

**OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education
October 24, 2012**

To: Board of Education

From: Tony Smith, Ph. D, Superintendent,
Timothy E. White, Assistant Superintendent of Facilities Planning &
Management, Buildings & Grounds and Custodial Services

Subject: Approval of the Right of Entry Agreement between the Thornhill Elementary School and St. John's Episcopal Church for the reciprocal use of adjacent School and Church properties for overflow parking and student drop-off and pick-up.

ACTION REQUESTED

Approval by the Board of Education of the Oakland Unified School District ("DISTRICT") of the Right of Entry Agreement between the DISTRICT and the St. John's Episcopal Church ("CHURCH"), for the reciprocal use of adjacent School and Church properties for overflow CHURCH parking and student drop-off and pick-up.

BACKGROUND

DISTRICT owns and operates Thornhill Elementary School located at 5880 Thornhill Drive, Oakland, California ("School Site") and CHURCH owns and operates a church and associated buildings and lands, including parking located at 1707 Gouldin Road, Oakland, California ("Church Site"), which is adjacent to the School Site.

DISTRICT requests permission to enter the Church Site for the purpose of parent or caretaker parking including morning drop-off and afternoon pick-up of students and such other uses associated with school functions that occur at times other than CHURCH activities. CHURCH consents to authorize the DISTRICT to enter upon the CHURCH site for the limited purpose of parent or caretaker parking including morning drop-off and afternoon pick-up of students and such other uses associated with school functions that occur at times other than CHURCH activities.

CHURCH requests permission to enter the School Site playground area for the purpose of overflow CHURCH parking when the School is not in session (including afterschool activities) and only at such times that are approved by the Principal of the School. DISTRICT consents to authorize CHURCH to enter upon the DISTRICT site for the limited purpose of overflow CHURCH parking when the School is not in session (including afterschool activities) and only at such times that are approved by the Principal of the School.

FISCAL IMPACT

N/A

RECOMMENDATION

That the Board of Education approve the Right of Entry Agreement between the Thornhill Elementary School and St. John's Episcopal Church for the reciprocal use of adjacent School and Church properties for overflow parking and student drop-off and pick-up.

Attachment:

RIGHT OF ENTRY AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT
AND ST. JOHN'S EPISCOPAL CHURCH

**RIGHT OF ENTRY AGREEMENT
BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT
AND ST. JOHN'S EPISCOPAL CHURCH**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is approved and entered into as of October 1, 2012("Effective Date") by and between the Oakland Unified School District, a California public school district of California ("DISTRICT") and the St. John's Episcopal Church, a California non-profit religious organization ("CHURCH"). The District and CHURCH may be individually referred to herein as "Party" or collectively referred to herein as "Parties.

RECITALS

WHEREAS, DISTRICT owns and operates: Thornhill Elementary School ("School") located at 5880 Thornhill Drive, Oakland, California ("School Site"); and

WHEREAS, CHURCH owns and operates: a church and associated buildings and lands, including parking located at 1707 Gouldin Road, Oakland, California ("Church Site"), adjacent to the School Site; and

WHEREAS, CHURCH requests permission to enter the School Site playground area for the purpose of overflow CHURCH parking when the School is not in session (including afterschool activities) and only at such times that are approved by the Principal of the School; and

WHEREAS, the DISTRICT consents to authorize CHURCH to enter upon the DISTRICT site for the limited purpose of overflow CHURCH parking when the School is not in session (including afterschool activities) and only at such times that are approved by the Principal of the School; and

WHEREAS, the DISTRICT requests permission to enter the Church Site for the purpose of parent or caretaker parking including morning drop-off and afternoon pick-up of students and such other uses associated with school functions that occur at times other than CHURCH activities; and

WHEREAS, the CHURCH consents to authorize the DISTRICT to enter upon the CHURCH site for the limited purpose of parent or caretaker parking including morning drop-off and afternoon pick-up of students and such other uses associated with school functions that occur at times other than CHURCH activities.

NOW THEREFORE, the Parties hereto agree as follows:

Section 1. Grant of Entry.

- A. The DISTRICT grants to CHURCH a limited right of access to the School Site playground area for a five (5) year term as specified in Section 3, below.
- B. The CHURCH grants to DISTRICT a limited right of access to the parking and circulation areas on the Church Site for a five (5) year term as specified in Section 3, below. The DISTRICT understands that the CHURCH may construct improvements that will modify its parking and circulation and that the right of entry is not to the specific existing path of circulation or

to the future path of circulation. Rather, the right of entry applies to the parking and circulation that the CHURCH has or constructs and that the CHURCH can change the location of the parking and circulation in its sole discretion. Upon any change of location by the CHURCH, the right of entry will shift to the new location for the remainder of the term or any extension thereof.

- C. The Parties agree to indemnify defend, protect and hold harmless one another, their respective officers, trustees, employees, agents, consultants, and contractors (the "Indemnified Parties") from and against any and all claims, suits, actions, damages, costs, liabilities, obligations, expenses, fines or penalties (collectively, "Claims") resulting from or arising out of injury or death of any person, damage or loss to any property, any non-compliance with any federal, state or local laws or regulations, arising out of or under this agreement.

Section 2. Insurance.

CHURCH:

A. Public Liability and Property Damage. CHURCH agrees to maintain in full force and effect throughout the duration of this Agreement a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with the access and work under this Agreement. Such insurance shall be in amounts not less than \$1,000,000 for injury to or death of one person; and \$1,000,000 for property damage.

B. Automobile Liability. CHURCH agrees to maintain in full force and effect with regard to any vehicles which brought onto the DISTRICT Parcel a suitable policy or policies of automobile liability insurance with a combined single limit of \$1,000,000 per accident.

C. Workers' Compensation. CHURCH shall also maintain, in full force and effect throughout the term of this Agreement, Workers' Compensation insurance in accordance with the laws of California, and employers' liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence.

DISTRICT:

D. Oakland Unified School District is permissibly self-insured for all losses pursuant to California Education Code Section 17566. The DISTRICT's election in this regard is sufficient to satisfy any and all legal obligations that require it to provide evidence of Liability or property damage insurance. The provision of the insurance evidenced herein shall apply to claims, costs, injuries or damages but only in proportion and to the extent such claims, costs, injuries and damages are caused by or result from the negligent acts or omissions of the Oakland Unified School District its officers, agents, or employees.

It is expressly understood that any express or implied agreement by the DISTRICT to indemnify, hold harmless, or defend the certificate holder *is* subject to the official policies and procedures adopted by the Board of Education of the DISTRICT ("Board"), and (ii) will not be afforded unless shown to be caused by the negligence

or willful misconduct of the DISTRICT. Further, it is expressly understood between the parties that nothing herein is intended to bar any defense or immunity made available to the DISTRICT by statute or otherwise, and that any right to indemnification of the certificate holder by the District requires a showing of direct liability to a third party by the DISTRICT.

Section 3. Term.

The term of this Agreement shall be for Five (5) Years. The commencement date shall be October 1, 2012, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end five years from that date, which shall be September 30, 2017 ("Term").

Section 4. Compliance With Laws.

CHURCH shall comply with all federal and State laws, ordinances, rules, and regulations while exercising duties and obligations under this Agreement.

Section 6. Legal Interpretation of Instrument.

CHURCH expressly understands and agrees that this Agreement constitutes a non-exclusive license for use of the DISTRICT's School Sites, and is neither intended by the DISTRICT, nor shall it be legally construed to convey leasehold, easement, or other interest in real property. Should the DISTRICT be compelled to institute arbitration, legal or other proceedings against CHURCH for or on account of CHURCH's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement, the Parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings. This Agreement shall be governed by the laws of the State of California.

Section 8. Entire Agreement.

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be changed except in writing executed by both Parties.

Section 10. Miscellaneous.

Each Party shall execute and deliver such other and further documents or instruments as may be necessary or appropriate in order to carry out the intentions of the Parties as contained in this Agreement. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day set forth above.

File ID Number: 12-2677
Introduction Date: 10/10/12
Enactment Number: 12-2603
Enactment Date: 10/10/12
By: ad

OAKLAND UNIFIED SCHOOL DISTRICT

Jody London
Jody London, President, Board of Education

10/11/12
Date

Edgar Rakestraw, Jr.
Edgar Rakestraw, Jr., Secretary, Board of Education

10/11/12
Date

ST. JOHN'S EPISCOPAL CHURCH

David A. Brown
By: DAVID A. BROWN

9/27/12
Date

Its: SENIOR WARDEN

APPROVED AS TO FORM:

Jacqueline Minor
Jacqueline Minor, General Counsel

9/26/12
Date