007 City Council resolution that states “the purpose of the acquisition is to preserve the current open space and recreational uses, including the ball field…and to permit the continued operation of the Winston School, in keeping with the original deed restriction (for school purposes only).” (City Resolution 2007-35.)

In order to meet the financial obligations contemplated in Lease, Winston will be required to increase financial productivity of the School Site. In order to achieve this, and at the City’s behest, Winston would be forced to propose redevelopment that would allow for a significant growth in the student population, resulting in substantial increase to bulk, scale and footprint of structures on the School Site. Such redevelopment to meet the demands of the Lease would violate the objective of Resolution 2007-35, as Winston’s current lease compels its enrollment, faculty and new school buildings to more than double in size.

Winston has considered alternative plans for a school that could accommodate a higher student population in order provide the additional income necessary to cover the rent rates identified in the current Lease. Through Winston’s community outreach, including the two (2) CPP meetings, it has become abundantly clear that such a proposal would be wholesale and categorically rejected by the community. In fact, the outcry to such redevelopment is so vehement, Winston has been expressly informed that certain portions of the community are considering both judicial and referenda actions against any redevelopment of the School Site that would result in a “large” school. Based on Winston’s information, the community is concerned about disastrous traffic, noise and aesthetic impacts that would result from the “large school option.”

Instead, the community has made it clear they are aligned with Winton’s interests in maintaining a school with enrollment between 125-150 students. Therefore, Winston is currently in a no-win situation in which it cannot meet the demands of both the Lease and the community. It is our position that the City is requiring Winston to redevelop the School Site in a way that will invoke community ire, and possibly result in litigation, and contradict the established values and mission of Winston.

To align the school’s interests with the neighbors and general citizenry, we request amendment of the lease terms to an annual land-lease rent of $147,000.00, permitting the facilities to stay at their current scale, maximizing open recreational space and fulfilling the non-profit’s critical mission of serving the needs of bright students with learning differences. With this lease rate, Winston can successfully align the school size with the financial and community requirements. Additionally, an amendment to the Lease would continue to achieve the objectives outlined in City Resolution 2007-35, identified above.

1 We understand certain correspondence have been submitted to the City related to donor fraud, and wish to clarify Winston is not yet a party to the statements made therein despite the same set of circumstances giving rise to these various correspondence.

2 Per the terms of the Lease, the approximately $2,950,000 rent credit will be exhausted in 2023. Subsequent to that, the rent on the Winston school site will automatically increase by the cumulative Consumer Price Index (“CPI”) increases since July 1, 2008 and, thereafter, annually by CPI.
It is our position that, because the amendment will fulfill a public purpose and promote the social welfare, such an amendment is not a gift of public funds. (Alameda v. Janssen (1940) 16 Cal.2d 276, 281; City & County of San Francisco v. Collins (1932) 216 Cal. 187, 193 [social welfare expenditures of counties are not illegal gifts]; American Co. v. City of Lakeport (1934) 220 Cal. 548, 556 [mere incidental benefit to an individual does not make a “public” purpose a “private” purpose]; Mannheim v Superior Court (1970) 3 Cal.3d 678, 691 [the concept of public benefit is liberally construed]; Community Mem. Hosp. v. County of Ventura (1996) 50 Cal.App. 4th 199, 207.)

Moreover, charter cities are not required to comply with the constitutional prohibition on the gift of public funds. (Tevis v. City & County of San Francisco (1954) 43 Cal.2d 190; Los Angeles Gas & Elec. Corp. v. City of Los Angeles (1922) 188 Cal. 307 [the constitutional prohibition on a gift of public funds has been held not to apply to a charter city, unless the city’s charter itself contains a similar prohibition].)

Winston has also considered income-generating options suggested in the City’s correspondence dated December 20, 2018. During Winston’s design process, it has been determined that these options are economically infeasible, impermissible under the Lease and/or illegal. Winston is happy to address the specifics of these determinations in further detail following submittal of its project application.

Additionally, based on the feedback received thus far, the community opposes development of any structure on the School Site that looks “institutional” or “correctional.” As alluded to above, the citizens of Del Mar are primarily concerned with: (i) bulk and mass; (ii) privacy; (iii) community esthetics; and (iv) the amount of concrete needed to sustain parking.

In response to the community concerns, Winston is proposing improvements to School Site that will result in a de minimis increase in the bulk and mass of the existing buildings and shifts the footprint towards 9th Street and Stratford Court in order to maintain green space and controlled parking. As part of the proposed redevelopment of the site, an initial rendering of which is attached hereto as Exhibit A, the following elements must be implemented as part of the design:

- Play fields;
- Softball field;
- 2 full-sized basketball courts;

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3 Most housing commissions responsible for the management of affordable housing require a covenant to be recorded against the property that requires the affordable housing be maintained for at least fifty-five years, which is longer than the remaining life of the Lease.

4 Investors in affordable-housing projects receive a credit applicable to their federal and state income taxes in exchange for investing in housing reserved for and affordable to lower income households. Owners of these developments are expressly prohibited from discriminating against certain classes in the operation and management of the housing. (See 26 CFR § 1.42–9(a).) They must also certify compliance with the terms of the low income housing commitment, which includes a provision prohibiting an owner from refusing to rent to tenants with Section 8 vouchers. (26 CFR §1.42–5(c)(1)(v), (x).) State housing agencies – in California, the California Tax Credit Allocation Committee – must review the certifications for compliance. (26 CFR §1.42–5(c)(2); 4 Cal Code Regs §§ 10300–10337.)
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- Fencing or other suitable separation between the City-run dog park and the School’s outdoor amenities;
- Additional hardscape/blacktop unrelated to basketball courts for assembly area;
- Picnic area and/or child playground not located adjacent to the school or between the basketball courts;
- Secured perimeter of the School Site to be closed to public during the school-day.

Additionally, this proposal will comply with the current zoning and deed restriction set forth in the Grant Deed from Del Mar Unified School District to the City.

Winston wishes to gain commitment from the City for the proposed amendment to the Lease, permitting an $147,000 annual lease rate, so that it may present an advanced development plan the neighbors and Del Mar citizens can embrace at the final CPP meeting. We would like to present renderings that demonstrate consistency with the character of the surrounding neighborhood. Additionally, the proposal based on the lower lease rate would comply with current zoning as well as the deed restriction set forth in the Grant Deed from Del Mar Unified School District to the City.

Winston believes the provision of a modernized school on the School Site would not only benefit the students, but would provide tangible benefits to the City as well. Following the conclusion of the CPP process, we look forward to progressing with this development plan and continuing to be part of the community.

On behalf of Winston, we request a reply from the City within two (2) weeks, or no later than Friday August 2, 2019, regarding the City’s initial response to this proposal so that Winston can prepare the necessary documents in accordance with the City-mandated CPP timeframes. Additionally, please consider this correspondence as a formal request for the City’s records related to the City’s appropriations of prepaid rent pursuant to the terms of Lease, an accounting of the utilization of Wilson School-related donations and a schedule of future rents intended under the Lease as currently drafted. Lastly, for our edification, can you please explain or provided citation to the City’s City Council recusal procedure regulations. Specifically, please confirm the radius around projects which trigger recusal from decision-making functions, as this policy could have an direct effect on whether Winston will be permitted to continue its operations on the School Site.

We look forward to hearing from you and appreciate the City’s time and consideration of Winston’s current proposal and inquiry. Winston believes the provision of a modernized school on the School Site would not only benefit the students, but would provide tangible benefits to the City as well.

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5 Please note, as a sign of good faith and continued cooperation, this request represents an increase rent rate as compared to Winston’s November correspondence to the city, which requested a $136,000 annual lease. We propose any revised rent rate would go into effective January 1, 2020 and include a maximum annual 2.5% CPI cap.

I'm attaching here two pages from the November proposal for your reference, as well as a marked up copy of your attached letter.
Following the conclusion of the CPP process, we look forward to progressing with this development plan and continuing to be part of the community.

Sincerely,

Whitney A. Hodges
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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