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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, General Counsel

Meeting Date September 22, 2021

Subject Lease Agreement between Trust for Public Land and the Oakland Unified School District to help the former be awarded a Statewide Park Program Proposition 68 Grant to develop a green schoolyard at Bridge Academy and for the former to perform community outreach, design, and construction of green schoolyard improvements, with a term of 30 years

Ask of the Board Approval by the Board of Education of the Lease Agreement between Trust for Public Land and the Oakland Unified School District

Background Trust for Public Land (“TPL) has applied for a grant under Proposition 68 for funding to develop a green schoolyard at Bridge Academy. One of the conditions of the grant is a lease agreement between TPL and the District permitted the development to occur and guaranteeing the maintenance of the new green schoolyard.

Discussion This Lease would satisfy the grant conditions and make TPL eligible for the grant. The Lease would permit TPL, if it received the grant, to develop a green schoolyard at Bridge Academy and maintain it for 30 years.

Fiscal Impact None. The costs of development, construction, and maintenance of the green schoolyard at Bridges Academy would be borne by TPL as described in the Lease Agreement.

Attachment

- Lease Agreement Between Trust for Public Land and the Oakland Unified School District

Lease Agreement

This LEASE AGREEMENT ("**Agreement**" or "**Lease**") is made as of September 23, 2021, by and between OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district (hereinafter "**Lessor**"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation (hereinafter "**Lessee**", and together with Lessor, the "**Parties**"), with reference to the following recitals of fact.

RECITALS

A. Lessee is in the business of park and green schoolyard development. Lessor desires to see the schoolyard at Bridges Academy, located at 1325 53rd Ave, Oakland, California (the "**Property**" as described in Exhibit A), transformed into a green schoolyard by Lessee. Together the Parties are hoping that Lessee is awarded a Statewide Park Program Proposition 68 Grant (a "**Prop 68 Grant**") to develop a green schoolyard at the Property. Lessor is not an eligible entity under the Prop 68 Grant criteria. Therefore Lessor and Lessee are entering into this Lease so that Lessee may remain the eligible entity under Prop 68 Grant criteria even after Lessee completes the construction of the green schoolyard improvements, and for the duration of the thirty year land tenure period (the "**Land Tenure Period**") mandated by the Prop 68 Grant requirements.

B. If the Prop 68 Grant is awarded, then Lessor desires to engage Lessee to perform community outreach, design, and construction of green schoolyard improvements on the Property (the "**Services**") upon the terms and conditions set forth in this Lease and in the Donation Agreement for the Development and Construction of Living Schoolyards on Oakland Unified School District Campuses between the Parties dated December 17, 2017 (as amended November 12, 2020, the "**Donation Agreement**"). This Lease authorizes the Lessee to proceed with the Services, including the construction of the improvements (the "**Project**") and the post-construction operations and maintenance, during the Land Tenure Period. The Lessee may delegate the actual design, construction, construction management, and post-construction operations and maintenance during the Land Tenure to other entities. Pursuant to the Donation Agreement, Lessor has already committed to doing the post-construction operations and maintenance at the Property, and this Lease confirms that commitment.

C. Lessee desires to perform the Services upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, and the recitals set forth above, which are made a part hereof, the parties agree as follows:

1. **Leased Premises**. The Lease concerns only the schoolyard areas at the Property (the "**Leased Premises**") and not the school buildings. The Lease is also non-exclusive to Lessee, except during the active construction of the Project improvements until acceptance of those improvements by Lessor. Once Lessor accepts the completed Project improvements, Lessor shall again have control over all Property, including the Leased Premises, and Lessor shall undertake the operations and maintenance of the Project improvements for the duration of the Land Tenure Period, as specified in the Donation Agreement. Thereafter, Lessee shall only exercise its rights under this Lease to access the Leased Premises in order to confirm the maintenance of, and public access to, the Project improvements during the Land Tenure Period, or to maintain the Project improvements if Lessee determines that the Project improvements are not being adequately maintained during the Land Tenure Period. Lessee shall not undertake any maintenance of the Project improvements without first giving at least sixty (60) days written notice to Lessor of any Project improvements which Lessee feels are in need of maintenance. During that sixty day period Lessor may undertake that maintenance and/or initiate discussions with Lessee as to whether the maintenance is needed, and if so, what is needed and how it should be undertaken.

2. **Rent.** There shall be no rent owed at any point during the Lease. Instead consideration for the Lease on the part of Lessee shall be Lessee's undertaking of the Services and acting as the eligible entity under the terms of the Prop 68 Grant.

3. **Lease Term.** The Lease shall not become effective unless and until the Project is awarded a Prop 68 Grant. The "**Lease Term**" shall commence upon the later of (i) award of a Prop 68 Grant to the Project, and (ii) the execution of the Lease; the Lease Term shall continue for thirty (30) years after the commencement of the Lease Term from September 9, 2021 – September 9, 2051. Due to the Prop 68 Grant requirements, the Lease may not be terminated by Lessor or Lessee before the completion of the Lease Term.

4. **Independent Contractor Relationship.** Lessee is, and shall at all times be, an independent contractor and not an employee, officer, or agent of Lessor. Nothing herein contained shall be construed as constituting the Parties herein as partners.

5. **Property Taxes.** Lessee shall not be responsible for the payment of property taxes or property assessment fees, each of which shall remain the responsibility of Lessor as the Property's owner.

6. **Compliance with Laws.** Lessee shall, at its sole cost and expense, comply with all of the requirements of all municipal, state, and federal authorities now in force, or which may be in force pertaining to the Leased Premises and use of the Leased Premises as provided by this Lease. Any work done that does not comply with any laws, rules, or regulations will be remedied at the Lessee's expense.

7. **Operations, Maintenance, & General Public Access of the Leased Premises.** Lessor will maintain the Leased Premises for the duration of the Land Tenure Period as set forth in the Donation Agreement and this Lease. Lessee, as the eligible entity under the Prop 68 Grant, will ensure Lessor's maintenance of the Project improvements for the duration of the Land Tenure Period. Additionally, to the fullest extent possible, the Lessor intends that the Property will participate in the Lessor's Joint Use Agreement with the City of Oakland, whereby school's outdoor facilities are made available for community use beyond school hours. Lessor commits, in good faith, to opening the Property for community use, after the Project improvements are completed, the Leased Premises shall be open to the general public during non-school hours for no less than 3 hours per day, 7 days per week, to meet the Prop 68 grant requirements during the Land Tenure period. Additionally, Lessor will clearly display a sign at the Sites that indicates the hours and rules for the community use of the Leased Premises. The sign will be designed and fabricated by Lessee and approved by Lessor.

8. **Surrender of Property.** Lessee hereby acknowledges the underlying fee title of Lessor in and to the Property and hereby covenants and agrees never to contest said title.

9. **Signs.** All signs shall be subject to review by Lessor, including placement, size, color, and wording; provided, however, nothing herein shall prohibit Lessee from placing any visible sign near the entrance of the Property if required by the Prop 68 Grant. Should the Lessee wish to install a sign or signs, placement of sign(s) will be decided by Lessor. Lessor shall not unreasonably withhold approval of such sign(s). Lessee shall obtain any and all permits as may be required for Lessee to place said sign(s) at or near the entrance to the Property. Lessor will clearly display a sign at the Leased Premises that indicates the hours and rules for the community use of the Leased Premises. The sign will be designed and fabricated by Lessee and approved by Lessor.

10. **Personal Property.** All personal property, tools or equipment taken onto, stored or placed on the Property by the Lessee shall remain the property of the Lessee. Such personal property shall be removed by the Lessee, at their sole risk and expense, upon the expiration or sooner termination of this Lease, or upon completion of the Project improvements. Lessor does not accept any responsibility for any damage, including, but not limited to damages caused by fire, flooding and theft, to any personal property, including any equipment, tools or machinery stored on the Property.

11. **Miscellaneous.**

(a) **COVID-19.** Lessee agrees to notify Lessor within twelve (12) hours if – within 14 days of having been on District property – any employee, contractor, agent, volunteer, or representative of Lessee tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to Stanford possible COVID-19 exposure. Lessee further agrees to immediately adhere to and follow any Lessor directives regards health and safety protocols including, but not limited to, providing Lessor with information regarding possible exposure of Lessor employees to any employee, contractor, agent, volunteer, or representative of Lessee and information necessary to perform contact tracing, as well as complying with any Lessor testing and vaccination requirements. Lessee shall bear all costs of compliance with this section.

(b) **Governing Law.** This Agreement shall be governed by the laws of the State of California, applicable to contracts executed and performed entirely therein.

(c) **Waiver of Default.** Failure by either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or of the right to such party thereafter to enforce such provision. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

(d) **Modifications.** This Agreement may be modified only in writing, signed by both parties hereto.

(e) **Integration Clause.** This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior correspondence, conversations and negotiations with respect thereto.

(f) **Covenants.** Whenever words or provisions imposing an obligation or duty on either party are used herein, such words or provisions shall have the same force and effect as though phrased in the form of express covenant.

(g) **Attorneys' Fees.** The Parties agree that each shall bear their own cost, including reasonable attorneys' fees and costs, in any litigation between the Parties in connection with this Agreement.


(h) **Binding Effect.** This Agreement shall be binding upon the heirs, successors, assigns and representatives of the parties hereto.

(i) **Severability.** If any provision, in whole or in part, of this Agreement should be found to be invalid or unenforceable, it shall not affect the validity of any other provisions within this Agreement which shall continue to bind the parties.

(j) **Construction.** The language in all parts of this Lease shall in all cases be construed simply and according to its fair meaning and not strictly for or against either of the parties.


IN WITNESS WHEREOF, the Parties have executed this Lease Agreement effective the date set forth herein.

Trust for Public Land/Lessee

Name: Gilman Miller Signature: 
Position: Senior Counsel Date: September 15, 2021

Oakland Unified School District/Lessor

Name: Shanthi Gonzles Signature: 
Position: _____ Date: September 24, 2021
 Board President
 Superintendent
 Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: 
Position: Secretary, Board of Education Date: September 24, 2021

Approved as to form on September 14, 2021

