

LEGISLATIVE FILE

File ID No. 12-3097

Introduction Date 12-12-2012

Enactment No. 12-3010

Enactment Date 12-12-12

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education
December 12, 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 Highland Elementary School and Allen Temple Baptist 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 Allen Temple Baptist 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 Highland Elementary School located at 8521 A. Street, Oakland, California ("School Site") and CHURCH owns and operates: a church and associated buildings and lands, including parking located at 8501 International Boulevard, Oakland, California ("Primary Church Site"), adjacent to the School Site, and 86th Ave., Oakland, California ("Secondary Church Site" collectively "CHURCH Sites").

DISTRICT requests permission to enter the Church Sites 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 sites 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 Highland Elementary School and Allen Temple Baptist 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 ALLEN TEMPLE BAPTIST CHURCH

**RIGHT OF ENTRY AGREEMENT
BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT
AND ALLEN TEMPLE BAPTIST CHURCH**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is approved and entered into as of October 30, 2012("Effective Date") by and between the Oakland Unified School District, a California public school district of California ("DISTRICT") and the Allen Temple Baptist 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: Highland Elementary School ("School") located at 8521 A. Street, Oakland, California ("School Site"); and

WHEREAS, CHURCH owns and operates: a church and associated buildings and lands, including parking located at 8501 International Boulevard, Oakland, California ("Primary Church Site"), adjacent to the School Site, and 86th Ave., Oakland, California ("Secondary Church 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 Teacher and Administrator for use during school hours 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 purpose of Teacher and Administrator for use during school hours 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 as specified in Attachment 1 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 Primary Church Site and specified in the Secondary Church Site (See Attachment 2).

- 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 30, 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.

OAKLAND UNIFIED SCHOOL DISTRICT

Jody London, President, Board of Education

Date

Edgar Rakestraw, Jr., Secretary, Board of Education

Date

ALLEN TEMPLE BAPTIST CHURCH

J.V. Lambert-Thompson
By: _____

10/30/12
Date _____

Its: *Chairperson, Trustee Board*

APPROVED AS TO FORM:

Jacqueline Minor, General Counsel

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Jody London
Jody London, President, Board of Education

12/13/12
Date

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

12/13/12
Date

ALLEN TEMPLE BAPTIST CHURCH

By:

Date

Its: _____

APPROVED AS TO FORM:

Jacqueline Minor
Jacqueline Minor, General Counsel

11/13/12
Date

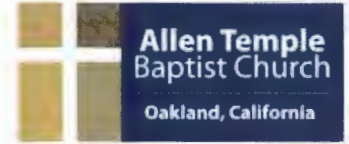
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Introduction Date: 12-12-12
Enactment Number: 12-30/D
Enactment Date: 12-12-12
By: RT







OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

HIGHLAND PARKING AT ATBC PARKING LOT (Attachment 2)



LEGEND

-  AVAILABLE HIGHLAND PARKING
-  RESERVED FOR ATBC
-  RESERVED FOR ATBC DURING FUNERALS
-  OVERFLOW PARKING FOR HIGHLAND