



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 10.2

Meeting Date: October 17, 2013

Subject: Lease Agreement Between City Of Sacramento and Sacramento City Unified School District for Use Of Fremont Site

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference (Action Anticipated: November 7, 2013)
- Conference/Action
- Action
- Public Hearing

Department: Facilities Support Services

Recommendation: N/A

Background/Rationale:

The proposed lease agreement for the Fremont Adult School Site has been prepared for the Board's review. This agreement will be between the City of Sacramento and the Sacramento City Unified School District.

Financial Considerations: N/A

Documents Attached:

- Executive Summary
- Lease Agreement

<p>Estimated Time of Presentation: N/A</p> <p>Submitted by: Cathy Allen, Assistant Superintendent, Facilities Support Services</p> <p>Approved by: Jonathan P. Raymond, Superintendent</p>

Board of Education Executive Summary

Facilities Support Services

Lease Agreement Between City of Sacramento and Sacramento City Unified School District for Use of Fremont Site
October 17, 2013



I. OVERVIEW / HISTORY

The Agreement between the City of Sacramento and the Sacramento City Unified School District encompasses over a year of planning between the agencies and collaboration with a third party, the Studios for the Performing Arts Operating Company (the "Company"), a California nonprofit public benefit corporation. The Company represents the interests of the Sacramento Ballet, the California Musical Theatre, and the Sacramento Regional Performing Arts Alliance. The "Project," as envisioned by the Company, shall be known as the E. Claire Raley Studios for the Performing Arts after Sacramento philanthropist Joyce Raley Teel's late mother. The Project will serve to organize, promote, and conduct programs for recreation and education in the performing arts. The Project will be located at the former Fremont Adult School site at 2420 N St., Sacramento, California.

When it was built in 1920, Fremont School symbolized the growing Sacramento community's commitment to providing a quality education to the city's children. The housing of the E. Claire Raley Studios for the Performing Arts at this historic building will now symbolize the community's commitment to ensuring that all children have access to an education infused with the arts. The partnership envisioned would be two-way: Artists will be housed inside the building and artists from the building will travel to our schools to enrich our classrooms with music, art, dance and theater.

The direct benefit to the District is the provision for two-week summer camps for up to 50 students in a multi-disciplinary performing arts program, and the establishment of a minimum of 10 performing arts student internships. In addition, \$20,000 worth of scholarship opportunities will be made available to District students for each of the first two years. This value increases to \$40,000 in years three, four and five. Annually, after the fifth year, the scholarship support will be no less than in year five. The Agreement also provides for office space for the District's Visual and Performing Arts Director at the site.

The Agreement is for an initial term of 40 years, with negotiable extensions, at an annual rental fee of \$1.00.

It is expected that this collaborative effort will not only be successful here in Sacramento but serve as a model for other districts across the nation.

II. DRIVING GOVERNANCE

- EC 10900
- EC 10902

Board of Education Executive Summary

Facilities Support Services

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October 17, 2013



- EC 10910

III. BUDGET

Annual rental fee to the District in the amount of \$1.00. The property is leased on an “as-is” basis.

IV. GOALS, OBJECTIVES

This Project shall further serve our efforts to educate, train, and develop the talent of the District’s students in the performing arts area.

V. MAJOR INITIATIVES

This Project will provide additional opportunities to access art programs that are not currently available in our District. Years of research show that an education rich in the arts is closely linked to SCUSD’s mission of preparing every student for college and the workplace. The arts enhance academic achievement, social-emotional development and civic engagement. Arts education enables children from financially challenged backgrounds to have a more level playing field with children whose parents can afford to enrich their lives through the arts.

This effort is in alignment with the District’s *Strategic Plan 2010-14: Putting Children First*, Pillar I: Career- and College-Ready Students:

We will provide students with a relevant, rigorous and well-rounded education that includes 21st century career exploration, visual and performing arts and that meets four-year college and university requirements.

It is also in alignment with Pillar III: Family and Community Engagement:

We believe partnerships provide opportunities for students to learn beyond the school walls.

We will increase strategic partnerships that expose students to career pathways through internships and service learning. Our goal is for our schools to be engaged in partnerships that increase summer, during- and after-school opportunities for students.

Board of Education Executive Summary

Facilities Support Services

Lease Agreement Between City of Sacramento and Sacramento City Unified School District for Use of Fremont Site
October 17, 2013



VI. NEXT STEPS

The Company is ready to begin Phase I which will include the renovation of the property into dance studios, rehearsal and performance facilities, classrooms, offices, common use areas and building systems. The funding for the renovations is under the auspices of the Company and supported through community grants, private donations and the City of Sacramento. The City of Sacramento will sublease the property to the Company for the purposes of organizing, promoting, and conducting programs for recreation and education in the performing arts.

Board to consider approval of Lease Agreement on November 7, 2013.

**LEASE OF THE FREMONT SCHOOL FOR ADULTS
TO THE CITY OF SACRAMENTO**

This Lease (“Lease” or “Agreement”) is entered into _____, 2013 (“Effective Date”), by and between the Sacramento City Unified School District (“District”) and the City of Sacramento (“City”) (collectively, the “Parties”).

RECITALS

WHEREAS, the District, as the lessor, and City, as the lessee, desire to maximize use of their public facilities and community resources to organize, promote, and conduct programs for recreation and education in the performing arts;

WHEREAS, the District agrees to make available for use by the City the property located at the former Fremont School for Adults at 2420 N Street, Sacramento, California (the “Property”), for recreational and educational purposes as authorized and provided for in Education Code sections 10900 et seq.;

WHEREAS, the City, in turn, will sublease the Property to the Studios for the Performing Arts Operating Company (the “Company”), a California nonprofit public benefit corporation that represents the interests of the Sacramento Ballet, the California Musical Theatre, and the Sacramento Region Performing Arts Alliance (formerly consisting of two separate organizations—the Sacramento Opera and the Sacramento Philharmonic) (altogether referred to as “Member Organizations”), for the purpose of facilitating the Studios for Performing Arts Project (the “Project”);

WHEREAS, the Project consists of bringing together the Member Organizations under one roof, allowing them to share studio, rehearsal, performing, office, and classroom space;

WHEREAS, working in the same space will allow the Member Organizations to conserve resources and facilitate communication and cooperation between the groups in an effort to foster innovative ideas for advancing the arts and arts education in the Sacramento community;

WHEREAS, the Property, with some improvements (“Initial Improvements”), described in Exhibit A, is an ideal location for the Project;

WHEREAS, in addition to subleasing the Property, the City has agreed to support the Project consistent with City Council Agreement No. 2006-0798 adopted July 25, 2006 and Resolutions No. 2007-151 adopted March 13, 2007, 2007-883 adopted December 4, 2007, 2009-471 adopted July 21, 2009, 2013-144 adopted May 7, 2013 and 2013-0247 adopted July 23, 2013; and

WHEREAS, the purpose of the Agreement is to set forth the terms, conditions and covenants to support, in the District’s partnering with the City, the performing and

visual arts as a component of the community recreational and educational programs that enhance the unique cultural and educational opportunities within the District and the City.

TERMS, CONDITIONS & COVENANTS

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the Parties hereto agree as follows:

1. Lease. The District leases to the City and the City leases from the District the Property on the terms and conditions in this Agreement. The District hereby agrees to provide full access to the City to the Property at all times to give full force and effect to the rights and obligations of the Parties pursuant to this Lease. The City accepts the Property as is and is authorized to use the Property for the Project, including entering into a sublease agreement, as authorized in Section 4.

2. Term. Subject to the early termination provisions set forth in section 7 below, the term of this Lease is 40 years, commencing on the Effective Date (the “Term”). If the City wishes to extend the Term, the Parties shall negotiate in good faith regarding any such extension.

3. Rent. The annual rental fee is one dollar (\$1.00) per year.

4. Subleases.

(a) Sublease by the City. The parties agree that the City, in furtherance of the Project, will enter into a sublease agreement (the “Sublease”) with the Company, which term shall not exceed the Term of this Agreement. The District shall have the right to review and approve the Sublease and any amendments thereto, which approval shall not be unreasonably withheld. The Sublease shall require the Company to agree to those items listed in Exhibit B.

The District’s approval of the Sublease shall constitute an affirmation by the District that the City has complied with all of the obligations of this Lease with respect to the Sublease. The District’s approval of the Sublease shall fully release and discharge the City, its officers, employees, and agents from, and relinquishes all rights to, any and all claims, actions, causes of action, demands, damages, costs, losses of service, liens, expenses, and compensation related to the Sublease.

(b) Sub-Sublease by the Company. The District acknowledges that the Company, in furtherance of the Project, will enter into sub-sublease agreements (the “Sub-Subleases”) for the Property with each of the Member Organizations and potentially with other arts or educational organizations. The City, in the Sublease, shall require the Company to secure the District’s approval of all Sub-Subleases prior to their execution. Such approval shall not be unreasonably withheld.

5. Construction of Improvements. The District consents to the construction of the Initial Improvements (described in Exhibit A) and future tenant improvements that are consistent with the Studios Project and other arts and educational uses approved by the District. The District understands and agrees that the construction of all improvements, including the Initial Improvements, is the sole responsibility of the Company, to be completed at the Company's sole cost and expense. It is the Company—not the City—that is solely responsible for the performance of all work necessary to fully design and construct all improvements, including the Initial Improvements. Neither the City, nor any officer, employee or agent thereof, shall be responsible to the District for any claim, cost, damage, or other liability occurring by reason of anything done or omitted to be done in connection with the design and construction of any improvements, including the Initial Improvements, and the District hereby waives and releases any and all such claims, costs, damages, or other liabilities.

6. Maintenance. The City is not responsible, in any way, for the repair, maintenance, or care of the Property. It is the intent of the parties that the Company, through the Sublease, shall assume the obligation to repair, maintain, and care for the Property so as to keep it in good repair, order, and condition. If the Company fails to do so, the District's sole recourse is with the Company. Neither the City, nor any officer, employee or agent thereof, shall be responsible to the District for any claim, cost, damage, or other liability occurring by reason of anything done or omitted to be done in connection with the repair, maintenance, and care of the Property, and the District hereby waives and releases any and all such claims, costs, damages, or other liabilities.

7. Early Termination. The Agreement may be terminated by either party if (1) the Company fails to secure the necessary funding to complete the Phase I Improvements as described in Exhibit A; (2) the Company fails to commence construction on the Phase I Improvements within 24 months of the Effective Date or fails to complete the Phase I Improvements within 48 months of the Effective Date; (3) the Company fails to secure the necessary financing to complete any phase of construction for any improvements prior to commencing that phase or fails to complete a phase, including Phase II Improvements, as the Parties may agree during the Term of the Lease; (4) the Project fails to continue operating as a studios and arts space for a period of six continuous months except in the event of a force majeure; (5) for a material breach of this Lease or the Sublease that is not cured with due diligence efforts, upon receipt of notice by the District, after a reasonable period of time; or (6) failure by the Company to comply with any of the obligations listed in Exhibit B.

8. Removal on Termination. On termination of the Agreement, the Company, and if the Company fails to do so, the District shall be responsible for removing all personal property, without damage to the Property, which are not fixtures or improvements to the Property. All fixtures, except trade fixtures, and improvements shall remain the property of the District. If the District removes the personal property, or trade fixtures, it shall have the right to sell or otherwise dispose of such property. This provision shall be contained in the Sublease and/or the Sub-Subleases.

9. Liens. There shall be no liens on the Property, including mechanics liens (which do not attach to public lands). The City, in the Sublease, may authorize the Company, for the purpose of financing the Project, to enter into security agreements and financing statements as security for trade fixtures and for personal property and may encumber sublease agreements.

10. Indemnity. To the extent not included in the terms contained in the Memorandum of Understanding between the City and the Schools Insurance Authority (SIA), in which the District is also a member, the Parties agree to mutually indemnify, defend, and hold each other harmless, including their respective officers, representatives, employees, agents, and assigns, from acts or omissions related to this Lease that give rise to liability, or claims of liability, from third parties.

It is the intention of City and District that the provisions of paragraph above be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, invitees, subconsultants or subcontractors. It is also the intention of City and District that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors.

11. Insurance. City shall provide insurance regarding City's acts or omissions giving rise to liability, or claims of liability, regarding use of the Property by the City or its agents.

12. Waiver of Claims. The District waives and releases any and all claims of whatever sort or nature that may arise against the City, its officers, employees, agents, contractors and subcontractors, in connection with this Lease and any damage to the Property or injury to persons or properties arising from the installation, maintenance, operation, leakage, rupture, collapse, repair, or replacement of any improvements to the Property; this waiver shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the District expressly acknowledges that this agreement is intended to release and extinguish, without limitation, all claims for loss of any sort or nature arising hereunder that District does not know or suspect to exist.

13. Binding Effect. This Lease is binding upon the successors and assigns of the Parties.

14. Non-Waiver. Waiver of any breach of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Lease.

15. Entire Agreement; Modification. This Lease contains all of the terms and conditions as agreed upon by the Parties, and supersedes any and all oral or written communications by and between the Parties. No waiver, alteration, modification, or termination of this Lease shall be valid unless made in writing and signed by the Parties. In the event of a conflict between this Lease and any other agreement or understanding executed by the Parties subsequent to the commencement of this Lease, the terms of this Lease shall prevail and be controlling unless such other agreement expressly provides to the contrary. Either Party may record a copy of this Lease, pursuant to Government Code 27201 et seq.

16. Assignment Prohibited. No Party may assign any right or obligation pursuant to this Lease without the prior written approval from the other Party. Any attempt or purported assignment of any right or obligation pursuant to this Lease shall be void and of no effect.

17. Severability. If any term, covenant, or condition of this Lease is held to by a court of competent jurisdiction to be invalid, the remainder of this Lease shall remain in full force and effect.

18. Enforcement of Agreement. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

19. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

20. Captions. The headings or captions contained in this Lease are for identification purposes only and shall have no effect upon the construction or interpretation of this Lease.

21. Ambiguities. The Parties have each carefully reviewed this Lease and have agreed to each term of this Lease. No ambiguity shall be presumed to be construed against either Party.

22. Integration. This Lease embodies the entire agreement of the Parties in relation to the scope of matters covered by this Lease, and no other agreement or understanding verbal or otherwise, exists between the Parties. Notwithstanding the foregoing, the

substantive provisions of the Lease shall be included in any sublease agreement with the Company.

23. Notice. Any communication required during the term of this Lease, including, without limitation, notice of termination, shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

To the City: Rebecca Bitter
Convention, Culture, and Leisure Department
City of Sacramento
1030 15th Street, Suite 250
Sacramento, CA 95814
Office: (916) 808-8225
Fax: (916) 808-7279

To the District: Superintendent
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Office: (916) 643-9000
Fax: (916) 399-2058

Any Party who desires to change its address for notice may do so by giving notice as described above.

Notice may also be given by overnight mail with proof of delivery or by facsimile with proof of transmission.

24. City Representative Authority. Whenever under the provisions hereof the approval or consent of the City is required, or the City is required to take some action at the request of the District or Company, such approval or consent or such request shall be given for the City by its City Manager or the City Manager's designee and each party hereto shall be authorized to rely upon any such approval or request.

25. District Authority. The District represents and warrants that it has the authority to enter into this Lease pursuant to Education Code section 10900 et seq. and in particular, Education Code section 10910. The District also represents and warrants that an admission charge may be imposed on members of the public who come to the Property to participate in classes or view performances offered by the Company, Member Organizations, or other sublessees of the Property—such Sublease and Sub-Subleases having been approved by the District—as such events constitute educational events within the meaning of Education Code section 10902. Nothing herein shall preclude the District from citing or relying on any other authority based on current or subsequent law in support of, or in addition to, the representations and warranties stated in this provision, including but not limited to, Education Code sections 35160, 35160.1 and 38130 et seq.

The District shall defend, hold harmless and indemnify the City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected to the District's representations in this Section 25, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of the City, its agents, servants, or independent contractors who are directly responsible to the City, except when such agents, servants, or independent contractors are under the direct supervision and control of the District.

26. Signatory Authority. The persons executing this Lease have the capacity and are authorized to execute this Lease as the representatives of their respective Parties, and to bind their respective Party to the terms of this Lease.

(Signature Page Follows)

City of Sacramento

Sacramento City Unified School District

By: _____
John F. Shirey
City Manager

By: _____
Jonathan P. Raymond
Superintendent

Approved as to Legal Form
Sacramento City Attorney

By: _____
Kourtney Burdick
Deputy City Attorney

Attest
Sacramento City Clerk

By: _____

EXHIBIT A

INITIAL IMPROVEMENTS

The **Initial Improvements** shall be constructed in accordance with the following:

- (a) *Defined and Timeline.* The Initial Improvements consist of the following:
- (1) *Phase I Improvements.* The first phase of the Initial Improvements (“**Phase I Improvements**”) covers the renovation of the Premises into dance studios, rehearsal and performance facilities, classrooms, offices, common use areas, and building systems to provide for the relocation of the Sacramento Ballet into the building. Lessee shall commence Phase I Improvements within 24 months of the Effective Date and complete the Phase I Improvements within 48 months of the Effective Date of this Lease.
 - (2) *Phase II Improvements.* The second phase of the Initial Improvements (“**Phase II Improvements**”) includes the renovation of additional studios and classroom space and supporting offices, storage areas, cafeteria, gift shop, and related facilities to provide space for the relocation of the for the Sacramento Region Performing Arts Alliance and the California Musical Theater.
 - (3) The District, acting through the Superintendent or authorized designee, and the City, acting through the City Manager or his or her designee, may mutually agree to revise the scope of the Initial Improvements.
- (b) *Company’s Funding of Phase I Improvements.* The Company is to contribute a minimum of \$1.5 million dollars to construct the Phase I Improvements within the Timeline as set forth in (a)(1).

EXHIBIT B

COMPANY OBLIGATIONS

The City, in the Sublease, agrees to require the Company to do the following:

1. Give the District an opportunity to appoint a person to serve on the Company's nine-member Board of Directors throughout the Term of the Sublease;
2. Maintain the property in good repair, order, and condition and remove the Property on termination pursuant to section 8 of the Agreement;
3. Pay all utilities and other service costs, fees, taxes, and assessments relating to the use of the Property;
4. Agree to an indemnity provision in favor of the District;
5. Name the District as an additional insured on a general liability insurance policy acceptable to the District and, if requested, by the City as a named additional insured;
6. Give the District an opportunity to review and approve any agreements related to the construction of the Initial Improvements and use of the Property; and
7. With respect to the construction of the Initial Improvements:
 - (a) Prior to commencing each phase of construction, the District shall be given the opportunity to review the construction plans and the Company's financing plan;
 - (b) Construct the Initial Improvements in accordance with the construction plans and specifications that were approved by the District;
 - (c) The City and the District shall be given an opportunity by the Company to review and approve in writing, which shall not be unreasonably withheld, the use of the selected contractor, the contractor's insurance policies, indemnity provisions in favor of the City and the District, and other terms and conditions of construction documents and agreements, including surety bonds; and
 - (d) Require the Contractor to name the District, along with the City, as an additional insured on its insurance policies for the Project;
 - (e) Be solely responsible for securing all legally required approvals and permits and comply with all laws governing construction on public property, including the California Environmental Quality Act and zoning law;

8. Provide the following specific benefits to the District in furtherance of the District's efforts to educate, train, and develop the talent of its students in the performing arts:

(a) Annually, at no cost, a two (2) week summer camp for training in a multidisciplinary performing arts program offered by the Company for up to fifty (50) District students at the Property or other District designated site within the District and approved by the Company. Dates of said summer camps each year will be agreed upon by both the District and the Company.

(b) Annually, a minimum of ten (10) unpaid performing arts internships, or the equivalent, for District students, in the performing arts offered by the Company or any other permanent user of the Property with the location being either at the Property or at any other Company facility in reasonable proximity of the Property.

(c) Scholarship funds, or subsidies to offset fees or costs, charged for training in the performing arts, other than those offered under 1 and 2 above, offered by the Company or any other permanent user of the Property as follows:

- i. \$20,000 in value per year for the first two years of the Lease;
- ii. \$40,000 in value per year for the third, fourth and fifth years of the Lease; and
- iii. Annually, after the fifth year, the District and the Program shall meet to determine the amounts and types of scholarship funds, or subsidies to be provided. During any year the amount shall not be less than the amount established in year five.

(d) Any unsold tickets, at no cost, up to a maximum of forty (40) tickets per Community Center Theater (CCT) event made available, excluding the Broadway Series or other such touring performances, on a first priority basis, to the District, its parents and/or students, at least forty-eight (48) hours prior to the CCT event. Any unsold tickets, at no cost, at the time a performing arts event is scheduled to commence at the Property shall be made available at no cost to the District, its parents and/or students, on a first priority basis, up to a maximum of twenty (20) tickets, who appear and identify themselves immediately prior to the scheduled commencement of the performing arts event.

(e) Office space for District's Visual and Performing Arts Director.