



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File #: 2016-01182

Consent Item 03

Title: Agreement: Lease for Hopkins Park Child Care Center

Recommendation: Pass a Motion: 1) finding that it is in the best interests of the City to lease a portion of Hopkins Park property without bidding per City Code Section 3.68.110 B; 2) approving the Lease Agreement with the Sacramento Employment and Training Agency for the property located at 2317 Matson Drive for their portable building for use as a child care center for a five year term with a five year extension option for an annual rent amount of \$1,200; and 3) authorizing the City Manager or his designee to execute the Lease Agreement.

Location: District 8

Contact: Shannon Brown, Operations Manager, (916) 808-6076, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Attachments:

1-Description/Analysis

2-Agreement

Description/Analysis

Issue Detail: An approximate 85-foot by 150-foot area of the southeastern portion of Hopkins Park, located at 2317 Matson Drive in South Sacramento, is currently leased to Sacramento Employment and Training Agency (SETA). In 2007, SETA was permitted to construct a portable building and other improvements to establish a Head Start Child Care Center. The current lease will expire at the end of 2016. The proposed action is to renew the ground lease at the current rental rate for five years.

City Code Section 3.68.110 B provides for leasing City property without bidding to another government agency. SETA was formed in 1978 by the City and County of Sacramento as a joint powers agency. SETA operates an Early Head Start and the Preschool Head Start programs to serve Sacramento's low income communities. Under the proposed lease, SETA will pay an annual rent of \$1,200.

Policy Considerations: The continued operation of a Head Start Child Care Center by SETA will serve low income families in the South Sacramento area.

Economic Impacts: Not applicable.

Environmental Considerations: The lease to allow continued use of the 85 foot by 150-foot area of the southeastern portion of Hopkins Park for the SETA's building and improvements located at 2317 Matson Drive and is exempt from environmental review under the CEQA Guidelines Section 15301, Existing Facilities.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: SETA will operate Early Head Start and the Preschool Head Start programs at Hopkins Park to serve Sacramento's low income communities.

Financial Considerations: A five-year lease for the period January 1, 2017 through December 31, 2021 will generate annual revenue of \$1,200, for a total of \$6,000. All funds collected will be deposited in the General Fund, Community Center unit (department 19001641, Fund 1001).

Local Business Enterprise (LBE): Not applicable.

**LEASE AGREEMENT
SETA CHILD CARE CENTER
2317 Matson Drive**

THIS LEASE AGREEMENT ("Lease"), is made as of September ____, 2016 ("Execution Date") by and between the CITY OF SACRAMENTO, a municipal corporation ("City" or "Lessor"), and the SACRAMENTO EMPLOYMENT AND TRAINING AGENCY, a joint powers agency ("SETA" or "Lessee").

BACKGROUND

- A. SETA was formed in 1978 by the City and County of Sacramento. One of the services SETA provides is the Early Head Start and the Preschool Head Start programs to serve Sacramento's low income communities.
- B. Within the City's Hopkins Park, SETA was permitted to construct a portable building and other improvements for its Head Start program under a lease that is set to expire on December 31, 2016.
- C. The City Code allows for leases of City property to a government agency without competitive bidding.

AGREEMENT

NOW, THEREFORE, Lessee and Lessor enter into this Lease for the purpose of establishing each party's rights and obligations with regard to the occupancy, use and maintenance of the Premises as follows:

1. DESCRIPTION OF PREMISES.

Subject to the terms and conditions in this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, an approximate 85 foot by 150 foot area of the southeastern portion of Hopkins Park for the Lessee's building and improvements located at 2317 Matson Drive in South Sacramento as shown in attached Exhibit A (the "Premises"). In addition, the rights under this Lease includes the use of an existing 5 foot x 180 foot utility line corridor within Hopkins Park to allow for utility connections to Lessee's building.

2. TERM.

A. The effective date of this Lease is January 1, 2017. The term of this Lease is five (5) years commencing on January 1, 2017 and ending on December 31, 2021 ("Initial Term"), subject to prior termination by Lessor in the event of breach of any of the terms and conditions of this Lease, or pursuant to Sections 15. If Lessee shall for any

reason holdover beyond the Initial Term with Lessor's consent, express or implied, such holding over shall not be a renewal of this Lease but shall be a month-to-month tenancy subject to the terms and conditions of this Lease or subject to such other terms as Lessor may specify.

B. Subject to Lessor's consent, Lessee has the option to extend the term of this Lease by five (5) years commencing on January 1, 2022 and ending on December 31, 2026 ("Extended Term"), by giving written notice of Lessee's request for extension ("Option Notice") to Lessor not less than six (6) months but not more than one year before the end of the Initial Term. Within ninety (90) days from receipt of Lessee's written request for extension, Lessor shall notify Lessee of Lessor's decision. If Lessee obtains a grant from the federal government to purchase a replacement building and the grant requires use of the building atas a child care center for a period beyond the expiration of the Initial Term, then Lessor shall allow for an extension period to allow Lessee to comply with that grant obligation. Notwithstanding the foregoing, Lessee shall have no right to extend the Initial Term if Lessee is in default on the date the Option Notice is given to Lessor or if Lessee is in default on the date the Extended Term is to commence.

3. **RENT.**

A. Lessee shall pay Lessor an annual rent amount of One Thousand Two Hundred Dollars (\$1,200.00) ("Rent") during the Initial Term and any Extended Term. Payment is due in installments with the first installment of Six Hundred Dollars (\$600) due on July 1st of each year and the second installment of Six Hundred Dollars (\$600) due on January 1st of each year. Each Rent installment payment shall be made payable to the City of Sacramento and sent to the Revenue Division, 915 I Street, 1st floor, Sacramento CA 95814.

4. **PERMITTED USE AND OPERATION REQUIREMENTS.**

A. Lessee shall use the Premises exclusively for the operation of a Head Start Child Development Program (the "Program") and for no other purpose. No other use of the Premises shall be permitted without the written consent of Lessor. Lessee shall not sublease or assign any interest in the Premises without the prior written consent of Lessor. Lessee's failure to occupy and operate the Program at the Premises is a default and shall result in termination of this Lease.

B. Lessee's shall at all times during the term of this Lease be fully licensed by the State of California Department of Social Services to operate a preschool child care facility at the Premises, shall have a Program Director and staff that hold child care director and teacher licenses by the State, and shall insure that the Premises meets the State's day care facility standards.

C. Lessee shall not conduct or permit any activity at the Premises, or allow any condition of the Premises, to be a public or private nuisance.

D. In its occupancy and use of the Premises, Lessee shall not discriminate against any applicant for employment, any employee, any parent or child, or any member of the public on the grounds of sex which includes gender identity and gender expression, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language or immigration status. The foregoing is based on Section 51 of the Civil Code of the State of California, which is incorporated herein by reference as if set forth herein in full, and includes any other applicable federal, state, or local law prohibiting discrimination. Lessee is also prohibited from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees of Lessee.

E. Lessee shall operate and manage the Program, and shall ensure that its employees at all times conduct themselves, in a professional, businesslike manner. Lessee shall have a Program Director in attendance at all times that the Program is in operation at the Premises and shall maintain a staff adequate to operate and administer the Program in a safe and orderly manner.

5. **NO WARRANTIES BY LESSOR.**

Lessor makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for Lessee's use. Lessee's building and improvements have occupied the Premises under a prior lease with Lessor and Lessee is fully aware of the condition of the Premises. Lessor has no obligation to make improvements to the Premises to make it suitable for Lessee's operation of the Program. Lessee warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering this Lease relying only upon facts ascertained from said independent investigation.

6. **LESSOR'S RIGHT OF ENTRY.**

Lessor reserves the right to enter the Premises at reasonable times to carry out any business purpose in or about the Premises. Lessee shall permit Lessor and its employees and authorized agents to enter the Premises during Lessee's usual Program hours of operation or upon twenty-four (24) hours advance notice for the purpose of inspecting the Premises.

7. **CAPITAL IMPROVEMENTS.**

A. Lessee shall not undertake any alterations or improvements to the Premises without Lessor's prior written consent. Lessee may elect to replace the existing modular building and construct additional capital improvements on the Premises

provided that written notice and tentative plans of intended improvements are provided to Lessor for review and approval by the Director of the Parks and Recreation Department. Lessee shall not create waste, destroy or modify any improvements within the Premises except as approved by Lessor in advance in writing.

B. Lessee may provide at its own expense any fencing, security devices, installations or equipment designed for the purpose of protecting the Premises from theft, burglary, or vandalism.

C. Lessee shall pay in full all persons and entities that perform labor or provide materials for the work to be performed by Lessee at the Premises and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against Lessor's property for such work or materials. Lessee shall indemnify and hold harmless Lessor from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or arising from such work done, labor performed, or materials furnished.

D. Upon termination or expiration of this Lease, all improvements constructed by Lessee on the Premises shall be removed unless the Director of the Parks and Recreation Department approves Lessee's request to transfer ownership of some or all of the improvements to Lessor. Lessee shall obtain from Lessor a right of entry permit to perform the removal work and Lessor shall provide a reasonable time period for the removal of the improvements and all of Lessee's personal property from the Premises. In removing its property from the Premises, Lessee shall not damage any improvements within the Premises belonging to Lessor or the park property beyond the Premises. Lessee shall leave the property containing the Premises after removal of Lessee's improvements in a condition where the grade of the land is level, all utility lines are capped, there are no obstructions remaining that could endanger the safety of the public using the park, and the area is left in a clean condition.

8. MAINTENANCE OF PREMISES.

Lessee, at its sole cost, shall be solely responsible for maintenance of the Premises, including any Lessor improvements within the Premises, as follows:

A. Lessee shall arrange for all utility and building services and shall pay all charges and assessments when due.

B. Lessee shall keep all of the improvements within the Premises in an attractive condition and in good repair.

C. Lessee shall insure that all garbage and trash is removed from the Premises on a regular basis and that debris is prevented from migrating into the other areas of the park.

D. Lessee shall maintain the landscaping within the Premises in an attractive and weed-free condition.

9. **LIENS AND TAXES.**

Lessee shall be obligated to pay any possessory interest tax levied or assessed by the County Assessor on Lessee's possessory interest in the Premises under this Lease.

10. **INDEMNITY AND HOLD HARMLESS.**

Lessee shall assume the defense of, and indemnify and save harmless, Lessor, and its officers, employees, agents and volunteers from and against all actions, damages, costs, liability, claims, losses, judgements, penalties and expenses of every type and description including, but not limited to, any fees and/or costs reasonable incurred by the Lessor's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities arise out of or are in any way connected with Lessee's performance of its rights and obligations under this Lease, whether or not such Liabilities are caused in part by Lessor, its officers, employees, agents and volunteers; provided that the foregoing indemnity does not apply to Liabilities arising from the sole negligence of willful misconduct of Lessor, its officers, employees, agents and volunteers. This indemnity provision shall survive the termination or expiration of this Lease.

11. **INSURANCE REQUIREMENTS.**

During the term of this Lease, Lessee shall maintain in full force and effect at its sole cost and expense, the insurance coverage specified on Exhibit "B", attached hereto and incorporated herein by reference.

12. **COMPLIANCE WITH LAWS.**

A. Lessee and its employees and agents shall at all times comply with and abide by all applicable regulations and ordinances of the City of Sacramento, the County of Sacramento, and the laws of the State of California and the United States, including the Americans with Disabilities Act, and to obtain and keep in effect all necessary permits and licenses required for all operations permitted under this Lease.

B. Lessee represents, warrants and covenants that Lessee and its employees and agents will occupy and use the Premises in compliance with all applicable federal, state and local laws ordinances and regulations, including consent decrees and administrative orders relating to public health and safety and protection of the environment ("Environmental Laws"), and that Lessee will not permit to occur on the Premises any release, generation, storage, disposal or treatment of any hazardous materials as that terms is defined in any of the Environmental Laws. Lessee shall

immediately notify Lessor of any release of hazardous materials and take such necessary remediation measures at Lessee's expense to complete the remediation to the satisfaction of Lessor. Lessee shall immediately notify Lessor of any complaints, citations, inquires or notices from any governmental entity relating to compliance with Environmental Laws.

13. ASSIGNMENT, SUBLET, HYPOTHECATION.

A. Lessee shall not directly or indirectly assign, sublet, or hypothecate any interest in the leasehold estate under this Lease. Any attempt or purported assignment of any right or obligation of Lessee with the intent of releasing Lessee from its obligations to Lessor pursuant to this Lease shall be void and of no effect.

B. Excepting only a change in name, the term "assignment" shall include any change in the form of business entity of Lessee, any merger or consolidation of Lessee from that of a California nonprofit corporation whether voluntarily or by operation of law providing; however, that a change of status due only to a change in the California Corporation Code shall not be deemed to be an assignment. In the event however, that the Joint Powers Agreement establishing the Sacramento Employment and Training Agency is terminated, the successor agency of Lessee may become the successor-in-interest of Lessee under this Lease without the Lessor's prior approval.

C. Lessee is directly responsible for all events, activities, services, or merchandise conducted or provided on the Premises. The conducting of said events and activities and the offering or provision of goods and services must be under the auspices of authorized officers, employees, or volunteers of Lessee and all revenue realized within the scope of this Lease must be reflected in Lessee's financial records.

D. Lessee shall not directly or indirectly use, or permit to be used, the Premises or improvements for security for any debt.

14. VIOLATION OF LEASE PROVISIONS.

A. The Director of the City Parks and Recreation Department may terminate this Lease in the event that Lessee violates any provision of this Lease. Lessee may appeal any termination of this Lease to the City Manager within thirty (30) days after the date of mailing the notice of termination by the Director. Lessee's written notice shall specify the grounds for the appeal. The decision of the City Manager, or his or her designee, shall be final and conclusive.

B. In the event Lessee fails or neglects to perform any of the duties required to be performed by it by virtue of the provisions of this Lease, after Lessor provides written notice of default to Lessee and a reasonable opportunity to cure, Lessor may enter the Premises as provided in Section 6 and Lessee shall pay Lessor for its costs to perform such duties.

C. Either the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, a general assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any insolvency or bankruptcy act, shall constitute a breach of this Lease by Lessee. Should such action occur against Lessee, Lessee shall have thirty (30) days to cure the action or suit prior to being considered in default of this Lease.

15. **TERMINATION.**

In the event that either (i) funding to Lessee for the operation of its Head Start Child Care Program is reduced, suspended, or terminated, or (ii) Lessee is unable to find or fund a suitable replacement modular building, Lessee may terminate this Lease by providing Lessor with at least thirty (30) days advance written notice and specifying the date of termination.

16. **SURRENDER.**

At the end of the term of this Lease, or at any time this Lease may be terminated, Lessee shall peaceably vacate the Premises and comply with the obligations set forth in Section 7D. Within thirty (30) days of termination, Lessee or Lessee's representatives shall remove, at its sole cost and expense, its own furniture, furnishings, equipment, inventory and trade fixtures. Should Lessee fail to remove said items within the thirty-day period, Lessee shall lose all right, title and interest in and to said items, and Lessor may elect to keep same upon the Premises or to sell, remove or demolish them without the requirement to reimburse Lessee therefor.

17. **CAPTIONS.**

The captions of the various sections and paragraphs of this Lease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope or intent of this Lease or any part or parts of this Lease.

18. **WAIVER.**

The waiver by either party of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Lease.

19. **CONDEMNATION.**

In the event any entity with the power of eminent domain shall take the Premises, or any part thereof, actually using the power of eminent domain or negotiating under the threat of the use of the power of eminent domain, then:

(i) In the event of taking of the entire Premises, this Lease shall be terminated when title passes to the condemner or when possession is obtained by the condemner, whichever shall first occur; or

(ii) In the event of taking of less than the entire Premises, Lessee shall have the right to terminate this Lease by giving thirty (30) days advance written notice to Lessor.

20. **EXCUSABLE DELAYS.**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of any party obligated to perform, shall excuse performance by such party for a period equal to such prevention, delay or stoppage.

21. **NOTICES.**

Any notices that may be given under this Lease may be served by first-class mail or in person as follows, or to such other address as either may provide to the other in writing:

To Lessor:
City of Sacramento
Attn: Director of Parks and Recreation
915 I Street, 3rd Floor
Sacramento, CA 95814
(916) 808-8526

To Lessee:
Sacramento Employment & Training Agency
Attn: Executive Director
925 Del Paso Blvd #100
Sacramento, CA 95815
(916) 2673-3800

22. **AMENDMENT IN WRITING/SUCCESSORS.**

Any amendment to this Lease shall be in writing and signed by both parties. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto.

23. **SEVERABILITY.**

The invalidity of any portion of this Lease shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

24. **NO JOINT VENTURE.**

The parties to this Lease do not constitute a joint venture, partnership or association other than that of landlord and tenant pursuant to this Lease.

25. TIME OF THE ESSENCE.

Time is of the essence in the performance of Lessee's obligations under this Lease.

26. GOVERNING LAW.

This Lease shall be construed and enforced in accordance with the laws of the State of California.

27. AUTHORIZATION.

Each individual executing this Lease on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Lease and that said entity will thereby be obligated to perform the terms of this Lease.

28. ENTIRE AGREEMENT.

This Lease constitutes the entire agreement and supersedes the prior leases of the Premises between the parties and any prior written or oral agreements between the parties with respect to the matters contained herein.

[signature page follows]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease on the date hereinabove first written.

LESSOR: CITY OF SACRAMENTO

By: _____
Christopher Conlin, Director
Department of Parks and Recreation
For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

ATTEST:

By: _____
Assistant City Clerk

LESSEE: SACRAMENTO EMPLOYMENT AND TRAINING AGENCY

By: Kathy Kossick
Kathy Kossick, Executive Director

APPROVED AS TO FORM:

By: Larry C. Lauer
SETA Counsel

Attachments:

Exhibit A: Lease Area Diagram

Exhibit B: Insurance Requirements

Exhibit A: Lease Area Depiction



Exhibit B: Insurance Requirements

During the term of this Lease, Lessee shall maintain in full force and effect at its own cost and expense the following insurance coverages. Lessor does not represent that the coverage and limits of the required insurance will be adequate to protect Lessee's interests. It is also understood and agreed by the Lessee that the required insurance coverage and limits shall not be deemed as a limitation on Lessee's liability under the indemnity granted to the Lessor in this Lease.

Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions, and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

A. Minimum Scope & Limits of Insurance Coverage

- (1) General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall include coverage for premises, operations, products and completed operations and contractual liability for the term of the policy. The policy shall include a fire legal liability limit of \$100,000 per occurrence.
- (2) Auto Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) combined single limit. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Lessee.
- (3) Workers' Compensation Insurance is required with statutory limits, including a waiver of subrogation in favor of City and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000).
- (4) All Risk Property Insurance is required for all tenant improvements, fixtures and equipment located on or about the Premises against loss of damage including fire, flood or other acts of nature and vandalism. Tenant improvements, fixtures and other equipment shall be insured for replacement value. The proceeds from any such policy shall be used by the Lessee for replacement of personal property and restoration of Lessee's tenant improvements or alterations.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees, agents and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Lessee, including products and completed operations of Lessee and premises owned, leased or used by Lessee.
- (2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Lessee's insurance shall be primary as respects City, its officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, agents or volunteers shall be in excess of Lessee's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees, agents or volunteers.
- (3) Coverage shall state that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) The City will be provided with written notice if the policy is cancelled.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the foregoing requirements must be declared to and approved by the City Risk Management Division in writing prior to execution of this Lease.

E. Verification of Coverage

Lessee shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City's representative named in Section 21. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be

signed by an authorized representative of the insurance carrier. Lessee will provide the City with thirty (30) days written notice of a material change in any policy language or terms.

F. Contractors

Lessee shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A, C and D above with the exception of subsection A(4).