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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems & Services Officer, Facilities Planning and Management

Meeting Date September 13, 2023

Subject Use Agreement to allow the use of the portables located at Santa Fe Elementary, School with Alameda County California Children Services (“AC CCS”) by and between OUSD and the West Oakland Medical Therapy Unit Program by AC CSS (“MTU”)

Ask of the Board Adoption by the Use Agreement for the use of the portables by and between OUSD and the West Oakland Medical Therapy Unit Program by AC CSS.

Background Pursuant to Government Code section 7575, AC CCS, as the designated local agency of the State Department of Health Care Services, is responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis, when contained in a child’s individualized education program.

Pursuant to Government Code section 7575, the Oakland Unified School District (“District”) must provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner, including for the MTU.

The District is the owner of real property located at 915 54th St., Oakland, CA 94608 (“Property”), Santa Fe Elementary School.

The District will be installing certain portables (“Portables”) at the Property in order to meet its obligation to provide space and equipment to AC CSS for the MTU.

Discussion The proposed Use Agreement includes the following key terms and conditions:

The District agrees to allow use of the Portables by AC CSS for the sole purpose of operating the MTU and AC CCS agrees to use the Portables for the sole purpose of providing services to eligible clients in accordance with Government Code section 7570 et seq., including administrative and supportive purposes such as answering

telephone calls, completing charts and forms, scheduling appointments, and client-family conferences. AC CCS shall not use the Portables, or permit the Portables to be used, for any other purpose. AC CCS may access other parts of the Property for purposes of operating the MTU but only upon receiving specific approval to do so by the administrator in charge of the Property or the District's legal counsel. In requesting and granting such access, AC CCS and the District shall cooperate and coordinate for scheduling purposes.

Title to the Property and the Portables shall continue to be held by the District. AC CCS's use of the Portables does not convey a leasehold, easement, or any other interest in the District's real property.

Pursuant to Government Code section 7575 and Title 2, Division 9, Chapter 1, Article 5, Occupational Therapy and Physical Therapy, of the California Code of Regulations, the District shall provide AC CCS with such space and equipment as is necessary to accommodate CCS's administration, medical therapy conference, comprehensive evaluation, private treatment, activities of daily living, storage, and modification of equipment.

The term will need to be negotiated once the Portables are installed.

Fiscal Impact

N/A

Attachment(s)

Use Agreement by and between OUSD and the West Oakland Medical Therapy Unit Program by AC CSS

USE AGREEMENT BETWEEN
THE OAKLAND UNIFIED SCHOOL DISTRICT AND
THE COUNTY OF ALAMEDA

WHEREAS, pursuant to Government Code section 7575, Alameda County California Children Services (AC CCS), as the designated local agency of the State Department of Health Care Services, is responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis, when contained in a child's individualized education program;

WHEREAS, pursuant to Government Code section 7575, the Oakland Unified School District ("District") must provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner, including for the West Oakland Medical Therapy Unit program operated by AC CSS ("MTU");

WHEREAS, the District is the owner of real property located at 915 54th St., Oakland, CA 94608 ("Property");

WHEREAS, the District will be installing certain portables ("Portables") at the Property in order to meet its obligation to provide space and equipment to AC CSS for the MTU; and

WHEREAS, AC CCS desires to use the Portables for the MTU, and the District desires to permit AC CCS to use the Portables for the MTU, in furtherance of their respective obligations under Government Code section 7575.

THEREFORE, THROUGH ITS USE OF THE PORTABLES, the District and the County of Alameda on behalf of its AC CCS (individually, a "Party", collectively, the "Parties") agree to the terms and conditions that follow:

1. The District agrees to allow use of the Portables by AC CSS for the sole purpose of operating the MTU and AC CCS agrees to use the Portables for the sole purpose of providing services to eligible clients in accordance with Government Code section 7570 *et seq.*, including administrative and supportive purposes such as answering telephone calls, completing charts and forms, scheduling appointments, and client-family conferences. AC CCS shall not use the Portables, or permit the Portables to be used, for any other purpose. AC CCS may access other parts of the Property for purposes of operating the MTU but only upon receiving specific approval to do so by the administrator in charge of the Property or the District's legal counsel. In requesting and granting such access, AC CCS and the District shall cooperate and coordinate for scheduling purposes.
2. Title to the Property and the Portables shall continue to be held by the District. AC CCS's use of the Portables does not convey a leasehold, easement, or any other interest in the District's real property.

3. Pursuant to Government Code section 7575 and Title 2, Division 9, Chapter 1, Article 5, Occupational Therapy and Physical Therapy, of the California Code of Regulations, the District shall provide AC CCS with such space and equipment as is necessary to accommodate CCS's administration, medical therapy conference, comprehensive evaluation, private treatment, activities of daily living, storage, and modification of equipment.
4. The District and the County of Alameda agree to indemnify and hold the other Party, including their respective Board of Supervisors or Board of Education, the individual members thereof, officers, agents, employees, volunteers, and representatives, harmless and waive all claims for compensation for any loss, damage, personal injury, or death incurred in consequences of the intentional acts or omissions of the indemnifying Party's own employees and agents for any claims pertaining to the Party's performance of or obligations under this Agreement. It is the intent of the Parties that, where negligence is determined to have been contributory, principles of comparative fault will be followed, and each Party shall bear the proportionate costs of any loss, damage, expense, and liability attributable to the Party's negligence.
5. Each Party shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A/VII" in Best Insurance Rating Guide, the following policies of insurance:
 - i. COMMERCIAL GENERAL LIABILITY insurance which shall include contractual, products and completed operations, corporal punishment and sexual misconduct and harassment coverage, and bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence. Self-insurance to these limits shall be an acceptable form of meeting this obligation.
 - ii. WORKERS COMPENSATION insurance, as required by the California Labor Code, with not less than the statutory limits.

The above policies of insurance shall be written on forms or certificates acceptable to the Risk Manager of the other party; AC CCS shall name the Oakland Unified School District, its officers, employees, volunteers, and agents, as additional insured; the District shall name the County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives as additional insured.

6. The Parties shall not possess or consume any alcoholic beverages, illegal drugs, intoxicants, narcotics, tobacco products, and/or other restricted substances while on the Property.
7. The Parties shall comply with all applicable federal, state, and local shelter-in-place and related orders, including ceasing operations if required due to such orders and/or change in shelter-in-place order prohibiting continued operation, as well as social distancing, mask-wearing, quarantining, isolating, and other legal mandates.

8. The Parties shall comply with all applicable COVID-19 testing, contact tracing, and notification requirements set forth in federal, state, and local law, including notifications pursuant to AB 685 for anyone present on the Property by reason of AC CCS's use thereof.
9. The Parties, after consultation with the Integrated Systems of Care Division of the California Department of Health Care Services, may mutually agree to terminate this Agreement, including in a circumstance where occupational therapy and physical therapy services is relocated from the Portables to another district facility.


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

AC CSS

Name: June McIntyre Signature: 
Position: Chief Therapist Date: 8/2/2023

OUSD

Name: Mike Hutchinson Signature: 
Position: President, Board of Education Date: 9/14/2023
 Board President (for approvals)
 Chief/Deputy Chief/Executive Director (for ratifications)

Name: Kyla Johnson-Trammell Signature: 
Position: Superintendent Date: 9/14/2023

Approved as to form by OUSD Legal Counsel

Name: Joshua R. Daniels Signature:  Date: 8/1/2023