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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
LaResha Martin, Network Superintendent, Region 4
Mukta Sambrani, Principal, Lincoln Elementary School

Board Meeting Date January 27, 2021

Subject Agreement
Contractor: Marion Fong, Real Property Owner
Services For: Lincoln Elementary School, Oakland Unified School District

Action Requested and Recommendation Ratification by the Board of Education of an Agreement between the District and Marion Fong, Oakland, CA, for the latter to authorize parking at real property at the corner of 11th and Madison, 157-11th Street, Oakland, CA 94607, for Lincoln Elementary School, for the period of January 1, 2021 through December 31, 2021, and renewal will be automatically be extended annually for four years unless terminated under any provision hereof, for each year of the anniversary date, for an annual cost not to exceed \$16,800.00.

Background The District has had an Agreement with Ms. Fong since the construction of the Caroline Yee Annex at Lincoln School for parking for Staff. The Agreement is for the period of January 1, 2021 through December 31, 2021, and will be extended annually for four years unless terminated before the anniversary date of each year of the term. The annual cost is \$16,800 per year.

Competitively Bid Was this contract competitively bid? No
If no, exception: Agreement less than the \$95,200.00 threshold.

Fiscal Impact Funding resource(s): 0000/General Purpose funding in an amount not to exceed \$16,800.00 annually.

Attachments

- Agreement

LEASE AGREEMENT

This Lease is made and entered into as of January 1, 2021 by and between Marion Fong ("Owner") and the Oakland Unified School District, a California public school district ("District") (collectively, "Parties").

RECITALS:

WHEREAS, Owner owns that real property located at the corner of 11th and Madison, Oakland, California ("Real Property") which is further described on Exhibit "A" attached hereto;

WHEREAS, Owner desires to lease the Real Property to the District and District desires to lease the Real Property from Owner.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

1. Description of Real Property. The Owner hereby leases the Real Property to the District. The Real Property is vacant land that the District intends to use as a parking lot for use by Lincoln Elementary School staff and visitors.
2. Term of Lease. The Term of this Lease shall be for one (1) year ("Term"), commencing on January 1, 2021("Commencement Date"), and unless sooner terminated under any provision hereof, this Agreement shall end on December 31, 2021. ("Term").
3. Renewal of Lease. Unless terminated by either Party as indicated herein, this Lease shall automatically renew for one year on the anniversary date of each preceding Term. Under no circumstances shall this renewal exceed four (4) renewals for a total cumulative Term of five (5) years.
4. Rent. Rent for the Real Property ("Rent") shall be \$1,400.00 (Fourteen Hundred dollars and no cents) per month.
5. Use during the Term. District shall use the Real Property specifically and exclusively for parking, necessitated by the Lincoln ES Modernization Project and City of Oakland Alice Street improvements.
6. Repairs and Maintenance.
 6. 1 . District shall use all commercially reasonable precautions to prevent waste, damage or injury to the Premises. The District further agrees that all damage or injury to the Real Property caused by District's use or occupancy, except to the extent caused by the negligence or wrongful acts or omissions of Owner, Owner's agents, servants and

employees, shall be repaired by the District at the District's expense.

6.2. Repairs necessitated by reasonable wear and tear shall be performed by Owner during the lease term. Owner shall maintain the paved surface of the Property to District's reasonable satisfaction during the Lease term.

7. Utilities and Taxes.

7.1. Utilities. All utilities, if any are required, shall be paid by District.

7.2. Taxes. Owner shall be responsible for all taxes and assessments.

8. Insurance. District shall at District's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive General Liability insurance or equivalent, in an amount of not less than \$1,000,000 per occurrence of bodily injury and property damage combined or in a greater amount as reasonably determined by Owner and shall insure District, with Owner as an additional insured, against liability arising out of the use, occupancy or routine maintenance of the Premises.

9. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its officers, agents and employees from any and all liabilities, claims, or losses of any nature, including attorneys' fees, to the extent caused by, arising out of, or in connection with, the indemnifying party's negligent acts or omissions pursuant to this Lease.

10. Hazardous Materials. The Parties agree as follows with respect to the existence or use of Hazardous Materials on the Real Property.

10.1. Owner warrants that there is no hazardous material of any type or nature, solid, liquid or gaseous, which exists or has existed above, on, or beneath the Real Property.

10.2. Owner shall indemnify and hold District harmless from any and all claims, including third party claims, resulting from the presence of hazardous materials above, on or beneath the Real Property, which was deposited prior to the Commencement Date, including but not limited to the cost of removal of hazardous materials from the Real Property, damages consequent to its existence on the Real Property and attorneys fees and costs of litigation arising from any such claims.

- 10.3. Owner agrees to provide and disclose to District within 15 days of execution of the Lease, any and all documents in Owner's possession regarding the existence, use, application or removal of hazardous substances on or from the Real Property including any and all disclosures by current and former tenants of Owner of the use or presence of hazardous materials on or in the vicinity of the Real Property.
11. Entry and Inspection. The District shall permit Owner or Owner's agents to enter the Real Property at all reasonable times, upon reasonable written notice, for any of the following purposes: to inspect the same and to make necessary repairs.
12. Assignment, Mortgage or Sublease. Neither District nor its successors or assigns, shall assign, mortgage, pledge or encumber this Lease or sublet the Real Property in whole or in part, or permit the Real Property to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior written consent of Owner in each instance, which consent shall not be unreasonably withheld.
13. Alterations. The District shall not make, or suffer to be made, any alterations to the Real Property without the written consent of the Owner, which shall not be unreasonably withheld.
14. Defaults by District. If District fails to pay Rent or additional rent or other amounts due hereunder within thirty (30) days of the date such amounts are due, Owner may charge, as additional rent, a late payment fee equal to three percent (3%) of the unpaid Rent or other amount due.
15. Defaults by Owner. Owner shall not be in default in the performance of its obligations hereunder unless and until Owner shall have failed to perform such obligations within thirty (30) days after written notice to Owner by District properly specifying wherein Owner has failed to perform any such obligations; provided, however, that if the matter which is the subject of a notice is of such nature that the same cannot be corrected within thirty (30) days, then no default shall be deemed to have occurred if Owner, before the expiration of the thirty (30) day period from the date of giving notice by District, commences to correct any such default and diligently prosecutes the same to completion. District's remedies for Owner's default shall be the right of set-off or abatement, or the right to terminate.
16. Waivers. The failure of Owner or District to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the

right or remedies that District or Owner may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

17. Notices and Demands. All notices including change of address to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein as such party's principal office or that at such other address as either party from time to time designate in writing.

To Owner: Marion Fong
436 Hanover Avenue
Oakland, CA 94606

To District: Josh Daniels
General Counsel
Oakland Unified School
District
1000 Broadway, Suite 300
Oakland, CA 94607

18. Miscellaneous Provisions:

- 18.1. Owner covenants and agrees to and with District that all times when District is not in default under this Lease and during the Term or any extended term, District's quiet and peaceful enjoyment of the Real Property shall not be disturbed or interfered with by Owner or any person claiming by, through or under Owner.
- 18.2. Time is of the essence for this Lease.
- 18.3. Whenever Owner's approval or consent is required herein, such approval or consent shall not be unreasonably withheld.
- 18.4. The terms, provisions and stipulations of this Lease by and between the Parties shall inure to the benefit of and be binding upon their respective heirs, administrators, executors, successors and assigns.
- 18.5. The District, at its own cost and expense, shall comply with all laws, rules and orders of all federal, state and municipal governments or departments, which may be applicable to the Real Property.
- 18.6. If either party files an action to enforce any provision contained in this Lease, or for breach of any covenant or condition, the prevailing party in any action, trial or appeal, shall be entitled to reasonable

attorneys' fees and costs to be paid by the losing party as fixed by the court.

- 18.7. This Lease shall be governed by and construed in accordance with the laws of the State of California.
- 18.8. This Lease may be executed in several counterparts, and all so executed shall constitute one Lease binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.
- 18.9. Owner acknowledges that the District shall not be bound by the terms of this Lease unless and until it has been (i) formally approved by the District's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to Owner absent such formal approval or valid and proper execution.
19. Entire Lease. This Lease, together with any attachments hereto, contains the entire Lease of the parties regarding the letting of the Premises. Any representations, inducements or Leases, oral or otherwise, not contained in this Lease (including any exhibits or attachments) shall be of no force or effect. This Lease may not be modified, changed or terminated in whole or in part in any manner other than by an Lease in writing duly signed by both parties hereto.
20. Severability. The provisions of this Lease are declared to be severable, and if any provision herein is invalidated by any court, the remaining provisions shall not be affected thereby and shall be fully enforceable, unless such enforcement would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Lease.

IN WITNESS WHEREOF, the Owner and the District have caused this Lease to be executed in their respective names by their duly authorized officers, all as of the date first above written.

By: Marion Fong

Title: Owner of Property

By: Sondra Aguilar Dated: 12/21/2020
Sondra Aguilar, Chief Academic Officer

Approved as to form by OUSD Staff Attorney Joanna Powell on 12/18/2020.

Joanna J. Powell

Shanthy Gonzales 1/28/2021
Shanthy Gonzales
President, Board of Education

Kyla Johnson-Trammell 1/28/2021
Kyla Johnson-Trammell
Secretary, Board of Education

EXHIBIT A

Description of the Real Property

That certain real property located in the City of Oakland, County of Alameda, State of California described as follows:

157-11th Street, Oakland, CA 94607