

CITY OF ENGLEWOOD
CITY COUNCIL WORKSHOP MEETING

City Hall, 2nd Floor Conference Room
2-10 N. Van Brunt Street

November 22, 2011 – 7:30 pm

OPEN PUBLIC MEETINGS ACT STATEMENT

WORKSHOP AGENDA ITEMS:

- **Resolutions:**
 - #241-11-22-11 Authorize Insertion of an Item of Revenue and an Offsetting Item of Appropriation in the 2011 Budget
 - #242 -11-22-11 Authorize Rejection of Bid "Snow Clearing, Removal and Ice Control at the City of Englewood Library"
 - #243 -11-22-11 Authorize Liberty School Lease Agreement

- **Discussion:**
 - James Street
 - 2012 Budget
 - Inventory of City Owned Properties

PUBLIC SESSION:

CLOSED SESSION:

CITY OF ENGLEWOOD

RESOLUTION #241-11-22-11

AUTHORIZE INSERTION OF AN ITEM OF REVENUE AND AN OFFSETTING ITEM OF APPROPRIATION IN THE 2011 BUDGET

WHEREAS, NJSA 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of a municipality when such item was made available by law and amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, the Director may also approve the insertion of an item of appropriation for an equal amount; and

WHEREAS, the City of Englewood has received notice of grant awards from various State of New Jersey and Bergen County agencies and wishes to amend the 2011 budget to include this amount as a revenue;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Englewood, Bergen County, New Jersey, hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the budget of the year 2011 in the total sum of \$96,000.00 which is now available as revenue from:

Miscellaneous Revenues
 Special Items of General Revenues Anticipated with Prior Written
 Consent of the Director of the Division of Local Government Services:
 Revenues:

Bergen County – Disaster Relief Employment Program	
Hurricane Irene National Emergency Grant	\$ 96,000.00

BE IT FURTHER RESOLVED that a like sum of \$96,000.00 is hereby appropriated under the caption of:

General Appropriations
 Operations Excluded from CAPS

Bergen County – Disaster Relief Employment Program	
Hurricane Irene National Emergency Grant	\$ 96,000.00

BE IT FURTHER RESOLVED that the City Clerk is authorized to forward two certified copies of this resolution to the Director of Local Government Services for approval.

COUNCIL	MOTION	AYES	NAYS	ABSTAIN	ABSENT
<i>Algrant</i>					
<i>Rosenzweig</i>					
<i>Reddin</i>					
<i>Cohen</i>					
<i>Drakeford</i>					

I do hereby certify that the foregoing is a true and exact copy of a Resolution adopted by the Council of the City of Englewood.

Lauren P. Vande Vaarst, RMC
 City Clerk
 City of Englewood

CITY OF ENGLEWOOD

RESOLUTION #242-11-22-11

Authorize Rejection of Bid
“Snow Clearing, Removal and Ice Control
at the City of Englewood Library”

WHEREAS, sealed bids were received on November 22, 2011, for “Snow Clearing, Removal and Ice Control at the City of Englewood” in accordance with specifications therefore and following public advertisement thereof pursuant to law; and

WHEREAS, one vendor’s bid was properly received and opened, but the amount of the bid exceeded the budgeted amount for the service; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Englewood, Bergen County, New Jersey, that all the bids received for “Snow Clearing, Removal and Ice Control at the City of Englewood” be rejected and that the “Snow Clearing, Removal and Ice Control at the City of Englewood” be rebid in accordance with specifications therefore and following public advertisement thereof pursuant to law.

COUNCIL	MOTION	AYES	NAYS	ABSTAIN	ABSENT
<i>Algrant</i>					
<i>Rosenzweig</i>					
<i>Reddin</i>					
<i>Cohen</i>					
<i>Drakeford</i>					

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City Clerk
City of Englewood

CITY OF ENGLEWOOD

RESOLUTION #243-11-22-11

AUTHORIZE LIBERTY SCHOOL LEASE AGREEMENT

NOW, THEREFORE, BE IT RESOLVED that City Council of the City of Englewood formally approves the attached Lease Agreement with the Englewood Board of Education for the Liberty School.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the Lease Agreement between the City of Englewood and the Englewood Board of Education for the Liberty School in accordance with the specifications therefore.

<i>COUNCIL</i>	<i>MOTION</i>	<i>AYES</i>	<i>NAYS</i>	<i>ABSTAIN</i>	<i>ABSENT</i>
<i>Algrant</i>					
<i>Rosenzweig</i>					
<i>Reddin</i>					
<i>Cohen</i>					
<i>Drakeford</i>					

I do hereby certify that the foregoing is a true and exact copy of a Resolution adopted by the Council of the City of Englewood.

Lauren P. Vande Vaarst, RMC
City Clerk
City of Englewood

AGREEMENT

Dated:

By and Between

CITY OF ENGLEWOOD,

As Landlord,

-and-

ENGLEWOOD BOARD OF EDUCATION,

As Tenant.

THIS DOCUMENT WAS PREPARED BY:

Mark A. Tabakin, Esq.
WEINER LESNIAK
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P.O. Box 438
Parsippany, New Jersey 07054-0438
(973) 403-1100

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
SECTION 1. THE LEASE	1
SECTION 2. USE	2
SECTION 3. TERM.....	2
SECTION 4. RENT	3
SECTION 5. REPAIRS AND MAINTENANCE.....	3
SECTION 6. ALTERATIONS AND IMPROVEMENTS.....	4
SECTION 7. INSURANCE	4
SECTION 8. INDEMNITY	5
SECTION 9. FIRE AND OTHER CASUALTY.....	5
SECTION 10. ASSIGNMENT	6
SECTION 11. PARTIES RIGHT TO CURE DEFAULT	6
SECTION 12. QUIET ENJOYMENT	6
SECTION 13. NOTICES.....	6
SECTION 14. BINDING EFFECT	6
SECTION 15. APPLICABLE LAW	6
SECTION 16. ENTIRE AGREEMENT	6
SECTION 17. VALIDITY OF LEASE	7
SECTION 18. EXCLUSIVE USE OF THE LEASED PREMISE	7

THIS AGREEMENT is made the _____ day of _____, 2011, between **City of Englewood** whose address is 2-10 North Van Brunt Street, Englewood, New Jersey 07036 (hereinafter referred to as the "Landlord") and the **Board of Education of the City of Englewood**, whose address is 12 Tenafly Road, Englewood, New Jersey (hereinafter referred to as the "Tenant").

WHEREAS, the Board and the City entered into a Contract for Sale of Real Estate dated September 30, 2003 (see Exhibit A), in which the City purchased two (2) parcels of property from the Board know as the Liberty School (Lot 13, Block 0613) and the Lincoln School (Lot 12, Block 2305) for a total of \$11.5 million; and

WHEREAS, the parties contemporaneously signed a Use and Occupancy Agreement permitting the Board to occupy both properties under certain conditions (Exhibit B); and

WHEREAS, on or about _____, the Board surrendered the Lincoln School to the City and was paid \$5.4 million of the purchase price monies; and

WHEREAS, the Board continues to occupy the Liberty School; and

WHEREAS, the parties wish to amend and clarify the terms and conditions of the Use and Occupancy Agreement relative to the Board's continued use of the Liberty School, as well as add additional terms such as the payment by the City of \$5.8 million, escrowing retainage of \$1 million by the City as an incentive for the Board to surrender the Liberty School to the City in a timely manner under this Agreement and establishing certain maintenance/capital expenditure conditions for each party;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1. THE LEASE

This Agreement shall supercede the parties' Use and Occupancy Agreement. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following described premises (hereinafter referred to as the "Leased Premise"):

The property commonly known as Liberty School, 12 Tenafly Road in the City of Englewood, County of Bergen and State of New Jersey. It is shown on the municipal tax map as Lot 13 in Block 0613 and consisting of (a) the land and all the buildings, other

improvements and fixtures on the land; and (b) all of the Landlord's rights relating to the Leased Premise.

SECTION 2. USE

The Leased Premise is to be used by Tenant for the purposes of conducting its educationally-related programs, public school administration and the general conduct of the business functions of Tenant relative to its roll as a Board of Education and related administrative, student, classroom, and recreational/community activities. No other use is anticipated or permitted. Tenant shall use reasonable care in the use of the Leased Premise during its occupancy.

The use of the Leased Premise shall be as a public school facility, including ancillary school uses during the entire term of the Lease Agreement.

SECTION 3. TERM

This Lease shall commence on July 1, 2010, and shall continue for a period of Five (5) consecutive years. The term "Lease Year", as used herein, shall mean each consecutive twelve (12) month period commencing on July 1st and ending on the following June 30th. This lease shall terminate on June 30, 2015 which is the date it is originally fixed in this Lease for the expiration hereof; and the Landlord will have the right to remove all persons, goods, fixtures and chattels therefrom, by force or otherwise, without liability for damages. Either party shall have the right to terminate the Lease Agreement upon four (4) months written notice to the other party.

Of the \$6.8 million in funds being held by the City of Englewood currently, all but \$1,000,000.00 will be released to the Board of Education, within thirty (30) days of execution of this Agreement. Within the time required, the City shall pay the Board \$5.8 million due and owing under the Contract for Sale of Real Estate. The payment shall be effectuated through a wire transfer from the City to a bank account to be designated by the Board.

The balance of the funds being held by the City of \$1,000,000.00 will be held effectively as "security" and will be released to the Board of Education within thirty (30) days of it vacating the premises. The \$1,000,000.00 retainage shall be held by the City's attorney in an interest bearing escrow account. The Board shall be provided with written proof that the escrow account was established and funded within thirty (30) days of execution of this Lease Agreement by the Parties.

In the event that the Board of Education does not vacate the subject premises at the conclusion of the Lease term, the \$1,000,000.00 held as security will be forfeited and released to the City of Englewood.

SECTION 4. RENT

Tenant covenants and agrees to pay Landlord the sum of \$184,442 representing the annual rent payment for the period from July 1, 2010 through June 30, 2011. Tenant covenants and agrees to pay Landlord the sum of \$300,000 payable in four (4) equal quarterly installments, payable in advance on or before the first day of each month, commencing on July 1, 2011, and continuing each fiscal quarter thereafter. Tenant shall pay all back rent due as of the date of execution of this Agreement within thirty (30) days of execution of this Lease Agreement.

Tenant shall be responsible for utilities, electric, heat, trash, water.

SECTION 5. MAINTENANCE AND CAPITAL EXPENSES

The parties agree that:

(a) Tenant shall be responsible for up to \$50,000 per year of the Lease for routine maintenance costs to make repairs, replacements and/or damages to the Lease Premise; and the fixtures and equipment located therein, as deemed necessary by the Board. The \$50,000 per year cost shall in the aggregate and the Landlord shall be responsible for all remaining routine maintenance costs in excess of \$50,000 per year;

(b) Any major maintenance cost shall be subject to review and approval by the City through its designee;

(c) Tenant shall keep and maintain the Lease Premise and grounds in a neat, clean, safe and sanitary condition;

(d) Tenant shall keep the walks and driveways free from dirt, garbage, snow and ice;

(e) Tenant shall keep nothing in the Lease Premise which is flammable, dangerous or might increase the danger of fire or other casualty;

(f) Tenant shall do nothing to cause a cancellation or increase in costs of Landlord's fire or liability insurance;

(g) Tenant shall do nothing to destroy the peace and quiet of the Landlord or persons in the neighborhood;

(h) Tenant shall promptly comply with all orders and rules of the Board of Health or other authorities governing the Lease Premise which is directed to the Landlord.

Tenant shall deliver up the Premises in good order and condition, wear and tear from reasonable use thereof and damage by the elements not resulting from the neglect or fault of Tenant, excepted.

No capital improvements can be made without the express written consent of the Landlord. For approved capital improvements to the Premises (such as, window replacement, roof replacement, boiler replacement and the like), Tenant shall be responsible for the first \$25,000 and Landlord shall be responsible for not more than \$25,000.00 in additional capital improvement costs. As it is the expressed intention of both parties that this lease agreement is intended to be on a short term basis in the event that the Tenant wishes to make capital improvements in excess of \$50,000.00 in total costs said improvements shall be subject to the express written consent of the Landlord and at Tenant's expense. Landlord shall be solely responsible for compliance with the Public Contract Law, including public bidding.

SECTION 6. ALTERATIONS AND IMPROVEMENTS

Tenant shall not be permitted to make alterations, addition or improvements to the Leased Premise unless prior written permission from the Landlord is secured.

SECTION 7. INSURANCE

8.1 Required Insurance. Each party to this Lease shall maintain, at its sole cost and expense, the following specifically required insurance coverages:

(a) Liability Insurance. Public liability insurance having a limit of \$3,000,000.00 per occurrence for personal injury and \$1,000,000.00 for property damage.

(b) Casualty Insurance. All Hazards insurance, together with the broadest form of extended coverage available in the minimum amount of 100% of the full replacement value thereof.

(c) Additional Insured. Tenant's policy shall name the Landlord as an additional insured therein. In addition, Tenant shall be named as additional insured under the liability insurance maintained by Landlord.

(d) Certificates. Certificates setting forth the scope of coverage and policy limits for each required policy hereunder shall be exchanged by the parties.

(e) Blanket Policy. If any required insurance hereunder is provided pursuant to a blanket policy, then the party shall furnish proof satisfactory to the other party that such blanket policy conforms to the minimum requirements hereunder.

SECTION 8. INDEMNITY

The parties hereto shall save harmless and indemnify the other from and against any and all liability, penalties, damages, expenses, and judgments by reason of any injury or claim or injury to person or property, of any nature, arising out of the use, occupation, and control of the Leased Premise by the parties at any time during the term of this Lease excluding acts committed by each parties own negligence, including those resulting from any work in connection with any alterations, changes new construction, or demolition. The parties hereto agree to subrogate any rights of the other against other parties whomsoever in connection therewith. The parties shall promptly notify the other of any claim asserted against the other party on account of any such injury or claimed injury to persons or property and shall promptly deliver to the other party the original or a true copy of any summons or other process, pleading, or notice issued in any suit or other proceeding to assert or enforce any such claim. The parties shall have the right to defend any such suit with attorneys of their own choice and selection. The other party shall have a right, if it sees fit, to participate in such defense at its own expense. The indemnity provision shall not extend to any intentional act or for damage caused by fire or the extended coverage hazards of either the Landlord or Tenant.

Landlord and Tenant waives all rights of recovery against the other or the other's agents, employees or other representatives for any loss, damage or injury of any nature whatsoever to property or persons for which it is insured. The subrogation waiver provisions of this Lease are conditioned upon the Landlord and Tenant obtaining from their insurance carriers written confirmation of acceptance of the waiver of the subrogation rights and delivery to each other of waivers of subrogation rights under the respective policies.

SECTION 9. FIRE AND OTHER CASUALTY

If the Leased Premise shall be partially damaged by fire, the elements or other casualty, then Landlord shall repair the same as speedily as practicable. Tenant's obligation to pay the rent hereunder shall cease until such time as the Leased Premise are habitable or unless the Lease comes to an end in accordance with the next sentence. If, however, in the reasonable opinion of the Landlord or Tenant, the Leased Premise shall be totally destroyed or so extensively damaged as to require practically the rebuilding thereof, then the rent shall be paid up to the time of such destruction and then and from thenceforth this Lease shall come to an end.

SECTION 10. ASSIGNMENT

The Tenant shall not be permitted to assign the Leased Premise or any part thereof without the prior written notice and consent of Landlord.

SECTION 11. PARTIES RIGHT TO CURE DEFAULT

In the event that a party shall be in default with respect to any of its obligations hereunder, the non-defaulting party shall provide written notice of such default. The defaulting party shall then have fifteen (15) days to cure such default. If such default prevents Tenant from operating its school, then the Landlord shall immediately cure the default. In the event that the Landlord shall not so cure its default as provided in the preceding sentence, Tenant shall be entitled solely to an equitable adjustment in rent.

SECTION 12. QUIET ENJOYMENT

Tenant, upon the payment of the rent herein set forth and upon the performance of all the terms, covenants, and conditions of this Lease, shall at all times during this Lease peaceably and quietly enjoy the Leased Premise without disturbance from the Landlord, its agents or assigns.

SECTION 13. NOTICES

All notices required or permitted hereunder shall be in writing and shall be delivered by certified mail, return receipt requested, at the addresses listed in the initial paragraph of this Lease. Notices shall be deemed given upon receipt.

SECTION 14. BINDING EFFECT

This Lease shall be binding upon and insure to the benefit of the parties hereto and their respective successors, representatives and assigns.

SECTION 15. APPLICABLE LAW

This Lease shall be exclusively governed and construed under the laws of the State of New Jersey.

SECTION 16. ENTIRE AGREEMENT

This Lease constitutes the entire agreement of the parties. There are no other agreements, express or implied. Any oral representations, undertakings or agreements are expressly superseded by this Lease. This Lease may not be changed, amended or modified except by an agreement in writing signed by the parties hereto.

SECTION 17. VALIDITY OF LEASE

The terms, conditions, covenants, and provisions of this Lease shall be deemed to be severable. If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clause or provisions shall remain in full force and effect.

SECTION 18. EXCLUSIVE USE OF THE LEASED PREMISE

Tenant shall have exclusive and sole control of the Leased Premise during the term of the Lease and shall operate the Leased Premise as it deems fit without interference whatsoever by Landlord.

SECTION 19. TERMINATION

Tenant reserves the right to terminate this Agreement of Lease if it is directed by the Department of Education to take any action making Tenant unable to continue fulfilling its obligations as set forth herein. Any such termination shall be in accordance with the notice provisions set forth in Section 3 herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease
this _____ day of _____, 2011.

WITNESS: CITY OF ENGLEWOOD, Landlord

By: _____

Mayor Frank Huttle III

, City Clerk

By: _____
Timothy Dacey, City Manager

WITNESS: BOARD OF EDUCATION OF THE CITY
OF ENGLEWOOD, Tenant

_____ By: _____

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