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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer

Meeting Date December 15, 2021

Subject COVID-19 Vaccination Clinic Facility Use Agreement – Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals – Community Schools and Student Services Department

Ask of the Board Approve COVID-19 Vaccination Clinic Facility Use Agreement
 Ratify COVID-19 Vaccination Clinic Facility Use Agreement

Services *Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals (collectively “KP”) will operate temporary Vaccination Clinics at locations to be determined by separate communications to facilitate rapid deployment and flexibility. KP shall supply vaccine, administrative staff for registration, clinic staff to administer vaccines, and provide professional staff to oversee the clinic operation.*

Term Start Date: 8/3/2021 End Date:

Not-To-Exceed Amount \$0

Competitively Bid No. This no-cost agreement is under the bidding threshold.

In-Kind Contributions District must identify and make available spaces for temporary COVID-19 vaccination clinics with access to power, domestic water, restrooms, and Wi-Fi. District is responsible for any necessary set up and take down of tables, chairs, sunshades, etc. District must also provide janitorial services.

Funding Source(s) N/A. No-cost agreement.

Background

Approximately eighteen months ago, OUSD schools closed for in-person instruction, marking the early stages of a global pandemic that continues to cause loss of life and economic distress locally and globally.

Safe and effective vaccines have been developed and produced to protect the population from being infected by the coronavirus and the national interest demands that all community resources be deployed to rapidly vaccinate the population to abate the existing crisis.

On August 3, 2021, District staff executed an agreement with KP to run a temporary vaccination clinic on District property.

Attachment(s)

- COVID-19 Vaccination Clinic Facility Use Agreement
- Insurance Documentation

COVID-19 VACCINATION CLINIC FACILITY USE AGREEMENT

This COVID-19 Vaccination Clinic Facility Use Agreement (“Agreement”) is entered into as of August 3, 2021 by and between Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals (collectively, “KP”) and the Oakland Unified School District, a California school district (“District”).

Recitals

- a. WHEREAS, the U.S.A. has been struck by a deadly pandemic caused by the coronavirus which has caused loss of life and economic distress; and
- b. WHEREAS, safe and effective vaccines have been developed and produced to protect the population from being infected by the coronavirus; and
- c. WHEREAS, the District and KP each recognize that the national interest demands that all community resources be deployed to rapidly vaccinate the population to abate the existing crisis; and
- d. WHEREAS, the District has invited KP to establish a temporary Vaccination Clinic on its property; and
- e. WHEREAS, the use of the property is essential to the administration of the vaccine and it is the intent of the Parties that any applicable immunities, including, but not limited to the PREP Act, apply to claims brought against either party involving or related to use of the site or to the planning, distribution, supply, site logistics and administration of the vaccine at the site to fullest extent of the law.

Agreement

1. **USE OF SPACE:** In exchange for consideration that District acknowledges it received, District grants to KP an non-exclusive right to occupy and use the District facilities listed in Exhibit “B” (“Premises”) to plan, promote, establish and operate temporary COVID-19 vaccination clinics (“Clinic”). The dates and times of KP’s use are set forth in Exhibit B. Neither District, nor KP, shall owe the other party any fees for their respective contributions to this important public health initiative.
2. **OPERATIONS AND LOGISTICS:** KP and District agree that each party shall assume responsibility for certain operational and logistical tasks as set forth here:
 - KP responsibilities to include
 - Supply vaccine
 - Provide administrative staff for registration
 - Provide clinic staff to administer vaccines
 - Provide professional staff to oversee the clinic operation
 - Vaccination Area Cleaning
 - District responsibilities
 - Supply power and domestic water
 - WiFi access and usage
 - Janitorial
 - Set-up/break-down of tables, chairs and sunshades
 - Security and Traffic Management
 - Maintain restrooms
 - Remove and store all District property located in the Premises
 - Furnish and set up tables and chairs
 - Disposal of municipal solid waste.
 - Vaccination Area Signage to assist at wayfinding

3. CONFIDENTIALITY:

- A. No person under the control of District shall capture any recognizable photo, video, audio recording, or image of KP members, staff or vaccine-recipients at the Clinic, without the prior approval of KP. Examination and publication of any confidential medical information by unauthorized employees, agents, and vendors is forbidden. In the event that any unauthorized employee should come into possession of any confidential medical information, she or he will immediately return such document, record or information to KP's Clinic Manager.
- B. No person under the control of KP shall capture any recognizable photo, video, audio recording, or image of District faculty, staff or pupils at the Premises, without the prior approval of District. Examination and publication of any confidential District information by unauthorized employees, agents, and vendors is forbidden. In the event that any unauthorized employee should come into possession of any confidential District information, she or he will immediately return such document, record or information to the School Principal.

4. **CONDITION OF PROPERTY:** District makes no representation to KP as to the suitability of the Premises for the purposes contained herein and KP accepts the Premises in "as is" condition with all faults that may be discovered through visual observation. Following the final conclusion of the Clinic, KP shall, in cooperation with District personnel, take all actions required to remove all installations of KP made in connection with the Clinic, clean the Premises, and otherwise restore any damage to the Premises caused directly by KP. KP may not engage in vaccinations in any area not formally approved in writing by District. District reserves the right to inspect the location and limit the area for KP's use as is necessary for the health, safety and protection of students, staff, teachers and other District personnel.

5. **COVID-19:** KP agrees to notify OUSD within twenty-four (24) hours of discovering that any KP employee, subcontractor, agent, or representative who was present on OUSD Property has tested positive for COVID-19. KP agrees to immediately adhere to and follow any federal, state, county health and safety protocols including, but not limited to, masking, distancing, health screening, and case notifications. Notifications will be transmitted via E-mail to OUSDLegal@ousd.org.

6. INDEMNIFICATION:

- A. KP agrees to hold harmless, indemnify, and defend District from and against any and all liability, costs (including but not limited to, costs of suit and reasonable attorneys' fees incurred in District's defense and/or settlement of claims), from and against all claims, demands, actions, causes of action, penalties, fines, judgments, and liabilities of every kind and description for bodily injury, personal injury and/or death, damage to and/or loss of property arising out of KP's use of the District's premises, the vaccinations themselves and for any actions or omissions in regard to safe and prudent vaccinations, except those claims arising out of the gross negligence or willful misconduct of the District.
- B. District agrees to hold harmless, indemnify, and defend KP from and against any and all liability, costs (including but not limited to, costs of suit and reasonable attorneys' fees incurred in KP's defense and/or settlement of claims), from and against all claims, demands, actions, causes of action, penalties, fines, judgments, and liabilities of every kind and description for bodily injury, personal injury and/or death, damage to and/or loss of property, to the extent of District's negligence, except those claims arising out of the gross negligence or willful misconduct of KP.

7. **LIMITATION OF LIABILITY:** With the exception of claims for indemnification, neither party shall be liable to the other party for special, indirect, consequential or punitive damages arising hereunder, including without limitation, loss of profits, or loss of use, regardless of whether any such damage was foreseeable.

The foregoing limitation will apply whether an action is in contract or tort.

8. **PREP Act Immunity:** It is the intent of the District and KP that their participation in the Clinic is within the immunity provided by the Public Readiness and Emergency Preparedness Act (the "PREP Act"), 42 USC § 247d-6d, as amended. Nothing herein shall be interpreted as a waiver of the PREP Act or other applicable immunity by either party.
9. **INSURANCE:** KP will satisfy the insurance requirements set forth in Exhibit A, attached to and incorporated into this Agreement through its self-insurance program.
10. **ASSIGNMENT and THIRD PARTIES:** Neither party shall have the right to assign or otherwise transfer its interest in this Agreement, without the consent of the other. This Agreement is solely between District and KP and is not intended to create any third-party beneficiary.
11. **WARRANTY OF AUTHORITY:** Each person executing this Agreement on behalf of a party represents and warrants that each person (a) is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (b) if such party is a partnership, corporation or government entity, has the full legal right and authority to enter into this Agreement and fulfill all of its obligations.
12. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties, and all prior understandings, discussions and agreements between the parties are merged into this Agreement. This Agreement may be changed or modified only by a writing executed by the party against whom enforcement thereof is sought.
13. **NOTICES:** Except as otherwise stated herein, all notices or other communications required or permitted to be given by one party to the other shall be given in writing by registered mail, postage prepaid, addressed or delivered to such other party:

In the case of KP, at:

Edmund D. Chan
SVP, Area Manager
3600 Broadway
Oakland, California
Edmund.D.Chan@kp.org

In the case of District at:

Dr. Kyla Johnson-Trammell
Superintendent
1000 Broadway, Suite 300
Oakland, California 94607

or at such other addresses as may be specified by any party hereto by notice similarly given. All notices and other communications shall be deemed to have been received or delivered, or if mailed, three (3) business days after the mailing thereof.

14. **SEVERABILITY:** If any provision hereof is held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from this Agreement to the extent of such invalidity or unenforceability and the remainder hereof will not be affected thereby, each of the provisions hereof being severable in any such instance.
15. **WAIVER:** No waiver of any right, obligation or default shall be implied, but must be in writing, signed by the party against whom the waiver is sought to be enforced.

16. **RELATIONSHIP OF THE PARTIES:** KP and District are, and at all times shall be, considered as independent contractors and in no way agents of or employees, partners or joint venturers with each other. Except as provided herein, neither party may bind another party to any obligation.

In witness whereof, the parties hereto have executed this Agreement the day and year first above written.

Kaiser Foundation Hospitals, and
Kaiser Foundation Health Plan, Inc.

Edmund Chan
Edmund D. Chan, SVP and Area Manager

Date: 8/4/2021

Oakland Unified School District

Andrea Bustamante
Andrea Bustamante, Executive Director of CSSS

Date: 8/4/2021

APPROVED AS TO FORM:

Shanthy Gonzales
Shanthy Gonzales, President, Board of Education
12/16/2021

Joanna Powell 8/3/21
Joanna Powell
OUSD Staff Attorney

Kyla Johnson Trammell
Kyla Johnson Trammell, Secretary, Board of Education
12/16/2021

EXHIBIT A
Insurance to be provided by KP

District and KP agree that all required insurance may include alternative risk management programs, including self-insurance or a combination of self-insurance and insurance, provided that such alternative risk management programs provide protection equivalent to that specified under this Agreement.

1. Commercial General Liability.

Such insurance shall include, but not be limited to, bodily injury, liability, personal and advertising liability, contractual liability, products and completed operations liability, and property damage. Policies shall be primary and non-contributory. Vaccinating Party shall name the District as an Additional Insured on the policy

Insurance must be on the most current ISO CG 00 01 04 13 Occurrence Form or current equivalent, at a limit of at least \$1,000,000 per occurrence/\$2,000,000 general aggregate. Limits may be provided in a layered program (by means of primary general liability and umbrella or excess liability policies).

KP and any and all of its subcontractors shall purchase insurance coverage from insurance company(ies) rated A, VIII or better financial strength rating by A.M Best lawfully authorized to conduct business in the State of California and be in form and content reasonably satisfactory to District.

2. Business Automobile Liability.

Including all owned, non-owned and hired vehicles with a combined single limit of at least \$1,000,000 (without aggregate or limits carried). Limits may be provided in a layered program.

3. Worker's Compensation and Employer's Liability Insurance.

- a. Statutory Worker's Compensation including occupational disease in accordance with the laws of the state in which the work is performed.
- b. Employer's Liability Insurance – California and all other states \$1,000,000 bodily injury by accident, \$1,000,000 bodily injury by disease, and \$1,000,000 bodily injury by disease by employee, or limits carried.

4. Certificates of Insurance

Certificates will (a) provide for thirty (30) days' written notice of cancellation or material change, unless replaced with similar coverage; (b) will be maintained for the duration of the Agreement; (c) will indicate the Premises site; (d) are to be submitted, approved and available to the Vendor prior to commencement of Operations.

Certificates of Insurance are to be submitted to the following:

Rebecca Littlejohn
Risk Management Officer
1000 Broadway, Suite 300
Oakland, California 94607

510-879-1611
rebecca.littlejohn@ousd.org

Additional insured status is afforded to and extended to the District, its officers, officials, employees, and volunteers, as their interests may appear.

5. Failure of KP to provide documents required herein does not relieve KP or any and all of its subcontractors retained KP of responsibilities for securing and maintaining proper insurance coverages. District shall have the right (but not the obligation) to take out and maintain the insurance required of such parties, which parties shall furnish all necessary information to place such insurance and pay the cost thereof to District upon presentation of an invoice for such coverage.

EXHIBIT B
School Sites for Vaccination Clinics

KP and District agree that in order to facilitate rapid deployment and flexibility, the specific school locations, clinic dates and hours will be designated via separate communications. E-mail messages stating the location (including a graphic depiction of the actual clinic location on the campus), dates, and hours between KP and OUSD's designated representatives will confirm this information ("Designation E-mail"). The Designation E-mail messages will address only the topics stated in this Exhibit B. Nothing contained in such a Designation E-mail message will be interpreted to modify the terms and conditions of this Agreement. Designation E-mails will be sent to mara.larsen-fleming@ousd.org.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/18/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH RISK & INSURANCE SERVICES FOUR EMBARCADERO CENTER, SUITE 1100 CALIFORNIA LICENSE NO. 0437153 SAN FRANCISCO, CA 94111 CN101483686-NCAL-CAS-21-22 GLALW CA 005959 2021	CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____	
	INSURER(S) AFFORDING COVERAGE	
INSURED KAISER FOUNDATION HEALTH PLAN, INC. KAISER FOUNDATION HOSPITALS ONE KAISER PLAZA, 25B OAKLAND, CA 94612	INSURER A : Safety National Casualty Corp. NAIC # 15105	
	INSURER B : _____	
	INSURER C : _____	
	INSURER D : _____	
	INSURER E : _____	
	INSURER F : _____	

COVERAGES **CERTIFICATE NUMBER:** SEA-003798418-01 **REVISION NUMBER:** 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			GL4048017	01/01/2021	01/01/2022	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			CA6675880 \$5,000,000 SIR	01/01/2021	01/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 4,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTIONS						EACH OCCURRENCE \$ AGGREGATE \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	SP4064350 S.I.R. \$5,000,000	01/01/2021	01/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 5,000,000 E.L. DISEASE - EA EMPLOYEE \$ 5,000,000 E.L. DISEASE - POLICY LIMIT \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: REQUEST #RC005959

Evidence of insurance.

CERTIFICATE HOLDER CANCELLATION

Oakland Unified School District 1000 Broadway, Suite 150 Oakland, CA 94607	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh Risk & Insurance Services</i>
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