

RESOLUTION NO. 2019-0020

Adopted by the Housing Authority of the City of Sacramento

November 5, 2019

Interim Lease Approval for Housing Authority Owned Property at 4501 9th Avenue for Use by the Fortune School of Education

BACKGROUND

- A. The Redevelopment Agency of the City of Sacramento acquired the 4501 9th Ave (Donner Field Site) as a future housing site on March 21, 1986. The property was transferred to the Housing Authority in 2012 when the redevelopment agency was dissolved.
- B. The Fortune School of Education has been operating the William Lee College Prep School, authorized by the Sacramento Board of Education in buildings located at 3300 Stockton Blvd and 4545 9th Ave. since September 2012.
- C. Since that time, the Fortune School of Education has been using the Donner Field Site, which is adjacent to structures leased by the school for instruction, for their students play activities and physical education with the approval of the Housing Authority under various leases and use permits.
- D. On October 25, 2016, the Housing Authority of the City Sacramento (Resolution 2016-0022) and the City of Sacramento (Resolution 2016-0360) approved the Vacant Lot Disposition Strategy, which included 4501 9th Avenue in the Affordable Housing Opportunity Site category.
- E. A Request for Proposals for an affordable housing development was issued in January 2018, and Related California was selected as the developer to work exclusively to determine feasibility and, if appropriate, a financing plan for the development of new affordable housing on the Donner Field Site.
- F. The Housing Authority and Fortune School of Education desire to continue the interim use of the property, which benefits low-income children in the area, so a new lease is needed. In exchange for the lease, Fortune School of Education will continue to secure, maintain and insure the parcel for the duration of the interim lease, thereby preserving and maintaining this asset until such time as it is feasible to develop the property. No structures will be constructed on the parcel by Fortune School of Education.

- G. California Environmental Quality Act (CEQA): The interim lease agreement associated with 4501 9th Avenue is exempt under CEQA pursuant to Guidelines Section 15301.
- H. There are no federal actions and therefore review under the National Environmental Policy Act (NEPA) is not required.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

- Section 1. All recitals, including but not limited to the environmental findings, are found to be true and correct and are hereby adopted.
- Section 2. The Executive Director, or her designee, is authorized to enter into an interim lease with the Fortune School of Education for up to five and a half (5 ½) years, beginning January 1, 2020, and ending June 30, 2025 for the property at 4501 9th Avenue as outlined in Exhibit A. The Housing Authority shall have the ability to terminate the interim lease without penalty after 30 days from notification.

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Exhibit A - Lease Agreement

Adopted by the Housing Authority of the City of Sacramento on November 5, 2019, by the following vote:

Ayes: Members Ashby, Carr, Guerra, Hansen, Harris, Jennings, Schenirer, and Warren

Noes: None

Abstain: None

Absent: Mayor Steinberg

Attest by Secretary:

Mindy Cuppy Digitally signed by Mindy Cuppy
Date: 2019.12.09 13:01:30
-08'00'

Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Housing Authority.

INTERIM LEASE AGREEMENT

THIS INTERIM LEASE (LEASE), dated **January 1, 2020**, is between the **HOUSING AUTHORITY OF THE CITY OF SACRAMENTO** (LESSOR), and the **FORTUNE SCHOOL OF EDUCATION** (LESSEE).

RECITALS

A. LESSOR is the owner of real property known as 4501 9th Avenue, Sacramento, California, in the County of Sacramento, State of California, (the Premises), more particularly described in the Property Description, Exhibit A, attached hereto and incorporated herein (the Premises).

B. The Redevelopment Agency of the City of Sacramento acquired the property for housing on March 21, 1986.

C. In 2011, the California Legislature enacted AB 1x 26, which coupled with a subsequent decision of the State Supreme Court, resulted in the dissolution of redevelopment agencies as of February 1, 2012.

D. The City of Sacramento, by Resolution Number 2012-018 (adopted on January 31, 2012), designated the Housing Authority of the City of Sacramento as the local authority to retain the housing assets and functions previously performed by the Redevelopment Agency of the City of Sacramento.

E. The Redevelopment Agency of the City of Sacramento, by resolution Number 2013-001 (adopted on January 31, 2012) transferred its housing assets and housing functions to the Housing Authority of the City of Sacramento.

F. The Housing Authority of the City of Sacramento, by Resolution Number 2012-001 (adopted on January 31, 2012), accepted the housing assets and housing functions previously performed by the Redevelopment Agency of the City of Sacramento.

G. LESSEE began operating the Ephraim Williams College Prep Middle School (charter school) in 2012 in leased facilities located at 3300 Stockton Boulevard and 4545 9th Ave. in Sacramento as authorized by the Sacramento County Board of Education.

H. The Premises consist of a vacant lot directly adjacent to this charter school, and have been used as a play field by the school since its inception in 2012.

I. LESSEE desires this Interim Lease to continue to allow students to use the Premises as a field for play activities and physical education.

J. In October 2016, the Housing Authority of the City Sacramento approved the Vacant Lot Disposition Strategy, which included the Premises (4501 9th Avenue) in the “Affordable Housing Opportunity Site” category. A Request for Proposals for affordable

housing development was issued in January 2018, and Related California was selected as the developer to work exclusively to determine feasibility, and if appropriate, a financing plan for the development of new affordable housing on the Premises.

K. During the term of this Lease, no structures will be constructed on the Premises, and LESSEE is willing to participate in its maintenance and upkeep.

L. LESSEE acknowledges that LESSEE is leasing the Premises from the Housing Authority, on a temporary, interim basis. The Housing Authority acquired the Premises from the former Redevelopment Agency of the City of Sacramento for housing purposes to develop housing. LESSEE also acknowledges that the Housing Authority intends to develop housing or cause housing to be developed on the site in the future. This INTERIM LEASE (hereinafter LEASE) is consistent with, and furthers, the goals and needs of the Housing Authority. Such LEASE will assist in the maintenance and preservation of this asset while LESSOR evaluates the Premises' future redevelopment and use, which will be addressed as soon as feasible.

IT IS AGREED:

1. LEASE TERM:

A. LESSOR grants to LESSEE a tenancy of the Premises for up to five and a half (5 ½) years commencing on January 1, 2020, according to the Schedule in Section 2, below.

B. LESSEE understands and acknowledges that LESSOR intends to develop housing on the Premises, as soon as development becomes feasible and parameters of the project are met. This LEASE and the use contemplated by this LEASE are, therefore, temporary in nature. LESSEE shall not by this LEASE or otherwise be entitled to relocation benefits or replacement property or premises resulting from expiration or termination of this LEASE.

C. Therefore, LESSOR shall have the right to cancel this LEASE at no cost or penalty by giving LESSEE a minimum of thirty (30) days written notice.

2. SCHEDULE:

A. The LEASE term shall commence on January 1, 2020 and expire on June 30, 2025 to coincide with the ending of the school year in 2025.

3. RENTAL RATE:

Consideration for this LEASE shall be the securing, maintenance of, and insuring of the Property. There will be no monetary charge.

LESSEE shall at all times during this LEASE be responsible for and maintain and clean the Premises. This includes but is not limited to keeping the Premises free of debris and mowing the grasses on the Premises once a week except for the months of November, December, January and February, when mowing will be subject to the weather, but in no case less than once every three weeks.

4. USE:

A. LESSEE accepts the Premises in its present “as is” condition and LESSOR is under no obligation to undertake any improvements to make the Premises suitable for LESSEE’s intended use. LESSEE, at its sole cost, shall maintain the Premises in good condition and keep them free of garbage and debris.

B. The Premises shall be used by LESSEE only for customary school yard activities, including play activities and physical education, but for no other uses without LESSOR’s written consent.

5. ALTERATIONS BY LESSEE:

LESSEE may make no alterations to the leased premises without the prior written consent of LESSOR. No building or structures shall be constructed on the Premises.

6. UTILITY SERVICE PAYMENT:

The LESSEE is responsible for any and all utilities, if any, that may be required in LESSEE’s use of the Premises, including, but not limited to water, electricity and drainage.

7. INDEMNIFICATION:

LESSEE agrees to indemnify, defend and hold LESSOR and LESSOR’S governing boards, employees, agents and contractors harmless from all liability, penalties, losses, damages, costs, expenses, causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, or property damage resulting from any cause occurring in or about or resulting from an occurrence in or about Premises during the Lease Term; the negligence or willful misconduct of LESSEE or LESSEE’s agents, employees, and contractors wherever it occurs; or, an Event of LESSEE’s Default.

The provisions of this Section 7 shall survive the expiration or sooner termination of this Lease.

8. INSURANCE:

During the Lease Term, LESSEE must maintain the following insurance coverage from insurance providers licensed to do business in California and having an industry

rating that is reasonably acceptable to LESSOR. Failure to maintain the required insurance is a material breach of this Lease. Before beginning any work under this Lease, LESSEE must provide LESSOR with certificates of insurance or copies of the insurance policies demonstrating the required coverage, and the required endorsements naming LESSOR as an additional insured. LESSEE must assure that such certificates and endorsements are in a form reasonably acceptable to the LESSOR and reflect fulfillment of all of the requirements of this Lease. LESSEE must assure that the coverage afforded under the policies can only be canceled after thirty (30) days prior written notice to the LESSOR of the pending cancellation. LESSEE must mark such notice to the attention of the LESSOR's Procurement Services Office at the following address:

The Housing Authority of the City of Sacramento
801 12th Street
Sacramento, California 95814
Attn: Risk Management

a) The required insurance coverage is the following: (i) Two Million Dollars (\$2,000,000) or more of commercial general liability coverage including, without limitation, coverage for liability, public liability and property damage. The liability shall be endorsed to name the LESSOR as an additional insured.

b) Cancellation: LESSEE will provide the LESSOR with the cancellation clause and/or any amendatory endorsements that modify or change the policy cancellation clause of the insurance policies in force. It is the LESSEE's responsibility to notify the LESSOR of any notice of cancellation, non-renewal or non-payment of premium in accordance with your policy provisions. In the event insurance is cancelled or not renewed, the LESSEE shall notify the LESSOR within forty eight (48) hours of such cancellation or non-renewal.

_____**LESSEE's Initials**

LESSEE is in material breach of this Lease for so long as LESSEE fails to maintain all of the required insurance. LESSOR has the right, but not the obligation, to pay any delinquent insurance premiums and any other charges to reinstate or maintain the required insurance policies and coverage. Upon LESSOR's demand, LESSEE must immediately reimburse LESSOR for any and all costs incurred by LESSOR in so obtaining or maintaining insurance.

9. REPAIR CONTRACT:

LESSOR shall designate sources to be called when repairs to the leased premises are required. Said sources shall be called in the event LESSEE is unable to contact LESSOR within a reasonable time.

10. RISK OF HAZARDS:

LESSEE shall not do anything on the Premises, nor bring or keep anything thereon, which will in any way increase the risk of fire or the rate of insurance, or which shall conflict with the regulations of any fire district having jurisdiction.

LESSEE shall not do anything on the Premises, nor bring or keep anything thereon or use or apply chemical or hazardous materials on the Premises.

11. LESSEE OWNED ITEMS:

All permanent fixtures, partitions or other improvements made or installed under the requirements of this Lease, by either LESSOR or LESSEE, shall remain the property of the LESSOR. LESSEE shall repair any damage to the leased premises resulting from removal of any fixture, partition or other improvement installed by LESSEE.

12. GOOD NEIGHBOR:

LESSEE's use of the Premises shall be in a manner consistent with the general use of school yards located in residential neighborhoods.

13. WRITTEN COMMUNICATIONS:

A. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party pursuant to this Lease shall be in writing and either served personally or sent by prepaid, first class, certified mail.

Such matters shall be addressed to the other party at the following address or such other address as a party may designate to the other by notice:

<u>To LESSOR at:</u>	<u>To LESSEE at:</u>
Housing Authority of the City of Sacramento 801 12 th Street Sacramento, CA 95814	Fortune School of Education Margaret Fortune 2890 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833

B. Any matter mailed pursuant to this paragraph shall be deemed communicated within forty-eight (48) hours from the time of mailing.

14. RIGHT AND REMEDY:

No delay or omission in the exercise of any right or remedy of either party on any default of the other party shall impair such a right or remedy or be construed as a waiver of such default. Any waiver by either party of any default of the other party shall be in

writing and shall not be a waiver of any other default concerning the same or any other provisions of the Lease.

15. RULES AND REGULATIONS:

LESSEE'S occupancy and use of the Premises shall at all times be conducted in manner that is in compliance with applicable statutes, regulations and ordinances. Violation of these Rules and Regulations will be a default by LESSEE, in which case LESSOR may terminate this Lease on 48 hours written notice.

16. GOVERNING LAW:

This Lease shall be governed by and construed in accordance with the laws and regulations of the State of California.

LESSOR:
HOUSING AUTHORITY OF
THE CITY OF SACRAMENTO

LESSEE:
FORTUNE SCHOOL OF EDUCATION

By: _____
LA SHELLE DOZIER,
Executive Director

By: _____
MARGARET FORTUNE,
President/CEO

DATE: _____

DATE: _____

APPROVED AS TO FORM:

AGENCY COUNSEL

EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel 3, as shown on the Parcel Map entitled Lots 1-26 Inclusive as shown on the Plat of Tresch Tract, according to the official plat thereof, filed in the office of the Recorder of Sacramento County, California, on March 3, 1914 in Book 14 of Maps, Map No. 58.

APN: 014-0223-004-0000