

# Del Mar City Council Special Meeting Agenda

VIA TELECONFERENCE ONLY  
1050 Camino del Mar, Del Mar, California

**March 18, 2021 City Council Special Meeting**

**INFORMATION RECEIVED  
AFTER THE COUNCIL AGENDA  
WAS DISTRIBUTED  
("Red Dots")**



**From:** maureen.kendrick@thewinstonschool.org on behalf of Dena Harris  
<dena.harris@thewinstonschool.org>  
**Sent:** Thursday, March 18, 2021 12:06 PM  
**To:** City Clerk Mail Box  
**Cc:** Terry Gaasterland; Tracy Martinez; Dwight Worden; Dan Quirk; David Druker; Leslie Devaney; Whitney Hodges; Ashley Jones; Kristen M. Crane; Laura Cunitz; Kim Kanetis; Maureen Kendrick  
**Subject:** Red Dot Submission - Del Mar City Council Closed Session - Thursday, March 18, 2021 - Item IIID. Real Property Negotiations - The Winston School  
**Attachments:** Winston School - Del Mar - Purchase Offer (1).pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon:

Please see the attached letter from our attorney, Whitney Hodges, of Sheppard Mullin, as our **red dot** submission for the above-referenced meeting.

This letter contains a purchase offer which would constitute a **\$5.9 million purchase price** for the school to save it from development--the initial \$2.9 million contribution made by The Winston School to the DMUSD plus the additional monies being offered in the aforementioned letter.

Best regards,

Dena

**Dr. Dena Harris**

Head of School & Executive Director  
[dena.harris@thewinstonschool.org](mailto:dena.harris@thewinstonschool.org)



215 Ninth Street, Del Mar, CA 92014  
 Phone (858) 259-8155 | Fax (858) 259-8356  
<https://www.thewinstonschool.org/>

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. IN ADDITION, this communication may contain material protected by HIPAA and other privacy laws (45 CFR, Parts 160 & 164;42 CFR Part 2). If you are not the intended recipient or the person responsible for delivering this email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender by replying to this email and then delete the email from your computer.

March 18, 2021

619.338.6542 direct  
whodges@sheppardmullin.com

File Number: 64CT-296357

**VIA E-MAIL**

Leslie Devaney  
City Attorney  
Devaney Pate Morris & Cameron LLP  
402 West Broadway, Suite 1300  
San Diego, California 92101  
E-Mail: ldevaney@dpmclaw.com

Re: Formal Offer to Purchase Leasehold Property

Dear Ms. Devaney:

On behalf of The Winston School (“Winston”), we are pleased to provide this Proposal to potentially purchase the property currently subject to the current lease (“Lease”) between Winston and the City of Del Mar (“City”).

<b>Purchaser:</b>	The Winston School
<b>Seller:</b>	City of Del Mar
<b>Property:</b>	215 Ninth Street, Del Mar, California 92014
<b>Size (Acres):</b>	Approx. 1.564 acres (68,135 Square Feet)
<b>Purchase Price:</b>	\$3,000,000.00, plus or minus pro-rations and adjustments as set forth in a Purchase and Sale Agreement (“PSA”). <sup>1</sup>
<b>Earnest Money</b>	Within three business days of signing the PSA, Purchaser will deposit the amount of \$100,000.00 with the title company to be held as refundable earnest money and applied to the Purchase Price at closing.
<b>Title Commitment &amp; Survey:</b>	Seller shall pay the premium related to the standard portion of the ALTA Owner’s Coverage Policy of Title Insurance, and Purchaser shall have the option, at its expense, to upgrade to ALTA Extended Coverage, including zoning, survey and comprehensive endorsements. Purchaser shall pay for all

<sup>1</sup> With the addition of the Purchase Price, Winston will have remitted to the City a total of approximately \$5,900,000.00 for the purchase of this Property. This amount represents the appraised value of the Property as identified by the prior City Manager.

endorsements it requires. If Purchaser objects to any exceptions in the title commitment, then Seller will work to have such exceptions remedied and removed from the title of the property to the reasonable satisfaction of Purchaser. Purchaser may terminate the PSA if the title exceptions are not addressed to satisfaction of Purchaser. Purchaser, at its option and expense, may conduct an ALTA Survey as part of its Diligence Inspections.

**Inspection Period:** Purchaser and Seller shall enter into a reasonably acceptable Access Agreement pursuant to which Purchaser will have a period of sixty (60) days to conduct its due diligence inspections of the Property (“Diligence Inspections”).

**Property Condition:** Purchaser shall commence the redevelopment of the former school facility improvements on the Property (the “Redevelopment”) within six (6) months of execution of the PSA, subject to force majeure. Purchaser will advise Seller of any condition (environmental or otherwise) which is identified during Redevelopment which could adversely affect the use or value of the Property following closing and which could not be remediated by Purchaser during Redevelopment. Seller shall have no responsibility for the Redevelopment.

**Closing & Closing Costs:** Closing will occur within ten (10) days from the completion of the Redevelopment or at such other time and place as the parties may agree in writing. Closing costs to be split and paid as customary in San Diego, California. Any escrow fees will be split equally between Purchaser and Seller. Purchaser and Seller will each pay their own legal expenses associated with this transaction.

**Purchase and Sale Agreement:** Upon Purchaser’s satisfaction with its Diligence Inspections, Seller and Purchaser intend to promptly proceed to negotiate a definitive PSA, which shall contain the terms and conditions of the transaction, including but not limited to, the terms outlined in more specific detail herein. Seller shall provide Purchaser with the PSA for Purchaser’s review and the parties shall negotiate the PSA in good faith.

The above identifies the business terms to be followed in the preparation of a PSA. Nothing contained in this Proposal is intended nor shall be construed as a binding agreement, and neither Purchaser nor Seller shall have any other obligation hereunder unless and until a PSA is negotiated and executed by both the Purchaser and Seller.

It is Winston’s position that this Proposal represents a fair and good faith offer, taking into

consideration the original purchase price of the entire property from the Del Mar Unified School District in 2008, the amount of prepaid rent remaining for application under the Lease, the overcharged rent for the incorrect leasehold area and current reduced footprint.

It should be noted that this purchase price does not take into consideration Winston's request to be reimbursed for the costs incurred addressing the inaccurate legal description and the related impacts to its fencing installation. These cost considerations were identified in correspondence provided to the City dated January 21, 2021. Winston reiterates its reimbursement request to the City as put forth in previous correspondence.

This Proposal shall remain open for thirty-five (35) days, or until April 22, 2021.

Should the City not be amendable to Winston's purchase of the property, as a second option, it is Winston's position that, in order to Winston to continue current school operations, the parties are required to renegotiate the Lease in order to reflect the reduced leasehold footprint (approximately 11,765 square feet) and the impact of the existing easement on school operations and ability to redevelop. This amendment to the Lease must take into consideration the terms and deal points reiterated by Winston on numerous occasions. It must also address the numerous legal disputes between the parties, including, but not limited to: (i) the interpretation of the force majeure provision of the Lease; (ii) the application of the memorandum of understanding to the Lease; (iii) the deadline for submission of redevelopment plans for public review and comment; and (iv) the need for prior City approval of redevelopment application. Without this amendment, the Lease is unenforceable and unworkable.

It is our understanding, pursuant to correspondence sent by Assistant City Manager Kristen Crane, the City is in receipt of Winston's redevelopment plans.<sup>2</sup> Presently, the only outstanding items for completion of redevelopment submittal requirements identified in the Lease are obligations solely of the City. The City's substantial delay in processing the application may result in an illegal inducement of breach of the Lease. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118.)

In addition to addressing Winston's options for moving this process forward, this correspondence is intended to address ongoing issues with press releases, newsletters or other communications prepared by each party for dissemination to the public. It is our understanding that the City Council requested a copy of Winston's weekly newsletter to its parents for review and comment *prior to* transmission to its recipients. Putting aside that this weekly newsletter is a Winston tradition unrelated to the ongoing issues between the parties, and serves as a means to keep the Winston community updated on school events and operations, we appreciate the City's concern that the newsletter does, occasionally, provide an update on ongoing negotiations with the City. We are amenable to the City Council's request to provide an advance copy of the weekly newsletters. However, in exchange, we expect that any and all City communications related to Winston will be similarly provided to Winston in advance, not like the February 24, 2021 correspondence from the City that was released to the public concurrently with its transmission to Winston. Winston also reiterates its request that the non-City Council sanctioned

---

<sup>2</sup> These remain the same plans that were submitted to the City repeatedly since July 2020.

correspondence authored by Deputy Mayor Worden and a prior Councilmember be removed from the City website.

Lastly, as you may be aware, Dr. Dena Harris is on medical leave. Therefore, I respectfully request that the following Winston representatives be copied on all correspondence from the City or its representatives: Laura Cunitz, Kim Kanetis, and Maureen Kendrick. Additionally, as courtesy, Winston would appreciate that my colleague Paul Seeley and I be copied on such correspondence as well.

We look forward to the City's response related to the three (3) above-identified options currently being evaluated by Winston for moving forward with the lease and related redevelopment.

Sincerely,



Whitney A. Hodges

and

*Paul L. Seeley*

Paul L. Seeley  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4835-6070-1409.3

cc: Mayor Terry Gaasterland  
Deputy Mayor Dwight Worden  
Councilmember Dave Druker  
Councilmember Dan Quirk  
Councilmember Tracy Martinez  
Ashley Jones  
Kristen Crane  
Dr. Dena Harris  
Laura Cunitz  
Kim Kanetis  
Maureen Kendrick