

**LAND USE AGREEMENT
BETWEEN
THE CITY OF RICHMOND AND
THE WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT**

THIS **LAND USE AGREEMENT** (the “Agreement”) is made and entered into on 8/19/2024, 2024, by and between the CITY OF RICHMOND, a municipal corporation and charter city (“Landlord” or “City”), and the West Contra Costa Unified School District, a municipal corporation and a public school district (“Tenant” or “District”). Landlord and Tenant are sometimes referred to individually as “Party” and collectively as “Parties.” This Agreement shall be effective immediately and shall replace and supersede any and all previous agreements or amendments thereto made between the parties.

RECITALS

WHEREAS, West Contra Costa Unified School District (“District”) is the owner of certain real property, known as Stege Elementary School, located at 4949 Cypress Avenue, City of Richmond, County of Contra Costa, (“District Property”) and depicted on Exhibit “A”; and

WHEREAS, City of Richmond (“City”) is the owner owns property, 960 South 47th Street, City of Richmond, County of Contra Costa, known as the Booker T. Anderson Community Center (“BTA”) and Park property, located in close proximity to the District Property (“City’s Property”), as depicted on Exhibit “B”; and,

WHEREAS, the District informed the City that the District is performing urgently needed construction improvements at the District Property that render it unavailable for school use at the start of the academic school year on August 19, 2024; and,

WHEREAS, the District requested from the City (1) the usage of the City’s Property for their after-school program (“Program”), and (2) the usage and painting of the curb along South 47th Street to use as a bus loading location to facilitate a bus pick-up and drop-off for approximately 250 students to and from the temporary campus at Lavonya Dejean Middle School, a District property; and,

WHEREAS, the District desires to obtain City’s permission to enter upon the City’s Property, on a temporary basis, for the limited purpose of offering an after-school program and school bus loading location for District students, subject to the terms and conditions of this Agreement, and as depicted in the Scope of Work – City and District Roles and Responsibilities in Exhibit “C”; and,

WHEREAS, District acknowledges that it is accessing the City’s Property “as-is” and the City is making no representations as to its current condition; and,

WHEREAS, the District anticipates that its temporary use of the City’s Property will be during the District’s 2024-2025 academic year; and,

WHEREAS, City grants to District, its employees, agents, contractors and consultants a non-exclusive right to enter upon the City Property for the purpose of offering an after-school program and school bus loading area; and,

WHEREAS, District will permit only licensed, bonded and responsible District employees, contractors, consultants or other responsible individuals to enter upon the City Property; and,

WHEREAS, upon completion of the District's use of the City's Property, the District shall promptly restore the City Property to substantially the condition it was in prior to the District's temporary use, including the repair or replacement of any and all damage to the City Property caused by District, reasonable wear and tear excepted; and,

WHEREAS, the City reserves the right to update and revise this agreement in the event that additional requests are made, issues are unearthed, and information is received that necessitates any changes.

NOW, THEREFORE, in consideration of this Agreement and the mutual promises, covenants, and stipulations herein contained, the parties agree as follows:

Section 1. Incorporation of Recitals

The above recitals, including the paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

Section 2. Location

The location of the City's Property is set forth in Exhibit "B." However, if required and requested by Landlord, Tenant may be required upon sixty (60) days' notice in advance to temporarily relocate the Program to an area near the location set forth in Exhibit "B". Any such temporary relocation shall be subject to Landlord's approval, in their sole and absolute discretion.

Section 3. Term of Agreement

The Agreement shall commence upon its execution by the Parties and terminate on June 18, 2025 ("Termination Date"), unless sooner terminated in accordance with Sections 9 and 10. The Agreement may be extended by mutual written consent of the Parties. The City Manager has the authority to extend this Agreement up to two times for a one-year period each time the Agreement is extended.

Section 4. Operations Plan

District shall adhere to and update, as necessary, the District Scope of Work as set forth in Exhibit "C."

Section 5. Insurance

Insurance requirements are set forth in Exhibit "D."

Section 6. Compensation

Landlord is allowing temporary access to its property for the specified term and hours of operation to Tenant at no cost to Tenant. Landlord shall not pay Tenant for any services rendered under this Agreement.

Section 7. Services

The services set forth in Exhibit "C" shall be performed to the full satisfaction and approval of Landlord. Tenant shall, at its own cost and expense, furnish all facilities and equipment necessary for Tenant to operate the Program.

Section 8. General Use

Landlord's property shall be used for activities consistent with Tenant's operation of a Program. Tenant shall use Landlord's property in a manner consistent with all applicable laws, statutes, ordinances, or rules and regulations now in force and as they may be amended. Tenant shall pay all costs and expenses which may be incurred or required to be paid in order to comply with any and all laws, statutes, ordinances, rules, and regulations which apply to the operation of the Program.

Section 9. Termination Without Default

Notwithstanding any provision herein to the contrary, Landlord may, in its sole and absolute discretion and without cause, terminate this Agreement at any time upon five (5) days' written notice to Tenant. Tenant may terminate this Agreement at any time in its sole and absolute discretion and without cause upon thirty (30) days' written notice to Landlord.

Section 10. Termination in the Event of Default

Should Tenant fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, Landlord may immediately terminate this Agreement by giving written notice of such termination and in the notice, stating the reasons for such termination. Landlord shall be compensated for any expenses Landlord incurs as a result of Tenant's default under this Agreement.

Section 11. Professional Ability

Tenant acknowledges, represents and warrants that Tenant is and its employees are skilled and able to competently provide the services hereunder, and possesses all professional licenses, certifications, and approvals necessary to engage in its occupation. Landlord has relied upon the professional ability and training of Tenant as a material inducement to enter into this Agreement. Tenant shall perform in accordance with generally accepted professional practices and standards of Tenant's profession. In the event that Landlord, in its sole discretion, desires the removal of any person employed or retained by Tenant to perform services hereunder, such person shall be removed immediately upon receiving notice from Landlord.

Section 12. Independent Tenant

It is expressly understood and agreed upon by both parties that Tenant, including its agents and employees, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent Tenant and not an employee of Landlord. Tenant is solely responsible for its acts and omissions. This Agreement shall not be construed to create an agency, servant, employee, partnership, or joint venture relationship. Tenant agrees not to

represent, at any time or in any manner, that Tenant is an employee or agent of Landlord. As an independent Tenant, Tenant shall have no authority to bind Landlord to any obligation or to act as Landlord's agent except as expressly provided herein.

Section 13. Sub-Tenant

Tenant acknowledges that the services which Tenant shall provide under the Agreement are unique, personal services which, except as otherwise provided herein, Tenant shall not assign or sublet to any other party without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion. In the event that Landlord, in writing, approves any assignment or subletting of this Agreement or the retention of sub-Tenants by Tenant, Tenant shall provide to Landlord upon request copies of each and every subcontract contract prior to the execution thereof by Tenant and sub-Tenant. Any assignment by Tenant of any or all of its rights under this Agreement without first obtaining Landlord's prior written consent shall constitute a material breach of this Agreement.

Section 14. Indemnification

To the fullest extent permitted by law, Tenant shall indemnify, defend and hold harmless Landlord and its officers, employees, elected and appointed officials, and volunteers (the "Indemnified Parties") from and against any and all claims, demands, causes of action, lawsuits (whether at law, equity or both), proceedings, liabilities, losses, damages, expenses, costs (including without limitation attorney's fees and costs and expert witness fees), judgments, penalties, and liens of every nature resulting from injury to or death sustained by any person (including Tenant's employees), or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with Tenant's performance of work or services hereunder or its failure to comply with any of its obligations contained in the Agreement, or its failure to comply with any current or prospective law, regardless of the Tenant's fault or negligence, including any of the same resulting from the alleged or actual negligent act or omission of an Indemnified Party, except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of Landlord, its officers, agents, or servants.

Tenant shall further indemnify, defend and hold harmless the Indemnified Parties, against and from any and all claims for damages or suits arising from Tenant's use of Landlord's property under this Agreement, and against and from all costs, attorneys' fees, expenses and liabilities related to any claim for damages or any action or proceeding brought within the scope of this indemnification.

Submission of insurance certificates, endorsements, or other proof of compliance with the insurance provisions does not relieve Tenants from liability under these terms. These indemnification, hold harmless and defense obligations shall apply whether or not such insurance policies are applicable to any such damages or claims for damages, and shall survive the expiration or sooner termination of this Agreement.

Section 15. Safety

Tenant acknowledges that Landlord is committed to the highest standards of workplace safety. Tenant shall perform all work and hereunder in full compliance with applicable local, state and federal safety requirements including but not limited to Occupational Safety and Health

Administration requirements, and shall assume sole and complete responsibility for the safety of Tenant's employees and any sub-Tenant's employees. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Tenant shall immediately notify the Landlord by telephone and subsequent notification by email.

Section 16. Nondiscrimination

In executing this Agreement, neither Tenant nor Landlord shall discriminate against any person on the grounds of race, color, religion, national origin, sex, marital status, disability, sexual orientation, ancestry or age. Any sub-Tenant agreement entered in by Tenant, pursuant to this Agreement, shall contain comparable language forbidding discriminatory practices by sub-Tenants.

Section 17. Non-Liability of Officials and Employees of the Landlord

No official or employee of Landlord shall be personally liable for any default or liability under this Agreement.

Section 18. Remedies

In addition to any other available rights and remedies, either party may institute legal action to cure, correct or remedy any default, enforce any covenant herein, or enforce by specific performance the rights and obligations of the parties hereto.

Section 19. Litigation Costs

If legal action is necessary to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable litigation expenses, including court costs, expert witness and attorney fees, discovery expenses and all other related costs.

Section 20. Conflict of Interest

Tenant acknowledges, represents and warrants that Tenant shall avoid all conflicts of interest (as defined under any federal, state or local statute, rule or regulation, or at common law) with respect to this Agreement. Tenant further acknowledges, represents and warrants that Tenant has no business relationship or arrangement of any kind with any City official or employee with respect to this Agreement. No City official or employee has any economic interest, as defined in Title 2, California Code of Regulations §§ 18703.1 through 18703.5, with Tenant. Tenant acknowledges that in the event that Tenant shall be found by any judicial or administrative body to have any conflict of interest (as defined above) with respect to this Agreement, all consideration received under this Agreement shall be forfeited and returned to Landlord forthwith. This provision shall survive the termination of this Agreement for one (1) year.

Section 21. Continuous Use Clause

Tenant agrees to operate the Program according to the agreed upon schedule and acknowledges that failure to operate on said schedule may, at the discretion of Landlord, put them in default of the Agreement.

Section 22. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such an obligation is prevented or delayed by reason of acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the

price thereof, failure of power, restrictive governmental laws and regulations enacted after the date of this Agreement, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency or other reasons of a like nature not within the control of such party.

Section 23. Governing Law

This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. This Agreement is made in Contra Costa County, California, and any action relating to this Agreement shall be instituted and prosecuted in the courts of Contra Costa County, California.

Section 24. No Third-Party Beneficiaries

There shall be no third-party beneficiaries to this Agreement.

Section 25. Interpretation

This Agreement shall be interpreted as if drafted by both parties.

Section 26. Authorized Representatives

Landlord and Tenant shall each designate an Authorized Representative who has authority to act on its behalf in the administration of this Agreement. Landlord and Tenant warrants that the person(s) who signs this document has the full authority to do so, and by his/her signature shall bind Landlord and Tenant to each and every term and condition hereof.

Section 27. Notices

All correspondence and notice to the parties indicated herein shall be sent to the parties as follows:

LANDLORD/CITY

City of Richmond
Attention: Shasa Curl, City Manager
450 Civic Plaza
Richmond, CA 94804

TENANT/DISTRICT

West Contra Unified School District
Attention: Dr. Kenneth "Chris" Hurst, Superintendent
1108 Bissell Avenue
Richmond, CA 94804

Section 28. Holdover

Unless otherwise specified by Landlord, if Tenant fails to vacate the location as set forth in Exhibit B after expiration or termination of this Agreement, Tenant shall be deemed a trespasser which shall entitle Landlord to all remedies in equity and at law, including damages, to remove Tenant as a trespasser.

Section 29. Nonrenewal

Tenant understands and agrees that there is no representation, implication, or understanding that the Agreement will be renewed by Landlord under a new Agreement following expiration or

termination of this Agreement. Tenant waives all rights or claims to notice or hearing respecting any failure by Landlord to continue the purchase of all or any such services from Tenant.

Section 30. Entire Agreement

This Agreement, including the Exhibits, constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All prior written and oral communication, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement; provided, however, that correspondence or documents exchanged between Tenant and Landlord may be used to assist in the interpretation of the Exhibits to this Agreement.

Section 31. Amendment of Agreement

The City Manager, and the District Board of Trustees or, after Board approval, the District Superintendent are empowered to amend the provisions of this Agreement at any time provided such amendments are mutually agreed upon in writing. The City Manager has the authority to extend this agreement up to two times for a one-year period each time the agreement is extended.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day first written above.

[Signatures on Following Page]

LANDLORD:


City of Richmond, a California municipal corporation and charter city

By  _____
0418712405D14EC...

Title: City Manager

Date: 8/19/2024

Approved as to form:

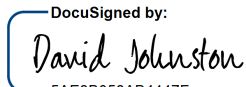
 _____
0F098C1E4C50485...
City Attorney

Insurance Coverage reviewed by:

 _____
EBB8EAC8426B405
Risk Manager

TENANT:

West Contra Costa Unified School District

By  _____
5AE3B058AB4447E...

Title EXECUTIVE DIRECTOR

Date 8/16/2024

EXHIBIT A
District Property



Exhibit B
City Property



Exhibit C

Scope of Work – City and District Roles and Responsibilities

The services performed by the City include but may not be limited to:

1. City shall provide access to the City Property and any approved use spaces. City will provide District staff for those City staff employee(s) that will serve as District’s point of contact in connection with this Agreement.
2. City will ensure the City’s Property is open and available and ready for use by the District Monday through Friday from 8:00 am to 8:45 am and 12:00pm – 6:00pm
3. City will paint the curb along South 47th Street and install appropriate signage to create a bus loading zone

The scope of services to be performed by the Tenant under this Agreement shall encompass the operations of the District for a school bus loading area in the morning and afternoon as well as an after-school program (Program) located at Booker T. Anderson Community Center (Center).

1. Program Operation

Tenant shall establish and operate the Program, at the location set forth in Exhibit “B” Monday through Friday from approximately 8:00 am to 8:45 am in the morning and 12:00 p.m. until 6:00 p.m. during the period from August 19, 2024, to June 18, 2025, (unless another time period is mutually agreed upon due to weather or other concerns).

2. California Department of Education's After School Requirements

The District's Program for Stege Elementary School (Stege) students must operate every day of the school year (180 days), before the instructional day in order for students to be transported from the Stege Elementary School Campus in the morning from 8:00 am to 8:45 am and at the end of the instructional day until at least 6:00 p.m. The Program must be staffed at a ratio of 1:10 for Transitional Kindergarten (TK) and kindergarten and a ratio of 1:20 for grades 1st through 6th. All staff must meet the District's instructional aide requirements. All students served in the program must be enrolled in Stege and must have a completed after school application on file.

3. Program Operator

The school bus loading period from 8:00 am to 8:45 am shall be staffed by District employees. The District has contracted with EdventureMore ("EDMO") to serve up to 100 after school students for the 2024-2025 school year. EdventureMore shall name the City of Richmond as an “Additional Insured” on all insurance provided to the District as a result of this Agreement. Additionally, EdventureMore shall waive all subrogation rights against the City of Richmond in writing.

4. Special Events

Should the Tenant need the use of City Property for special events, the Tenant shall notify the Landlord in writing and if applicable, complete a City of Richmond Special Event Permit Application, at least thirty (30) days in advance of such event. City shall have the authority to approve, modify or reject such request.

5. Logistics/BTA Space Requests

District may use the following rooms in the City Property from 1:00 pm until 6:00pm with an occupancy level that does not exceed those identified below:

- Art Room/Library and adjacent office: up to 20 students
- Computer Lab: up to 10 students
- Multipurpose Room (MPR): up to 40 students
- Gym: up to 40 students
- Kitchen access: supper/snack cold storage
- BTA fields, parks, and court spaces

Once the Program begins, the Program staff will escort students from the bus zone or pre-determined location to pick up the bussed students and walk them to City's Property. Student pick up will take place at City's Property. Parents and guardians are required to sign their students out at the time of pick up.

District will have the Program site coordinator to stay onsite with the student in one of the requested spaces until the child has been picked up by a family member/emergency contact.

6. Supper/Snack

District staff will need access to the kitchen for cold food storage. District and City staff will identify the most appropriate place for students to eat their supper/snack. Students will not be allowed to eat in the gym.

7. Daily Coordination and Communication

The Stege After School Program Coordinator is a full-time employee and will be responsible for day-to-day communications and coordination with the BTA site director. District after school programs use District walkie talkies for onsite communication. The Expanded Learning Office will work with tech services to ensure the BTA site director has access to a District walkie talkie to support communication.

8. Safety Protocols

- a. Traditional school site based after school programs must follow the safety protocols outlined in their School Safety Plan. Bus loading supervisory staff and Expanded Learning and BTA staff will work with District staff, Michael Booker, to establish the safety procedures (lockdown, etc.) for City's Property.

District shall obtain emergency medical care for any member of the public who is in need thereof, because of illness, or injury during District's use of Use Areas. District shall cooperate fully with the County in the investigation of any injury or death occurring on the Premises, including a prompt verbal and written notification to the Director or the designated County representative on-site.

9. Damage and Destruction.

- a. District shall assume the risks and bear all costs of damage or destruction, and loss due to theft, burglary or vandalism to any and all of District's equipment, materials, tools, and vehicles owned hired, leased, or used by District within City's Property, including within the Park, except to the extent that such damage or destruction and loss result from willful misconduct of City.
- b. District shall repair or replace, to the satisfaction of City, any and all of City property lost, damaged, or destroyed as a result of District's activities and/or use of City's Property, including the Park. Should District fail to promptly make repairs or replacements to City's satisfaction, City may have these repairs made at District's sole cost and expense.

10. District Supervision.

District shall provide adult supervision of students at all times when students are present in City's Property, including in the Park.

11. Maintenance & Clean-up

- a. Tenant shall make certain that at the end of each day the spaces used by the District is left clean of all trash, debris, recyclable and food waste materials (materials) associated with the Program. All materials shall be placed in appropriate receptacles for trash, recyclable and food waste materials.
- b. Tenant will provide its own custodial service for the Program clean-up after the Program ends and will guarantee that their custodial service vendor properly disposes of all waste. If the Landlord incurs clean-up costs as a result of the Tenant's use of the area, the Landlord will bill the Tenant for the costs.
- c. Traditional site based after school programs are expected to maintain the cleanliness of their program spaces by following the after-school classroom and MPR clean-up

checklist. The Expanded Learning Office will develop and implement appropriate clean-up checklists with BTA staff.

12. Signage and Outreach

- a. Any signs on or around the City Property area shall be temporary and designed, purchased, ordered and installed by Tenant and/or qualified vendors. The design of any signs proposed to be placed on or around the City Property shall be approved by Landlord and the City of Richmond Planning and Building Department prior to installation and shall comply with all applicable City of Richmond codes and regulations governing signs.
- b. District staff must provide notice and provide outreach to properties in close proximity to the City Property and the temporary campus to inform them of the temporary move, impact on parking and traffic, and other important information. City and District staff shall coordinate on appropriate messaging and outreach.

13. Bus Loading, Traffic Mitigation and Signage

- a. Landlord will establish a bus zone location for pick-up and drop-off of Stege students. The preferred location of the bus zone is on South 47th Street at the east curb line in front of the community center. Landlord will paint the curb in an appropriate color to designate bus loading and create and install appropriate signage designating the space as a bus zone. District and City staff will work collaboratively to complete this work prior to August 19, 2024.
- b. District and City staff will work together to paint crosswalks on South 47th at Olive and South 47th at Cypress Avenue.
- c. If needed, the City may, in its sole discretion, shift Richmond Police Department (RPD) crossing guards that were anticipated for use at Stege Elementary to appropriate intersections to assist with traffic and safety. The crossing guard location would depend on which direction the kids are approaching from.
- d. District staff and, when possible, RPD staff, will assist in directing vehicle traffic during drop off to ensure traffic does not back up in the area

Exhibit D

Insurance

Tenant shall comply with the insurance requirements that are set forth in the City of Richmond - Insurance Requirements document that is attached hereto and incorporated herein by this reference. Tenant is required to comply with “City of Richmond -Type 4 – Leases of City Property. In addition to the requirements of City of Richmond – Type 4- Lease of City Property Tenant shall purchase an “Abuse or Molestation Coverage” policy with A.M. Best rating of A:VII or better in the amount of \$2 million per occurrence naming the City of Richmond as “Additional Insured”.