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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, General Counsel

Board Meeting Date December 9, 2020

Subject Facilities Use Agreement with The Movement Church - Elmhurst

Action Ratification by the Board of Education of a Facilities Use Agreement between the District and The Movement Church, for the latter to hold religious services at Elmhurst United Middle School, for the period of November 14, 2020 through November 15, 2020, at no cost to the District.

Background & Discussion The Movement Church – Elmhurst (“TMCE”) has regularly used the facilities at Elmhurst United Middle School as space to conduct weekly religious services. For most of the pandemic, no such services were held. As more religious institutions held services, TMCE sought to do so as well. An individual contract to use the facilities is necessary given that Facilitytron has been closed during the pandemic. The services were held outside and the use was consistent with applicable state and local COVID guidance.

Fiscal Impact Minimal cost from additional custodial work, for which TMCE intends to reimburse the District.

Attachment Facilities Use Agreement between the Oakland Unified School District and The Movement Church - Elmhurst

FACILITIES USE AGREEMENT

THIS AGREEMENT is entered by and between the Oakland Unified School District (“OUSD” or “District”) and [“The Movement Church - Elmhurst” or “TMCE”] (together with the District, “Parties”) for non-exclusive use of facilities owned by the District. The Parties hereby agree as follows:

I. Use of Facilities

- A. The District shall allow [TMCE], as well as its representatives, agents, employees, and volunteers, to use the following areas of Elmhurst Unified Middle School (“Elmhurst”) for the purpose of [Sunday Service].
 - 1. [Soccer Field; bathrooms of the Gymnasium]
 - 2. [Gymnasium in the event of rain]
- B. [TMCE] use of Elmhurst shall be limited to Saturday, 14 November from 12:00-3:00p and Sunday, 15 November 15 from 7:30a-2p, 2020. Regardless of [TMCE]’s presence, the District shall be permitted to access and use Elmhurst at all days and times.
- C. The District shall provide building management and security at the determined days and times, and shall ensure that Elmhurst are regularly cleaned by District custodial staff. However, [TMCE] shall be responsible for cleaning any outdoor spaces used and returning such outdoor spaces to the condition in which they were in prior to the Event.
- D. [TMCE] shall use Elmhurst solely for the purposes identified in Paragraph A, and shall comply with any and all District directives regarding use of Elmhurst.

II. Allocation of Risk

- A. [TMCE] shall immediately inform the District of any [TMCE] representative, agent, employee, and/or volunteer who was present on a District facility in connection with this Agreement and who has been diagnosed with COVID-19 or has shown COVID-19-like symptoms.
- B. In the event that the District or [TMCE] discovers that a [TMCE] representative, agent, employee, and/or volunteer who was present on a District facility in connection with this Agreement has been diagnosed with COVID-19, the District and [TMCE] shall share equally the cost of deep cleaning the facility. [TMCE] shall be responsible for notifying those who may have been exposed to the diagnosed

individual, although nothing prohibits the District, at its discretion, from noticing individuals as well.

- C. [TMCE] shall use Elmhurst and shall be responsible for using Elmhurst in accordance with any shelter-in-place (or similar) order issued by the District or by local, state, and federal authorities and with any COVID-19-related health and safety guidelines or requirements established by the District or by local, state, and federal authorities.
- D. [TMCE] shall be responsible for the cost of any repairs to Elmhurst necessary based on [TMCE]'s use or activities.
- E. [TMCE] shall defend, indemnify and hold harmless the District (including its governing board and governing board members, its officers, employees, contractors, and volunteers) from any and all claims, demands, actions or damages arising out of [TMCE]'s use of Elmhurst to which the District may be subjected as a direct consequence of this Agreement, except for those claims, demands, actions or damages resulting solely from the negligence of the District.

III. Term and Termination

- A. If either Party determines that [TMCE]'s use of Elmhurst threatens the health or safety of District or [TMCE] representatives, agents, employees, and/or volunteers, or the community, that Party may terminate this Agreement immediately. Notice may be provided subsequent to termination.

IV. Insurance

- A. [TMCE] shall 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 use 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. With regard to any vehicles brought onto District facilities, [TMCE] shall maintain in full force and effect a suitable policy or policies of automobile liability insurance with a combined single limit of \$1,000,000 per accident.
- C. [TMCE] shall 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.

V. No Property Rights

- A. [TMCE] expressly understands and agrees that this Agreement constitutes a non-exclusive license for use of the District's facilities, and is neither intended by the District, nor shall it be legally construed, to convey leasehold, easement, or other interest in real property.

VI. Entire Agreement

- A. 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.

VII. Miscellaneous

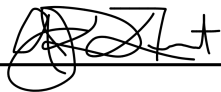
- A. Each Party shall execute and deliver such other and further documents or instruments as may be necessary or appropriate in order to carry out the intentions of the Parties as contained in this Agreement.
- B. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original agreement and all of which shall constitute one and the same agreement. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing party and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. This section constitutes a waiver by each party of the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
- C. This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- D. The District enters into this Agreement pursuant to Resolution No. 1920-0262 - Providing Authorization to the Superintendent in Light of the Covid-19 Pandemic, approved on June 24, 2020, which "authorizes the Superintendent or designee (i)

to take any and all actions necessary to ensure the continuation of public education, and the health and safety of the students and staff of OUSD." This Agreement constitutes such an action.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

[The Movement Church - Elmhurst]

Name: Aaron J. DeLaFuente

Signature: 

Position: Executive Pastor

Date: 12 Nov 2020

District


Name: Joshua R. Daniels

Signature: 

Position: General Counsel

Date: December 2, 2020

Name: Kyla Johnson-Trammell

Signature: 

Position: Secretary, Board of Education

Date: 12 / 10 / 2020

Pre-approved as to form by General Counsel