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CONTRACTUAL INCONSISTANCIES IN THE BUSD 2017 LEASE-LEASEBACK (LLB) RFP (REQUEST FOR PROPOSAL) 410-07.

There are four documents that make up the 2017 LLB agreement that was approved as the financing delivery method by the BUSD Board in March 2017. This “shell” agreement may be changed or modified. The bidding process to select a contractor will likely begin in April or May.

The four parts are:

1. CONSTRUCTION SERVICES AGREEMENT
2. SITE LEASE
3. SUBLEASE AGREEMENT
4. LLB SERVICES FOR BUSD CAPITAL IMPROVEMENT PROGRAM. AKA REQUEST FOR PROPOSALS (RFP BUSD-410-07)

The Gird Rd. site is mentioned in three of these documents as noted below.

1. CONSTRUCTION SERVICES AGREEMENT—

“**WHEREAS**, the District intends to finance the construction of school facilities and improvements, including the construction and installation of certain improvements to be known as the **PROPOSED NEW BONSALL HIGH SCHOOL PROJECT**, on property owned by the District (**Gird Road Property**)”

2. SITE LEASE AGREEMENT

“**WHEREAS**, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land located in Fallbrook, California on **Gird Road** and referenced by the County of San Diego as Assessor's Parcel Number (APN) ...”

3. SUBLEASE AGREEMENT ---Gird Rd is not mentioned.

4. RFP AGREEMENT

**Front page--“Mandatory Pre-Submittal Conference:
April 4 at 1:00 P.M. – 3800 Gird Road, Bonsall, CA 92003”**

(We do not consider this one section to mean without doubt that Gird is the only site under consideration. It was likely selected for a job walk so the contractors would all make their proposals based on the same terrain. Nevertheless, it would seem logical to conclude that a survey of Gird would be helpful in making a bid on Gird,

However, on page two this document says, “The RFP does not make any assumption regarding the ultimate site of the high school and such pre construction services will be needed regardless of the ultimate site of the new high school in order to assist the District in ensuring the most possible high school improvements may be constructed regardless of the Project site ultimately chosen.”

CONCLUSION:

The *legal* intent of the total RFP (all four agreements) cannot be known without a legal opinion as the individual documents are in conflict. But the record will show that the intent of the district as stated at the March Board meeting was to make this RFP non-site specific. It could be that sloppy copying and pasting from previous documents are to blame (they did that before), but we do not know for sure. **On the other hand, Cunningham is quoted as saying that the RFP was only for the Gird Rd. alone.** (Cunningham stated that the RFP is designated only for the Gird Road site, VN story March 16, 2017) We think it is unlikely that he misspoke.

The clear intent of the RFP document needs to be agreed upon by the Board, (specific to Gird or not site specific) after which an amendment can be written to avoid ambiguity. This would be less costly than rescinding and re-writing the entire document, although that option is also available.

CATE notes that at the BUSD workshop held one week before the March Board meeting, Dr. Coen and others questioned the legitimacy of *any* LLB agreement and wanted a discussion of the benefits and downsides of both LLB and a more standard sealed bid process. The BUSD attorney briefly discussed both.

We assumed this subject would be further discussed at the March Board meeting and voted upon, but Dr. Cunningham only put the LLB choice on the agenda, and the board

did not question if that delivery option was the best choice for the district. It was obvious that both Cunningham and Metcalf are strongly in favor of the LLB delivery method. CATE states this as another example of the Superintendent driving the school bus with little or no direction from the Board, and the need for District oversight which can be provided free of charge from the San Diego County Office Of Education. **CATE strongly recommends that the Board request this assistance.**