





Lease Agreement Between City of Sacramento and Sacramento City
Unified School District for Use of Fremont Site
November 21, 2013



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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

**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 bene

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-

5. Construction of

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.

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. 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

City of Sacramento

By: _____
John F. Shirey
City Manager

Approved as to Legal Form
Sacramento City Attorney

By: _____
Kourtney Burdick
Deputy City Attorney

Attest
Sacramento City Clerk

EXHIBIT A

INITIAL IMPROVEMENTS

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

- (a) *Defined and Timeline.* Lessee shall design and construct the Initial Improvements, which include the construction of dance studios, rehearsal and performance spaces, classrooms, offices, common use areas, storage areas, , and building systems such as HVAC, fire suppression, plumbing, electrical, and communications, to provide for the relocation of the Member Organizations into the building. Lessee shall commence the Initial Improvements within 24 months of the Commencement Date and complete the Initial Improvements within 48 months of the Commencement Date of this Lease.
 - (1) 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 the Initial Improvements.* The Company is to contribute the total cost of the Initial Improvements, less \$2,500,000 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 lawppor he 0-iomply2(c)-6(a)(nd c)]TJs, ia-5(-0.003 p-11(-6(a)(nd c)]TJ)-2(s

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 as follows:

- i. For the Ballet and the Philharmonic/Opera, up to forty (40) tickets per Community Center Theater (CCT) performance forty-eight (48) hours in advance, space permitting, excluding the Broadway Series or