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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems & Services Officer, Division of Facilities Planning and Management
Kenya Chatman, Executive Director of Facilities

Board Meeting Date September 11, 2024

Subject License Agreement with the City of Oakland concerning the premises at 10315 E Street, Oakland, CA 94621.

Action Requested Approval by the Board of Education for the District to operate and perform improvements on the area (land parcel) owned by the City of Oakland located at 10315 E Street, Oakland, CA 94621.

Background This License Agreement ("Agreement) is made by and between the City of Oakland ("City"), and the Oakland Unified School District ("District"). The District operates the Esperanza Elementary School and Korematsu Discovery Academy, located at 8000 Birch Street,10315 E St., Oakland, CA 94621 (APN 40-3370-1-4). The City owns a park space adjacent, operated partially by both the District and the City, to the Elementary School (APN 45-5214-2-3), commonly known as Stonehurst Park, which includes partial field area, parking, and garden area. Visuals are presented in **Exhibit A**.

The District has historically used the "District License Area" shown in **Exhibit A**. As part of an upcoming Living Schoolyard project, in partnership with KABOOM! and the District, the District will be adding a new outdoor classroom, a new multi-sport court, and acrylic basketball court, a new play structure and matting, a new nature exploration area, and one tetherball. Visuals are presented in **Exhibit B**. The first phase of the District's Living Schoolyard project was completed in October 2023 on the lower yard that is owned by the District, and this updated License Agreement is needed to proceed with the second phase scheduled for October 2024.

The City wishes to allow the District to have continued access to the District License Area, and to allow the District to perform the improvements listed in **Exhibit B** (hereinafter the "Improvements"). For purposes of making this Agreement, the Parties' respective ownership interests shall be treated as designated on Exhibit A. The Parties recognize that neither has obtained a survey or title report for this transaction, and the Parties' actual property interests may vary from what is shown on Exhibit A. By granting the licenses herein, neither Party intends to transfer title or any other interest to any of its property and intends to grant only the licenses provided for herein.

Discussion

The Board is being asked to approve a License Agreement with the City of Oakland that includes the following terms:

Term: The Agreement is set for a term of twelve (12) months, with options for up to two (2) one-year extensions. Either party may terminate the Agreement with thirty (30) days' written notice.

Licenses: The City grants the District a license to use the District License Area and make improvements, while the DISTRICT grants the CITY a non-exclusive license for the City License Area.

Use: During the Term, District may use the District License Area for no other purpose than to continue its use for students of the Stonehurst Elementary School in the manner specified and described in this Section 4 (the "Permitted Use"). This Agreement shall not in any way whatsoever establish any permanent interest or right in said Premises. The use by the Parties is subject to the following terms and conditions:

1) District may make Improvements to the District License Area as set forth in **Exhibit B** for the benefit of the Elementary School.
2) District shall continue use of the District License Area for the benefit of the Stonehurst Elementary School.
3) City shall continue use of the City License Area as McConnell Field.

License Fee: As consideration for this Agreement, District shall (i) permit the City to continue use of the City License Area as described; and (ii) on the first (1st) day of each month during the Term and any extension thereof, without offset or deduction, pay City a license fee of Zero Dollars ($0.00) per month (each a "License Fee").

Maintenance: Each Party agrees to provide continued maintenance of its own Premises and surrounding area at no cost to the other Party.

Recommendation

Approval by the Board of Education of the License Agreement as presented, allowing for continued beneficial use of the premises by both parties and facilitating necessary improvements and maintenance.

Fiscal Impact

The Facilities Department has a planned project for the two schools with dedicated resources and contracts in place. The District would incur a marginal cost as the District's Buildings and Grounds team would take over management and responsibility for the upkeep and maintenance of the field. This maintenance would be covered by existing allocations to Routine Restricted Maintenance Account.

Attachments

License Agreement signed by the City of Oakland; includes Exhibits A and B

LICENSE AGREEMENT
10315 E Street, Oakland, CA 94621
(Oakland Unified School District)

This License Agreement ("**Agreement**") is made by and between the City of Oakland, a municipal corporation ("CITY"), and the Oakland Unified School District, a California public school district ("DISTRICT") (collectively, the "Parties"). This Agreement shall be effective as of the date it is fully executed by City and District representatives and approved by the District's Board and City Council ("**Effective Date**").

RECITALS

This Agreement is made with respect to the following facts:

A. The DISTRICT operates the Stonehurst Elementary School, located at 10315 E St., Oakland, CA 94603.

B. For purposes of making this Agreement, the Parties' respective ownership interests shall be treated as designated on **Exhibit A**. The Parties recognize that neither has obtained a survey or title report for this transaction, and the Parties' actual property interests may vary from what is shown on **Exhibit A**. By granting the licenses herein, neither Party intends to transfer title or any other interest to any of its property and intends to grant only the licenses provided for herein.

C. The DISTRICT has historically used the "District License Area" shown in **Exhibit A**. The CITY wishes to allow the DISTRICT to have continued access to the District License Area, and to allow DISTRICT to perform the improvements listed in "**Exhibit B**" (hereinafter the "Improvements").

D. The CITY has historically accessed and maintained the "City License Area" shown in **Exhibit A**. The District wishes for the CITY to have continued access to the City License Area for the City's continued access and maintenance of the field.

E. The non-exclusive and temporary use of the District License Area by DISTRICT for community benefitting uses does not authorize development, and thus is not a disposition of surplus property under Government Code section 54220 *et seq*.

F. The CITY is authorized to license the City License Area from the DISTRICT pursuant to Section 2.41.050 of the Oakland Municipal Code ("OMC") because the license fees do not exceed One Hundred Thousand Dollars ($100,000) over the term of the license.

G. The CITY is authorized to license the District License Area to the DISTRICT pursuant to OMC Section 2.42.100.C because the license is for a term of 1-year or less, and the City may terminate the license unilaterally for any reason upon notice of thirty (30) days or less.

H. This License is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15183 (projects consistent with General

Plan and Zoning), and 15061(b)(3) (no significant effect on the environment).

AGREEMENTS

In consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants and undertakings described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and DISTRICT agree as follows:

1. **Premises**. The Premises to be licensed hereunder includes the District License Area and the City License Area as depicted in **Exhibit A** (the "**Premises**").

2. **Licenses**. During the Term of this Agreement and subject to the terms and conditions herein, CITY grants to DISTRICT a license to use and occupy the District License Area and agrees that DISTRICT may perform the Improvements indicated in **Exhibit B**, and DISTRICT grants the CITY a non-exclusive license to use the City License Area. The Parties acknowledge that the DISTRICT has historically secured certain portions of the District License Area and agree that the DISTRICT may continue to do so.

3. **Term**. Unless earlier terminated in accordance with the terms hereof, the "**Term**" of this Agreement shall commence on the Effective Date and shall terminate after twelve (12) months (the "**Expiration Date**").

a. Extension. City and District may agree to extend the Term of this Agreement for up to (2) additional term(s) of one (1) year each (each, an "**Extended Term**") for a total not to exceed three (3) years from the Effective Date, by notifying the other in writing no fewer than sixty (60) days prior to the expiration of the Term or Extended Term, as the case may be.

b. Termination. During the Term and any such Extended Term, either Party may unilaterally terminate this Agreement for any reason or for no reason, upon thirty (30) days' written notice to the other Party, stating such Party's intention to terminate this Agreement and the date such termination shall occur, after which this Agreement shall terminate in accordance with Section 12 below.

4. **Use**. During the Term, DISTRICT may use the District License Area for no other purpose than to continue its use for students of the Stonehurst Elementary School in the manner specified and described in this Section 4 (the "**Permitted Use**"). This Agreement shall not in any way whatsoever establish any permanent interest or right in said Premises. The use by the Parties is subject to the following terms and conditions:

a. Use. Except with the prior written consent of the other Party, each Party shall restrict its use of the Premises to the following:

(i) DISTRICT may make Improvements to the District License Area as set forth in **Exhibit B** for the benefit of the Stonehurst Elementary School.

(ii) DISTRICT shall continue use of the District License Area for the benefit of the Stonehurst

Elementary School.

(iii) CITY shall continue use of the City License Area as McConnell Field.

b. Security. During the Term, neither Party shall have responsibility for providing any security, cameras, or lighting at or about the Premises. Each Party assumes all responsibility for the protection of its own property, and shall indemnify, defend (with counsel acceptable to the other Party), and hold each other harmless from claims related to failure to provide any or adequate security. Any provision of security services provided by the other Party shall not constitute acceptance of liability for acts on the Premises. Each Party authorizes the other Party to secure the Premises when the properties are otherwise closed to the public. Each Party shall provide a means by which the other Party can access the secured property at any time, such as by providing a key. Each Party shall not add or change locks on the Premises, or otherwise impede the other Party's access to the Premises, without obtaining the advance written approval of the other Party and providing the other Party with a method of ongoing access to the Premises.

c. Maintenance Responsibilities. Each Party agrees to provide continued maintenance of its own Premises and surrounding area at no cost to the other Party, acknowledging that CITY will continue to maintain the field in the City License Area. The maintenance responsibilities shall include but not limited to regular removal of trash and other debris, graffiti removal, and as-needed fence repair, as further described in Section 13.

d. Vehicle Storage Restrictions. No vehicles may be stored, serviced, repaired, or restored on the Premises without the advance written consent of the other Party. In addition to such other rights and remedies that the other Party may have, the injured Party may, without notice to the other Party, remove or tow away the items parked or stored in contravention of this Agreement and charge the cost of such removal or towing to the responsible Party, which cost shall be immediately due and payable upon the other Party's demand therefor.

e. Signs. Neither Party shall construct, erect, maintain, or permit any sign, banner, or flag upon the Premises controlled by the other Party without their prior written approval as to the size, location, materials, method of attachment, and appearance, which shall be given or withheld in such other Party's sole discretion. Any such signage shall be installed at the installing Party's sole expense and in compliance with all applicable laws. An installing Party shall not damage or deface the Property in installing or removing signage and shall repair any injury or damage to the Property caused by such installation or removal.

f. Prohibited Uses. All uses not otherwise permitted by this Agreement are prohibited. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises or cause the cancellation of any insurance on the Premises, or that would constitute a fire hazard as determined by the City Fire Prevention Bureau. District shall not commit, or allow to be committed, any waste upon the Premises, or any public or private nuisance. Throughout the Term, District will not encroach on any areas of the public right-of-way without the prior written consent of City.

5. License Fee, Administrative Processing Fee, Other Fees.

a. License Fee. As consideration for this Agreement, DISTRICT shall (i) permit the CITY to continue use of the City License Area as described; and (ii) on the first (1st) day of each month during the Term and any extension thereof, without offset or deduction, pay CITY a license fee of Zero Dollars ($0.00) per month (each a "**License Fee**").

b. Payment. District shall make all payments to the City of Oakland and shall deliver such payments to City as follows:

City of Oakland
Real Estate Asset Management Division
250 Frank H. Ogawa Plaza, #4314
Oakland, CA 94612

c. Other Fees. Each Party agrees to pay all other fees legally required by the City of Oakland Chief of Police, the City of Oakland Fire Marshal, the City of Oakland Public Works Agency, the City of Oakland Real Estate Services Division, the City of Oakland City Engineer, the Oakland Municipal Code, and the Master Fee Schedule.

6. Security Deposit. Within three (3) business days of execution of this Agreement by District, District shall deliver to City the sum of Zero Dollars ($0.00) ("**Security Deposit**") for District's faithful performance of District's obligations under this Agreement. If District fails to comply with any provision of this Agreement after a five (5) day written notice from City, City shall have the right to apply all or part of the Security Deposit to cure any default under this Agreement. If all or part of the Security Deposit is applied to cure any default, District agrees to replenish the amount so applied within five (5) business days after receipt of City's written demand. City shall not be required to deposit the Security Deposit into a separate account, and District shall not be entitled to any interest earned or accrued on District's Security Deposit.

7. Holding Over. Neither Party shall have a right to holdover past the Expiration Date or earlier termination of this Agreement. If a Party fails to vacate the Premises by 11:59 p.m. on the Expiration Date or earlier termination of this Agreement, in the condition required in Section 12, then this Agreement shall, if the other Party provides prior written consent, in its sole and absolute discretion, continue as a month-to-month license, and the Party failing to vacate shall become a holdover licensee subject to the terms and condition of this Agreement. During the holdover period, City and District shall each be entitled to terminate this Agreement with thirty (30) days' written notice to the other Party, and thereafter, the License shall terminate on the thirtieth (30th) day following the date of the notice. If there is no mutual consent to holding over, then this Agreement shall terminate immediately and the Party seeking to holdover shall have no right to remain on the Premises, and the owner shall be entitled to every right and remedy under law and in equity to prevent the Party holding over from occupying the Premises.

8. Reserved.

9. Utilities. A Party granting a license hereunder shall not be responsible for providing any utilities to or on the Premises and shall not be liable for any loss, injury, or damage to person or

property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, except to the extent due to intentional misconduct or gross negligence. Each licensee agrees to pay for any applicable gas, electricity, water and sewer service charges, garbage, and any telephone services, proportionate to its use of the other Party's property whether or not such services are billed directly to the licensee.

10. Condition and Acceptance of the Premises. As evidenced by the execution of this Agreement, each Party warrants that it has inspected the Premises and accepts the Premises as of the Effective Date in its "as is" condition and subject to (a) all applicable zoning, municipal, and county laws, ordinances, and regulations governing and regulating the use of the Premises and the Permitted Use, (b) any covenants or restrictions of record or off record, and (c) all matters disclosed in this Agreement and any exhibits attached hereto. Each licensee Party shall be responsible for performing any work necessary to bring the Premises into a condition satisfactory to the licensee. Each Party acknowledges that the other has made no representation or warranty, express or implied, and, to the maximum extent permitted by law, waives and releases the other Party and its Councilmembers, Board members officers, partners, employees, attorneys, contractors, and agents (collectively, the "**Indemnified Parties**") from any and all liability to the indemnifying Party, its officers, directors, employees, contractors, patrons, and invitees (collectively, the "**Indemnifying Parties**"), for any loss, damage, liability, or liability for damages, whether for loss of or damage to property or injury to or death of persons, and whether or not known or suspected, which may arise out of use of or access to the Premises by Indemnifying Parties, and whether or not caused by or arising out of the act or omission of Indemnified Parities, which waiver and release shall survive the expiration or earlier termination of this Agreement.

11. Hazardous Materials. Neither Party shall cause or allow the transport onto, use, storage, deposit, release, handling, or disposal of (collectively, "**Release**") any Hazardous Materials (defined below) on or about the Premises or the Property, except for commercially reasonable amounts of such materials customarily used in the course of maintenance or operation of the Premises, so long as such use is in compliance with all Environmental Laws (defined below). "**Hazardous Materials**" means any substance that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation. "**Environmental Laws**" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Materials on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect. If a licensee contaminates the Premises or the Property during the Term, and such contamination requires mitigation, remediation, or removal under federal, state, or local law, such licensee shall promptly undertake all necessary actions to remove the contaminating material or substance from the Premises and/or the Property at no cost to the other Party and in compliance with all applicable law, provisions of this Agreement, and as directed by the other Party. If a licensee fails to comply after twenty-four (24) hours' written notice, a licensor shall have the

option (but not the obligation) to complete the work required to remove the Hazardous Materials at District's cost, which cost shall be due from the licensee. If within thirty (30) days of the commencement of the Term, a Party discovers that Hazardous Materials are located on the Premises in violation of Environmental Laws and which were not Released by the licensee or any of its related Parties, then either Party shall each have the right to terminate this Agreement upon ten (10) days' written notice to the other, which shall be no later than five (5) days after the discovery of such Hazardous Materials.

12. Improvements/Surrender. Neither Party shall make any alterations or improvements to the Premises without the prior written consent of the other, other than those specified in **Exhibit B**. City hereby approves the Improvements described in **Exhibit B**. When this Agreement expires or is earlier terminated, each Party shall restore the Premises to its original condition, reasonable wear and tear excepted, including, but not limited to, removing from or about the Premises all weeds, graffiti, debris, litter, equipment, signage, and other materials at the licensee's cost, provided that an improving Party shall not be required to remove that portion of the alterations or improvements which the other Party previously advised in writing were permitted to remain at the end of the Term or any earlier termination thereof. If a Party makes improvements and fails to restore the Premises to the other's reasonable satisfaction after reasonable written notice, that Party shall have the option (but not the obligation) to complete the work required to restore the Premises to its original condition (but not including any alterations or improvements the Parties agree may remain), at the improving Party's cost, which cost shall be due by upon demand and/or may be deducted from the Security Deposit. Unless otherwise agreed to, all improvements or alterations shall become part of the Property, and an improving Party shall not have any claim or interest in such improvements or alterations. Unless otherwise agreed to, all permanent structures, locks, bolts, repairs, alterations, installed equipment, and/or improvements affixed to the Premises by either of the parties hereto, shall be the property of the owner of the applicable Premises, and shall remain upon and be surrendered with the Premises upon termination of this Agreement.

13. Maintenance and Repairs. Except for any maintenance or repairs resulting from misuse by or gross negligence of the other Party, each Party shall at its own cost and expense, keep and maintain its licensed Premises and all improvements located on the Premises in good order and repair, consistent with the Permitted Use contemplated by this Agreement, and in as safe and clean a condition as they were when received, reasonable wear and tear excepted.

a. Each Party is responsible for graffiti removal within the Premises it is licensing from the other Party, which shall be commenced promptly whenever such graffiti is identified and in no event more than five (5) days of tagging. Each Party shall provide refuse waste disposal areas and maintain all such areas in a safe, lawful, sanitary, and orderly manner. District shall prevent all nuisance conditions that could arise out of the operations of a parking lot and is responsible for addressing and resolving any and all issues related to pollution, noise, and any other nuisance complaints.

Each licensee waives the provisions of California Civil Code Section 1941 with respect to each licensor's obligations for tenant's ability of the Premises, in favor of the provisions of this Agreement governing maintenance and repair.

Each licensee shall be responsible, at its own expense, for securing, maintaining, and repairing all furnishings, appliances, and other personal property located on the Premises it is licensing. Each licensee shall promptly inform each licensor of any loss, theft, or destruction of any of the licensor's furnishings, appliances, or personal property located on the Property, and shall pay to that licensor the fair market value of any such lost, stolen, or destroyed property to the extent that any such losses are not covered by insurance proceeds, except for any loss, theft, or destruction resulting from misuse by, or gross negligence of the licensor, its employees, agents, or contractors. Each licensee shall be responsible for the maintenance and repair of any and all of the licensee's improvements to the Property, including fences, locks, lighting, or any other fixture or equipment installed by the licensee. If such maintenance is not provided, and if the condition continues for more than ten (10) days after receiving written notice from the licensor, the licensee may be in default, and Licensor may be entitled to exercise all rights and remedies under this Agreement.

14. City Operations. District understands and agrees that City, with prior notice, may enter on and operate its own programs on the District License Area remises without obtaining the permission of District. District and City agree to cooperate in good faith to coordinate their respective activities on the Premises.

15. Right to Inspect Premises. Except in the event of an emergency, each Party shall provide twenty-four (24) hours' advance notice to the other before entering the Premises to inspect, install, construct, repair, or maintain any part of the Premises. In the event of any emergency, a licensor shall not be required to provide any advance notice. Each Licensor reserves the right to enter the Premises with proper notice to inspect the Property and to make any repairs that it may consider necessary to the preservation of the Property.

16. Legal Requirements. Each Party shall comply with all applicable laws, statutes, ordinances, zoning restrictions, governmental rules or regulations, covenants and restrictions of record, or requirements of duly constituted public authorities now in force or which may hereafter be in force with respect to the Premises and use thereof ("**Law(s)**"). Neither Party may use the Premises or permit anything to be done on or about the Premises that will in any way conflict with any Laws. Each Party shall (a) obtain all required permits and approvals for use of the Premises (collectively, "**Governmental Approvals**"), (b) maintain all required Governmental Approvals throughout the Term, and (c) comply with the requirements of such Governmental Approvals throughout the Term.

17. Insurance. During the Term, each Party shall obtain and maintain insurance required under Schedule Q, attached as Exhibit C and incorporated herein.

18. Mechanics' Liens. Each Party shall keep the Premises free and clear of all mechanics' liens, stop notices, and comparable liens (collectively, "**Liens**") arising out of, or alleged to arise, in connection with, any work performed, labor or materials supplied or delivered, or similar activities performed by a licensee or at a licensee's request or for a licensee's benefit. If any Lien(s) are placed on the Premises (or any portion thereof), the party causing such lien shall diligently pursue all necessary actions to remove the Lien(s) from title to the Premises (or any portion thereof), by payment in full of the Lien(s) or by recording a lien release bond with respect

to each Lien in the manner specified in California Civil Code Section 8424 or any successor statute.

19. Indemnity. Except to the extent of Claims (as defined below) arising from the gross negligence or intentional misconduct of the other Party, Each Party agrees to protect, defend (with mutually acceptable counsel), indemnify, save, and hold the other Party and its Councilmembers, Board members, officers, partners, employees, attorneys, contractors, and agents (collectively, the "Indemnified Parties") from any and all third Party actions, liability, claims, losses, expenses (including reasonable attorneys' fees and costs), or liability (collectively called "**Claims**") resulting from use and occupancy of the Premises by the licensee Party. Each licensing Party agrees that it has an immediate and independent obligation to defend the other and its related Indemnified Parties from any Claims when such a Claim is tendered and shall continue thereafter until the Claim is resolved to the satisfaction of the indemnified Party. The indemnifying Party's obligations shall survive the expiration or sooner termination of this Agreement.

20. No Fault Termination. Either Party hereto shall have the right to cancel and terminate this Agreement by giving to the other Party at least thirty (30) days' prior written notice of such proposed cancellation and termination.

21. Termination Due to Default/Remedies. A Party claiming a default shall notify the other in writing of a Default under this Agreement (as defined below), including a reasonably detailed description of the Default. In the event of Default, the non-defaulting Party shall have the option, in its sole and absolute discretion, to terminate this Agreement upon thirty (30) days' written notice without giving the other Party an opportunity to cure. If an opportunity to cure is granted, the Party alleged to be in default shall have (i) three (3) business days from the date of the written notice to cure any monetary Default described in such notice, and/or (ii) ten (10) business days from the date of the written notice to cure any non-monetary Default described in such notice. If the Party alleged to be in default fails to cure the Default within the period described above to the other's satisfaction, the Party alleging Default shall have the option, in its sole and absolute discretion, to terminate this Agreement. If a Party is in Default or fails to perform any of its obligations under this Agreement, and the notice and opportunity to cure has been given as provided above, the non-defaulting Party may, but shall be under no obligation to, cure the Default. Prior to effecting such cure, prior written notice of its intent to cure shall be given. Any amount expended by the Party effecting such cure, along with the maximum legal rate of interest not to exceed ten (10) percent per annum, shall be reimbursable, immediately upon request. The term "**Default**" under this Agreement include, but are not limited to, the following:

(a) Reserved.

(b) Reserved.

(c) Failure to use the Premises in accordance with this Agreement or use of the Premises for purposes not specified in this Agreement.

(d) Failure to maintain and keep the Premises in good repair as described in this Agreement.

(e) Failure to keep the Premises clean and free and clear of weeds, graffiti, garbage, and debris required as required under this Agreement.

(f) Failure to comply with any insurance requirements of this Agreement.

(g) Failure to reimburse for any cost paid by is required under this Agreement, including, but not limited to, the cost of restoration, repair, maintenance, keeping the Premises free and clear of weeds, graffiti, garbage, and debris, and any other expense under the Agreement.

(h) Failure to keep the Premises free and clear of any Liens.

(i) Assignment of this Agreement or encumbering the Premises without prior written consent.

(j) Failure to comply with all applicable laws.

(k) The abandonment or vacation of the Premises during the Term for a period in excess of thirty (30) consecutive calendar days.

(l) The other Party (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another Party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another Party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; or (5) failure, inability, or admission in writing of its inability to pay its debts as they become due.

(m) Failure to comply with any other obligations under this Agreement.

In addition to the right to terminate this Agreement in connection with a default, the non-defaulting Party shall be entitled to exercise all other rights and remedies available to it at law or in equity and/or under this Agreement.

22. No Waiver. The waiver by either Party of any breach, or default by the other Party, of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by a Party of the same or another provision.

23. Emergency Interruption of Use. If use of the Premises is materially interrupted or rendered unlawful or unsafe as a result of any governmental action (other than any grossly negligent act), other calamity, or other force majeure event, either Party shall have the option to terminate this Agreement upon twenty-four (24) hours' written notice.

24. Damage or Condemnation. If all or part of the Premises is destroyed or damaged from any cause, and the resulting damages or force majeure frustrates use of Premises or causes the use of the Premises to be unfit for the intended purpose or use described in this Agreement or creates an unsafe or hazardous condition, either Party shall have the option to terminate this Agreement

upon thirty (30) days' written notice to the other Party. In any event, neither Party shall have any obligation to the other under any circumstances to repair any damage to the Premises or to rebuild any structure on the Property (unless they cause the damage).

25. Americans with Disabilities Act Compliance. The Parties shall be responsible for compliance with the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. or any disabled access laws under applicable laws.

26. Non-Discrimination. The Parties covenant and agree not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, or Acquired Immunodeficiency Syndrome or HIV status (AIDS/HIV status) with respect to employees, applicants for employment, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in business, social, or other establishments or organizations operated by either Party.

27. No Relocation Rights. Each Party understands and agrees: (1) it shall not be eligible for any relocation benefits (including advisory services) when this Agreement terminates, (2) that this Agreement shall not create any rights or interests to receive any relocation benefits, and (3) that neither party shall make any claims against the other for any relocation benefits. As a material inducement for each Party to enter into this Agreement, each Party expressly waives and releases any and all relocation benefits under any applicable law or regulation and releases the other Party from any obligation to provide relocation benefits.

28. Possessory Interest Taxes. Each Party understands and acknowledges that the other is a public entity and is not subject to a possessory interest tax or property tax that may be levied by the City or the County of Alameda pursuant to Section 107 of the California Revenue and Taxation Code, Section 33673 of the California Health and Safety Code, or any other provision of state or local law.

29. CASp Inspection. For purposes of Section 1938 of the California Civil Code, Each Party discloses to the other Party that the Premises has not undergone inspection by a Certified Access Specialists (CASp). As required by Section 1938(e) of the California Civil Code, Each Party hereby states as follows: A Certified Access Specialist (CASp) can inspect the subject Property and determine whether the subject Property complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Property, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Property for the occupancy or potential occupancy of the lessee or District, if requested by the lessee or District. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Property. In furtherance of the foregoing, City and District hereby agree as follows: (a) any CASp inspection requested shall be conducted, at requesting Party's sole cost and expense, by a CASp designated by the property owner, subject to its reasonable rules and requirements; (b) requesting Party, at its sole cost and expense, shall be responsible for making any improvements or repairs within the

Property to correct violations of construction-related accessibility standards; and (c) if anything done by or for a licensee in its use or occupancy of the Property shall require any improvements or repairs to the Property to correct violations of construction-related accessibility standards, then the licensee shall reimburse the licensor upon demand therefor, for the cost to the licensor of performing such improvements or repairs.

30. Notices. Notices under this Agreement may be made by personal delivery to the individuals specified below or by prepaid, registered, or certified mail, return receipt requested, addressed as set forth below, or by a recognized overnight courier, and shall be deemed received upon the date of delivery to the address of the person to receive such notice as evidenced by the return receipt or proof of delivery slip of such overnight courier. In addition, notice may be provided by electronic transmission (email), in which case notice shall be deemed delivered upon transmittal, provided that a duplicate copy of the notice is promptly delivered by prepaid, registered, or certified mail, return receipt requested, addressed as set forth below, or sent by express delivery or overnight courier service. Any notice given by email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

To City: Oakland Parks, Recreation and Youth Development
250 Frank H. Ogawa Plaza, Suite 3330
Oakland, CA 94612
Attention: Director of Oakland Parks, Recreation and Youth Development

With copy to: City of Oakland
Real Estate Asset Management Division
250 Frank H. Ogawa Plaza, #4314
Oakland, CA 94612
Attention: Real Property Asset Manager

and

City of Oakland
Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attention: Real Estate Deputy City Attorney

To District: Oakland Unified School District
Attn: General Counsel
955 High St. Oakland, CA 94601

Either Party with a written notice to the other Party may change the address and person designated for notice under this Agreement.

31. No Interest in Land Created. The Parties understand and agree that this Agreement establishes only a license and not a lease with respect to the Premises or the Property, and that no

interest or estate in real property or any improvements thereon is created hereby. Each Party understands and agrees that it shall not have exclusive possession of its respective licensed Premises by virtue of this Agreement, and that the owner shall retain possessory rights over the Premises and may freely enter and use the Premises as it chooses, so long as any such uses are consistent with this Agreement.

32. No Agency. The relationship of the Parties is solely that of a licensor and licensee and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Neither Party undertakes nor assumes any responsibility or duty to the other Party (except as provided for herein) or to any third Party with respect to the Premises or the Property. Except as specified in writing, neither Party shall have authority to act as an agent of the other or to bind the other Party to any obligation.

33. Entire Agreement. This Agreement contains the entire understanding between the Parties relating to this transaction and may not be amended except in writing signed by both Parties.

34. Non-assignability. The licenses granted under this Agreement are personal to the licensees. Licensees shall not assign, transfer, pledge, or sublicense (collectively, "**Transfer**") this Agreement without the prior written consent of the licensor. Irrespective of approval of any Transfer, licensees shall remain obligated under this Agreement and shall not be released of any liability in connection therewith.

35. Choice of Law and Jurisdiction. The laws of the State of California apply to this Agreement. The Parties agree that any dispute with respect to this Agreement shall be subject to the jurisdiction of the Superior Court of Alameda County.

36. Litigation Costs. If an action is commenced to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees in addition to other costs and fees from the other Party.

37. Inconsistency. In the event of any conflict between this Agreement and any related exhibits, the provisions of this Agreement shall supersede and prevail over any conflicting provisions of the exhibits.

38. Exhibits. All exhibits referenced in this Agreement are attached hereto and made a part of this Agreement.

39. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. A PDF copy of a Party's signature on this Agreement shall constitute an original and be binding on all parties when assembled into a fully executed Agreement.

40. Time is of the Essence. Time is of the essence with respect to each and every provision of this Agreement. City shall not unreasonably withhold any requested approval.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

CITY:

THE CITY OF OAKLAND,
A MUNICIPAL CORPORATION

By: Brendan Moriarty
Brendan Moriarty (Aug 23, 2024 15:[illegible] PDT)
Brendan Moriarty
Real Property Asset Manager

Effective Date: Aug 23, 2024

DISTRICT:

OAKLAND UNIFIED SCHOOL DISTRICT,
A CALIFORNIA SCHOOL DISTRICT

By: [signature]
Preston Thomas (Sep 4, 2024 09:44 PDT)
Name: Preston Thomas
Its: Chief Systems and Services Officer

Date: Sep 4, 2024

[signature]
Benjamin Davis, President
Board of Education 9/12/2024

[signature]
Kyla Johnson Trammell, Secretary,
Board of Education 9/12/2024

Approved for forwarding:

Oakland Parks Recreation and Youth Department

By: Fred Kelley
Fred Kelley (Aug 23, 2024 13:56 PDT)
Fred Kelley
Director

Approved as to form and legality

By: [signature]
Naree Chan
Deputy City Attorney

By: James Traber
Jim Traber
OUSD Facilities Counsel

TABLE OF EXHIBITS

Exhibit	Description
A	Premises
B	Improvements
C	Insurance – Schedule Q

EXHIBIT A
PREMISES

OAKLAND UNIFIED SCHOOL DISTRICT
City Parcels

City License Area

District License Area

EXHIBIT B

IMPROVEMENTS

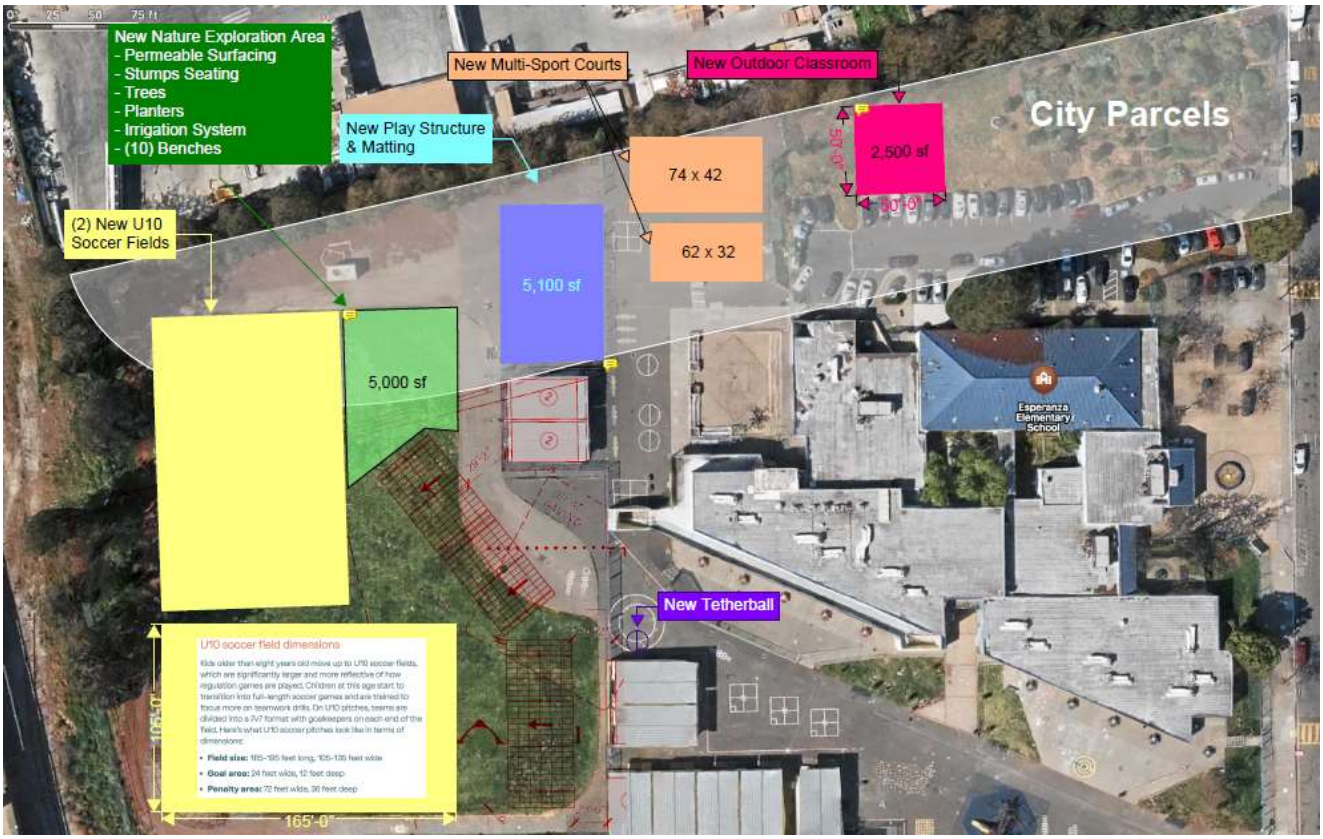

EXHIBIT C

INSURANCE REQUIREMENTS
SCHEDULE Q
(*Revised 09/12/2019)*

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Each Party (and District's contractor, during construction) shall procure, prior to use of its licensed portion of the premises, and keep in force for the term of this contract, at its own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the other Party. If requested, each Party shall be required to provide the other Party with copies of all insurance policies. The insurance shall at a minimum include:

i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be on an occurrence basis and at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)
Limits of liability: Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non- owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

iii. **Workers' Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than $1,000,000 each accident, $1,000,000 policy limit bodily injury by disease, and $1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

iv. **Contractor's Pollution Liability Insurance:** If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than $500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least $1,000,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Contractor must also maintain Errors and Omissions (Professional Liability) of $1,000,000 per occurrence and in the aggregate.

v. **Sexual/Abuse insurance.** If Contractor will have contact with persons under the age of

18 years, or provides services to persons with Alzheimer's or Dementia, or provides Case Management services, or provides Housing services to vulnerable groups (i.e., homeless persons) Contractor shall maintain sexual/molestation/abuse insurance with a limit of not less than $1,000,000 each occurrence and $1,000,000 in the aggregate. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

b. Terms Conditions and Endorsements

The afore mentioned insurance shall be endorsed and have all the following conditions:

i. Insured Status (Additional Insured): Each Party shall provide additional insured status naming the other Party, its Councilmembers, Board members directors, officers, agents, employees and volunteers as insureds under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If a Party submits an ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and Coverage afforded to each Party, Councilmembers, Board members, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, Board members, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and

ii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and

iii. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the additional insured for all work performed by the contractor, its employees, agents and subcontractors; and

iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

v. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

Reserved.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if, and when, requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should a Party's Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in

this Schedule. If this option is exercised, the CITY or DISTRICT as applicable, and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The CITY reserves the right to perform an insurance audit during the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY or DISTRICT, as applicable. At the option of the CITY or DISTRICT, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the additional insured, its Councilmembers, Board members directors, officers, agents, employees and volunteers; or the Contractor shall provide a satisfactory financial guarantee guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Any construction Contractor working on the Premises shall waive all rights against the applicable licensor and its Councilmembers, Board members, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

Either Party maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the Contractor maintains higher limits than the minimums shown above, either Party shall be entitled to coverage for the higher limits maintained by the contractor.