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Board Cover Memorandum

To Board of Education

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

Meeting Date November 17, 2021

Subject Right of Entry Agreement with St. John's Episcopal Church – No Cost

Ask of the Board Approve Right of Entry Agreement
 Ratify Right of Entry Agreement

Right of Entry Provided Under this Agreement, St. John's Episcopal Church ("St. John's") provides OUSD staff, parents, and students the right to use the St. John's property for parent or caretaker parking, including morning drop-off and afternoon pick-up of students, and such other uses associated with school functions. St. John's property will be predominantly used by Thornhill Elementary staff and families as St. John's is located next to the Thornhill campus.

Term Start Date: October 12, 2021 End Date: October 12, 2026

Not-To-Exceed Amount \$0

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

In-Kind Contributions In exchange for use of St. John's property, St. John's parishioners will be permitted a right of entry to the Thornhill Elementary playground area for overflow parking services when neither school nor after-school programs are in session and only as approved by the Thornhill Principal.

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

Background Thornhill Elementary has limited parking availability and its geographical location makes it difficult to provide a functional pick-up/drop-off process

solely on public and District property. Through previous agreements, St. John's has permitted the District to use its parking lot and driveway to allow for a structured pick-up/drop-off system in exchange for the Church to have access to the Thornhill playground area at approved times. This Agreement codifies the terms of that arrangement with appropriate indemnification language.

Attachment(s) Right of Entry Agreement with 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 the date of the latest signature on the signature page below ("Effective Date") by and between the Oakland Unified School District, a California public school district ("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"; and 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, 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 which do not impair the CHURCH's use of its property; and,

WHEREAS, the DISTRICT consents to authorize CHURCH to enter upon the DISTRICT-School Site Playground Area for the limited purpose of overflow CHURCH parking when the School is not in session and is not using the School Site Playground Area including after school activities, and only at such times that are approved by the Principal of the School as conditioned herein; 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 as approved by the CHURCH and as conditioned herein;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Grant of Entry.

A. The DISTRICT grants to the CHURCH a limited right of access to the School Site Playground Area for a five (5) year term as specified in Section 3, below. The CHURCH agrees that the right is limited and if at any time the CHURCH's use overburdens the playground use as determined by the DISTRICT, the access may be limited. The CHURCH understands that the DISTRICT may construct improvements that will modify the layout of the School Site Playground Area at the DISTRICT's sole discretion.

B. The CHURCH grants to the 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 4, below. The DISTRICT agrees that the right is limited and if at any time the DISTRICT'S, students' and parents' use overburdens the drop off and pickup use as determined by the CHURCH, the access may be limited. Moreover, the DISTRICT understands that the CHURCH may construct improvements that will modify its parking and circulation, at the CHURCH's sole discretion and that the DISTRICT's right of entry is not to the specific existing path of circulation or to the future path of circulation, but rather, the right of entry applies to the parking and circulation that the CHURCH has or constructs and that the CHURCH can change the extent of and 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 as determined by the CHURCH.

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Section 2. Indemnification, Hold Harmless and Duties to Defend.

A. The DISTRICT agrees to indemnify, hold harmless, and defend the CHURCH from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which the CHURCH may suffer or incur in connection with the DISTRICT's, its students, and parents' willful misconduct or negligent or other culpable use of the Church Site.

B. The DISTRICT agrees to indemnify, hold harmless, and defend the CHURCH from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which the CHURCH may suffer or incur in connection with the DISTRICT's willful or negligent misconduct in its management and maintenance of the School Site Playground Area.

C. The CHURCH agrees to indemnify, hold harmless, and defend the DISTRICT from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which the DISTRICT may suffer or incur in connection with the CHURCH's willful or negligent misconduct in its use of the School Site Playground Area.

D. The CHURCH agrees to indemnify, hold harmless, and defend the DISTRICT from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which the DISTRICT may suffer or incur in connection with the CHURCH's gross negligence or willful misconduct in its management and maintenance of the Church Site.

Section 3. Insurance and Financial Responsibility.

CHURCH: Insurance: Public Liability and Property Damage. The 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.

DISTRICT: The DISTRICT is permissibly self-insured for all losses pursuant to California Education Code Section 17566, and represents that 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 DISTRICT'S "self-insurance" as represented here 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 and that nothing herein is intended to bar any defense or immunity made available to the District by statute or otherwise.

Section 4. Term. The term of this Agreement shall be for Five (5) years. The commencement date shall be the date of the execution of this Agreement which shall be the effective date of this agreement, and unless sooner terminated under any provision hereof Section 4 below, this Agreement shall end five years from that date (the "Term.")

Section 5. Termination. Either Party may terminate this Agreement immediately in the event of material breach of the Agreement by the other party. In addition, either Party may terminate this Agreement for any reason upon 30 days' notice to the other Party.

Section 6. 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 7. Legal Interpretation of Instrument.

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

B. DISTRICT expressly understands and agrees that this Agreement constitutes a non-exclusive license for use of the CHURCH's drop-off and pick up locations and is neither intended by the DISTRICT or CHURCH, nor shall it be legally construed to convey leasehold, easement, or other interest in real property.

C. This Agreement shall be governed by the laws of the State of California, and the City of Oakland.

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 9 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 executed below.

OAKLAND UNIFIED SCHOOL DISTRICT

By: Sondra Aguilera

Sondra Aguilera, Chief Academic Officer

Date: 10/12/2021

Shanthi Gonzales, President, Board of Education 11/18/2021

Kyla Johnson Trammell, Secretary, Board of Education 11/18/2021

ST. JOHN'S EPISCOPAL CHURCH

By Scott Denman

The Rev. Scott Denman, Authorized
Representative

Date 10/2/21

Approved as to form by OUSD Staff Attorney Sterling Elmore on 09/28/2021. *JS, E*