

OGDENSBURG CITY SCHOOL DISTRICT
OGDENSBURG, NEW YORK

SUBJECT: Resolution Authorizing a Lease Between the Ogdensburg City School District
And River Rat Designs

DATE: February 7, 2022

REASON FOR BOARD CONSIDERATION:

The Board of Education must approve all contractual agreements.

FACTS AND ANALYSIS:

WHEREAS, the Ogdensburg City School District (the "District") has determined that it needs additional space for the operation of parking, maintenance and repair of its buses (the "Bus Garage"); and

WHEREAS, the District's Superintendent of Schools has negotiated a lease agreement (the "Lease") in good faith with River Rat Designs for certain space located at 1801 Ford Street, in the City of Ogdensburg, County of St. Lawrence, which space is further described in the Lease, for the operation of the Bus Garage; and

WHEREAS, the Board of Education of the Ogdensburg City School District (the "Board") has reviewed the proposed Lease and is in agreement with its terms; and

WHEREAS, the Board hereby finds that it is in the best interest of the District to enter into the Lease; and

WHEREAS, the Lease is hereby incorporated into the minutes of this meeting;

RECOMMENDED ACTION:

NOW, THEREFORE, BE IT RESOLVED that in accordance with Sections 403-b and 2503 of the New York State Education Law, the Board hereby ratifies and approves the Lease, the terms of which are incorporated by reference within the minutes of this meeting, and authorizes the Superintendent of Schools to (i) execute the Lease on behalf of the District; and (ii) execute any and all documents necessary in connection therewith on behalf of the District and the Board this 7th day of February 2022.

APPROVED FOR PRESENTATION TO THE BOARD:


Superintendent

KJB/alf
Attachment (Lease)

LEASE

This sets forth a Lease made as of the 7th day of February, 2022 (the "Lease"), by and between River Rat Designs, an individual with an address of 1801 Ford Street, Ogdensburg, New York 13669 (the "Landlord") and THE OGDENSBURG CITY SCHOOL DISTRICT, a public school district organized under the laws of the State of New York, having an address of 1100 State Street, Ogdensburg, New York 13669 (the "Tenant"). Landlord and Tenant are sometimes hereafter referred to as a "Party" and together as the "Parties".

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord approximately 1,400± square feet of space consisting of a bus bay and pit within the building (the "Building") located at 1801 Ford Street, in the City of Ogdensburg, County of St. Lawrence, and State of New York, identified as tax map parcel number 48.064-5-1.1, and as shown on the floor plan attached hereto as Exhibit A (the "Premises"), together with the right of vehicular and pedestrian ingress and egress over and across the land upon which the Building is located to and from the Premises and Ford and Kiah Streets. Tenant and its employees, agents, and representatives shall have the right to use, in common with others, the parking lot (the "Parking Lot") adjacent to the Building.

2. Use. Tenant shall have the right to use the Premises in connection with parking, maintenance and repair of its buses. Should Tenant desire to use the Premises for any other purpose, Tenant may do so with the written consent of Landlord. Tenant will not make or permit to be made any use of the Premises which is forbidden by law, ordinance or governmental regulation, now or hereafter enacted.

3. Term. The term (the "Term") of this Lease shall commence on January 1, 2022 ("Commencement Date") and expire on December 31, 2026.

4. Rent.

A. *Rent*. Tenant shall pay to Landlord during the Term hereof monthly rent in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00). Rent shall be due and payable in advance on the first day of each and every calendar month during the Term of this Lease, commencing on the Commencement Date (the "Monthly Rent").

B. *Improvement Payment*. Upon execution of this Lease, Tenant shall pay to Landlord an amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (the "Initial Improvement Payment") which shall be used by Landlord to prepare the Premises for Tenant's use in accordance with the work outlined on the attached Exhibit B ("Landlord's Work"). Landlord shall provide true and correct copies of invoices for all Landlord's Work. In the event the initial Improvement Payment or any subsequent Additional Payment (hereinafter defined), if applicable, is not sufficient to cover the cost of Landlord's Work, Tenant agrees to provide additional funds in reasonable District-approved amounts estimated to cover the cost of Landlord's Work. In the event there is an overpayment of the Improvement Payment, Landlord shall return such overpayment within fifteen (15) days of substantial completion of Landlord's Work.

C. *Additional Rent.* All monetary payments due Landlord under this Lease other than Monthly Rent, shall be deemed "Additional Rent". Monthly Rent and Additional Rent shall be referred to together as the "Rent."

5. Signage. Tenant may affix a sign on or to the Premises upon the prior written consent of Landlord. Upon the expiration or earlier termination of this Lease, Tenant shall remove the sign and shall repair any damage caused by such removal.

6. Alterations, Maintenances and Utilities.

A. *Alterations.* Tenant shall not make any alterations to the Premises without Landlord's prior written consent. Notwithstanding the foregoing, Tenant shall have the right, at its sole expense, from time to time to make such interior cosmetic alterations, redecorations and changes in such parts thereof as Tenant shall reasonably deem necessary for its purposes, including the installation of trade fixtures, without Landlord's prior written consent.

B. *Maintenance.*

- i. Landlord shall be responsible for all maintenance and repairs of the Premises, including, but not limited to, repairs, maintenance or replacement, if necessary, of the roof, exterior walls and structure (including foundation) of the Building as well as all mechanical systems, facilities, appliances and equipment in or serving the Building and the Premises, including HVAC, as well as all interior non-structural repairs. Landlord shall not, however, be responsible for any repairs necessitated as a direct result of Tenant's use of the Premises. Tenant agrees to notify Landlord immediately in the event of an emergency repair need, including, but not limited to, a roof leak, loss of heat or loss of air conditioning. Upon receipt of such notification, Landlord agrees to promptly commence such repair and use commercially reasonable efforts to complete such repair so to avoid interrupting Tenant's use of the Premises.
- ii. Subject to the responsibilities of Landlord as set forth herein, throughout the Term hereof, Tenant agrees to take good care of the Premises and make any repairs which are necessary as a direct result of its use of the Premises. All other repairs shall be the responsibility of Landlord. For purposes of clarification, Tenant shall not be responsible for any repairs as a result of reasonable wear and tear, damage by fire or other casualty, or which are necessary as a result of the actions, negligence or default of Landlord, or its agents, contractors, employees, licensees, or lessees other than Tenant.

C. *Utilities, Janitorial, Snow Removal.* Tenant shall furnish janitorial services for the Premises and shall be responsible for snow removal from the Parking Lot. Landlord shall be responsible for the costs of utilities used or consumed at the Premises, including heat, electricity, gas, and water.

7. Taxes. Landlord shall be responsible for the payment of any and all real estate taxes associated with the Premises. In the event Landlord fails to pay such taxes when due, Tenant may pay the same on behalf of Landlord and may offset any payment of Rent in such amount(s) as necessary to cover the cost thereof.

8. Fire and Other Casualties. If all or any part of the Premises should be damaged or destroyed by fire or other casualty, Landlord shall repair and/or rebuild the same with reasonable diligence, and if there should be a substantial interference with the operation of Tenant's business in the Premises, Rent shall be equitably apportioned for the duration of such repairs. If, during the Term, the Premises should be so damaged or destroyed by any casualty whatsoever that at least fifty (50%) percent of the Premises is rendered untenable, then Landlord or Tenant may elect to terminate this Lease by notice to the other party within ninety (90) days after such casualty, in which event the Term hereof shall expire forthwith, and the Rent shall be adjusted to the date of the casualty. If the damage to the Premises is of a nature and extent which will require more than six (6) months to repair in order for Tenant to fully operate in the Premises, either Landlord or Tenant may elect to terminate this Lease by notice to the other within ninety (90) days after such fire or casualty, in which event the Term shall expire forthwith and the Rent shall, if and as necessary, be adjusted to the date of the fire or casualty.

9. Eminent Domain. If Tenant's use of the Premises is materially affected due to the taking by eminent domain of the Premises or any part thereof or any estate therein, then and in that event, Tenant shall have the right to terminate this Lease and the Term of this Lease shall cease and terminate from the date of title vesting in such proceeding. Tenant shall have no claim against Landlord for the value of any unexpired term of said Lease. No part of any award made to Landlord shall belong to the Tenant, provided that Tenant may apply for any separate award available at law or equity for its moving expenses, personal property damage and similar matters.

10. Subordination and Attornment. This Lease is and will remain subject and subordinate in all respects to the lien of any mortgages affecting the Premises, and to the lien of any mortgage or mortgages which at any time may be made a lien upon the Premises. In the event of the sale or assignment of Landlord's interest in the Building, or in the event of a foreclosure or the exercise of a power of sale under a mortgage made by Landlord covering the Premises, Tenant shall attorn to the purchaser and recognize such purchaser as Landlord hereunder so long as the purchaser shall recognize Tenant and assume all duties and obligations of the Landlord herein.

11. Estoppel Statement. At any time and from time to time, Landlord and Tenant each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that this Lease is unmodified and is in full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default in the performance of its covenants hereunder, or if there have been such defaults, specifying the same and the dates to which the Monthly Rent and other charges have been paid, and such other matters as the requesting party may reasonably request.

12. Liability Insurance.

otherwise, in connection with loss covered by any insurance policies which the releasor carries with respect to the Premises or any interest or property therein or thereon, but only to the extent that such loss is collected under said insurance policies. Such release is also conditioned upon the inclusion in the policy or policies of a provision whereby any such release does not adversely affect such policies or prejudice any right of the releasor to recover thereunder. Tenant acknowledges that Landlord will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Landlord will not be obligated to repair any damage thereto or replace the same, unless caused as a result of Landlord's negligence. Landlord shall not be paid any proceeds from the insurance maintained by the Tenant for personal property/contents within the Premises.

13. Indemnification and Hold Harmless.

A. *Indemnity by Tenant.* Tenant shall defend, indemnify and hold harmless Landlord and Landlord's agents and employees from and against any and all third party claims arising from Tenant's use of the Premises, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or arising from any negligence of Tenant, or any of Tenant's agents, contractors or employees, and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, excepting, however, any and all claims arising out of (i) the intentional acts or negligent acts or omissions of Landlord, or its agents, officers, licensees, lessees (other than Tenant), contractors or employees, or (ii) the breach of this Lease by Landlord or its agents, contractors or employees, or (iii) acts of God, casualty, condemnation or damage that is covered by any insurance required to be maintained by Tenant hereunder, and provided no claim shall be made against Tenant unless and until the insurer shall fail or refuse, within a reasonable time following the occurrence of the matters giving rise to such claim, to defend and pay any part thereof, and, in any event, Tenant's liability shall be limited to amounts in excess of the proceeds of such insurance. In the case of any joint or concurrent negligence of Tenant and Landlord, Tenant's liability shall not be greater than the proportion of its negligence to the total negligence.

B. *Indemnity by Landlord.* Landlord shall defend, indemnify and hold harmless Tenant and Tenant's agents and employees from and against any and all third party claims arising from any activity, work or things done, permitted or suffered by Landlord in or about the Premises, or arising from any negligence of Landlord, or any of Landlord's agents, contractors, employees, licensees or lessees (other than Tenant) and from and against all costs, reasonable attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, excepting, however, any and all claims arising out of (i) the intentional acts or negligent acts or omissions of Tenant, or its agents, officers, contractors or employees, or (ii) the breach of this Lease by Tenant or its agents, contractors or employees, or (iii) acts of God, casualty, condemnation or damage that is covered by any insurance required to be maintained by Landlord hereunder, and provided no claim shall be made against Landlord unless and until the insurer shall fail or refuse, within a reasonable time following the occurrence of the matters giving rise to such claim, to defend and pay any part thereof, and, in any event, Landlord's liability shall be limited to amounts in excess of the proceeds of such insurance. In the case of any joint or concurrent negligence of Tenant and Landlord, Landlord's liability shall not be greater than the proportion of its negligence to the total negligence.

14. Termination. Either party may terminate this lease for any reason by tendering ninety (90) days written notice of termination to the other party.

15. Holding Over. At the expiration of the Term of this Lease, Tenant shall immediately surrender possession of the Premises to Landlord in as good condition as on the Commencement Date, reasonable wear and tear and fire and casualty excepted. If Tenant for any reason shall remain in possession of the Premises with the consent of Landlord after the expiration of the Term herein granted, such occupancy shall continue as a tenancy from month to month and shall be subject to all the conditions of this Lease.

16. Right of Entry. Landlord or its agents may enter the Premises during reasonable hours with prior notice, for the purpose of making inspections or repairs, alterations or improvements connected with any portion of the Premises as provided for in this Lease. In the event of an emergency, no prior notice by Landlord or its agents is required. Landlord reserves the right during the last ninety (90) days of this Lease to enter the Premises during reasonable hours with prior notice, for the purpose of allowing prospective tenants to view the Premises.

17. Quiet Enjoyment. Landlord represents and warrants that it owns the Premises in fee simple absolute and that Tenant, upon paying the rents hereinbefore provided and in performing each and every covenant hereof, shall peacefully and quietly hold, occupy and enjoy the Premises throughout the Term of this Lease, without molestation or hindrance by any person.

18. Surrender. Tenant covenants, upon expiration or earlier termination of this Lease, to remove its property and effects from the Premises, including trade fixtures, and to surrender the Premises and all keys, locks and other fixtures connected therewith to Landlord, in good repair, order and condition, ordinary wear and tear and damage by fire or other casualty excepted.

19. Waiver of Jury Trial. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant under it, Tenant's use or occupancy of the Premises or any claim of injury or damage.

20. Notices. All notices hereunder shall be sent by certified mail, return receipt requested or by national overnight delivery service to the addresses first written above or such other addresses as may be designated to the parties in writing. Any notice to the Landlord shall be addressed to **[River Rat Designs]** and any notice to the Tenant shall be addressed to **[Ogdensburg City School District/Superintendent of Schools]**. Such individuals shall be the primary contacts for any day-to-day communications related to the Lease.

21. Assignment and Subletting. This Lease shall not be assigned nor the Premises sublet by Tenant without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

22. Force Majeure. The period of time during which either party is prevented or delayed in the performance of any obligation hereunder due to unavoidable delays caused by fire, catastrophe, strikes or labor trouble, civil commotion, Acts of God or the public enemy,

governmental prohibitions or regulations or inability to obtain materials by reason thereof, shall be added to such party's time for performance, and such party shall have no liability by reason thereof.

23. Compliance with Laws. Tenant's use and occupancy of the Premises shall be in compliance with all statutes, codes, laws, rules, regulations, permits, licenses and requirements of all Federal, State, County, Municipal and other governments, departments, commissions, boards or agencies which now or at any time hereafter may be applicable to the Premises.

24. Remedies Cumulative. Either Landlord or Tenant may from time to time at its option exercise any or all of its rights or remedies which it may have at law, in equity or under this Lease, and nothing contained herein, and no exercise of any rights or remedies under this Lease, at law or in equity shall be construed as in any way abridging or waiving any such rights or remedies. Any consent, waiver, compromise or indulgence by one party hereto of or under any of the provisions of this Lease, or as to any breach or default hereunder by the other party hereto, shall not constitute or be construed as a waiver of such party's right to enforce strict interpretation and performance of the conditions and terms hereof at all other times.

25. Entire Agreement, No Oral Modification. This Lease constitutes the entire agreement between Landlord and Tenant relating to the Premises and the Building described herein, and supersedes any other agreement, whether written or oral, that may have been entered into by the parties. This Lease may not be modified, except by a written agreement signed by the parties.

26. Governing Law. This Lease shall be governed in all respects by the law of the State of New York.

27. Counterparts. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

28. Contingencies. This Lease shall be contingent upon approval of the Lease by the Board of Education of Tenant This Lease shall be void and unenforceable if entered into in violation of section 801 of the New York State General Municipal Law or section 410 of the New York State Education Law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Lease has been duly executed by the Parties hereto the day and year first above set forth.

LANDLORD:

RIVER RAT DESIGNS/LAURELEE ROETHEL

TENANT:

THE OGDENSBURG CITY SCHOOL DISTRICT

By: _____
Name: KEVIN K. KENDALL
Title: SUPERINTENDENT OF SCHOOLS

EXHIBIT "A"

FLOOR PLAN OF PREMISES

EXHIBIT "B"

LANDLORD'S WORK