

Santa Barbara Unified School District Facility Use Agreement for use of the Elings Performing Arts Center

This Facility Use Agreement (hereinafter “Agreement”), made and entered into this 31st day of July 2015, by and between Santa Barbara Unified School District (hereinafter “District”) and Hope Community Church (hereinafter “Occupant”).

In consideration of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. PREMISES: Subject to the terms and conditions of the Agreement, District hereby grants to Occupant the right to use and occupy the following designated spaces at Dos Pueblos High School, Goleta, California (“Premises”):

Space	Dates	Day of the Week	Charge
1. Elings Performing Arts Center (“EPAC”); 2. 4 classrooms to be mutually agreed upon by the parties; and 3. Non-exclusive use of staff and student parking lots.	August 1, 2015 through July 31, 2016	Saturday evening for two hours for set up as available Each Sunday for up to four hours per day	\$607.19 per Sunday

Occupant accepts the Premises in its present state. Occupant acknowledges District does not represent or warrant the condition of the Premises, and Occupant has inspected the Premises before entering into this Agreement. Further, Occupant acknowledges District does not represent or warrant the fitness of the Premises for the purposes for which Occupant may use the Premises pursuant to this Agreement.

To the extent Occupant is reasonably prohibited from use of the Premises on a date identified in the table above, for reasons outside the control of Occupant, (including but not necessarily limited to Force Majeure, defined in paragraph 27 below), Occupant shall not be subject to payment of the rental fee for that date. Otherwise, there will be no refunds of any unused time.

2. USE OF PREMISES: Occupant shall use the premises solely for the purposes of church events (the “Event”). Occupant shall have the right to modify the EPAC during the rental term only with the District’s prior written permission. Any installation of equipment will follow existing District protocol. Occupant assumes all risk of any damage to or theft of its equipment.
3. TERM OF THE AGREEMENT: The Term of the Agreement shall begin on August 1, 2015, at 6:00 am and thereafter every Sunday until July 31, 2016. Either party may cancel this

Agreement for any reason, provided the non-canceling party receives written notice of the canceling party's cancellation at least 60 days prior to the termination date. No later than March 31, 2016, the Parties agree to engage in a collective review of this Agreement, to determine if an extension of the term is agreeable to District and Occupant.

4. CANCELTION OF AGREEMENT: Notwithstanding the foregoing, District may immediately cancel this Agreement for cause without any right of Occupant to cure or correct if Occupant breaches of any of the following covenants of the Agreement:
 - a. Failure to pay the rent due and any late charges within the time required by Section 5 of this Agreement;
 - b. Failure to provide a certificate of insurance in such amounts of coverage and in a form acceptable to the District within the time required by Section 11 of this Agreement;
 - c. Failure to substantially comply with any other Occupant Obligations described in Section 7 of this Agreement.

5. FEES: All sums of money which become payable to District under the terms hereof are payable at Santa Barbara Unified School District, 720 Santa Barbara Street, Santa Barbara, CA, 93101. Occupant shall pay the following fees, without further notice or demand:
 - a. Rental Fee: Occupant shall pay the sum of \$607.19 per day as the rental fee for the use of the premises ("Rental Fee"). The Rental Fee is calculated pursuant to District Administrative Regulation 1330 as follows:
 - \$533.03 for EPAC (1.5 x Half Day Direct Fee Rate)
 - \$74.16 (1.5 x Direct Fee Rate for 4 Classrooms@4 hours)

The Rental Fee for each month shall be due and payable of the first day of each month of the term of this Agreement, based on the number of Sundays occurring during that month. By way of example only, if a given month contained four Sundays, \$2428.76 would be due on the first of that month and if the month contained five Sundays, \$3035.95 would be due. Should the first day of a month fall on a weekend or holiday, the Rental Fee shall be due and payable the first business day thereafter.

- b. Default: If any portion of the Rental Fee is delinquent by more than fifteen (15) days, District may, at its sole option, assess a late charge in the amount of five percent (5%) of the delinquent amount. If after five (5) additional days and written notice to cure by District, the Rental Fee and late charge, or any portion thereof remains unpaid, District may, at its sole option consider Occupant in material breach of this Agreement and may cancel this Agreement pursuant to Paragraph 4 above.

6. RIGHTS OF DISTRICT: This Agreement is entered into pursuant to the California Civic Center Act (Education Code § 38130 et seq.) and Occupant agrees to comply with the terms of the Civic Center Act as well as District's Board Policies and Administrative Regulations pertaining to the Civic Center Act, as they may be amended from time to time. This Agreement does not confer any real property rights or interests, whether leasehold or otherwise, to Occupant. District reserves the right to control and enforce all rules, regulations and policies for the management and operation of the premises, now or hereafter in effect.

7. OBLIGATION OF OCCUPANT:

- a. Set-Up and Removal: Occupant shall set up and remove all of its property within the Term of this Agreement. District has the authority to remove and dispose of Occupant's property not removed from the Premises at the termination of this Agreement, and Occupant agrees to pay the reasonable costs or expenses incurred by District in connection with such removal and disposal.
- b. Decorations: Occupant may use decorations for the Event. Decorations must be of flameproof and/or fire resistant material in compliance with fire safety codes. Occupant shall be solely responsible for the clean up and removal of decorations. Notwithstanding the foregoing, Occupant shall not use glitter or confetti in any form. Stick-on decals or similar adhesive-backed promotional items may not be distributed or used on the premises. Any tape applied to the walls of the EPAC must be "painters" tape with the exception of Gaffers tape for sound, stage and lighting purposes. All tape that is used must be removed the same day.
- c. Fixtures: Occupant shall not move or relocate District property, including but not limited to furniture, equipment, artwork or decorative plants, without prior approval of the District.
- d. Exits and Passageways: Occupant shall not obstruct any portion of the sidewalks, ramps, entry ways, corridors, vestibules, lobbies, elevators, doorways, stairways, driveways, fire hose cabinets, access to or the admittance of electrical, emergency or natural lighting, or access to the utilities at the Premises. Under no circumstances may doors or exit lights be covered, blocked, or disabled. Exterior doors are to remain shut at all times, except when actively in use (ie, lobby doors opened for congregation to enter).
- e. Hazardous Materials: Occupant shall not allow any flammable liquids, fuels, oils, engines, motors, machinery, fog making machines, or smoking materials to be brought onto the Premises without the prior consent of the District.
- f. Law Enforcement Services: Occupant shall be responsible for the expense of all Sheriffs or other local law enforcement services required by those agencies.
- g. Venue Security: Occupant shall be solely responsible for security of the Premises during the Term of this Agreement. All interior (as appropriate) and all exterior doors shall be secured and locked after each use.

- h. Theater Management: At all times during the term of this Agreement, Occupant shall employ a site theater manager with sufficient demonstrated knowledge and expertise to operate the sound and light equipment in the EPAC.
 - i. Cleaning: After each use, Occupant shall leave the Premises in a clean condition. To the extent the District is required to provide any custodial services, such services shall be billed to occupant at a rate of \$30 per hour pursuant to District Administrative Regulation 1330.
- 8. CAPACITY: Seating capacity of the EPAC is 750. Occupant shall not exceed the maximum occupancy of the Premises as established by the fire department.
- 9. ACCESS: Keys and access to the Premises shall be controlled by the Dos Pueblos High School Principal. Designated Occupant staff shall be issued keys as necessary and appropriate in the discretion of the Dos Pueblos High School Principal. No portion of the Premises shall be re-keyed except with the approval of the District's Director of Facilities and Operations. Occupant shall be solely responsible for the cost of replacing any lost keys in accordance with District Administrative Regulation 1315.
- 10. FOOD AND BEVERAGE: Food and beverages are allowed in the EPAC lobby only. Water is permitted throughout the facility.
- 11. MISCELLANEOUS SERVICES: Except as otherwise provided in this Agreement, Occupant may contract separately for other services including but not limited to deliveries, loading, advertising, security, decorating, audio/visual equipment rental, floral arrangement, photography, and event planners.
- 12. FIXTURES: All improvements attached and affixed to the Premises shall become the property of District upon installation or construction. All appliances, mobile equipment, or accessories, including but not limited to office equipment, musical equipment, shall, if paid for with Occupant funds or as a result of Occupant fund-raising efforts, be the property of Occupant. In the event of the termination of this Agreement, dissolution of Occupant, or if Occupant should cease operations, all such fixtures shall remain the property of Occupant to be disposed of by Occupant in accordance with applicable law.
- 13. CAUSE FOR VACATING PREMISES: In the event that the entire EPAC Facility, or any part of the Facility, becomes unusable due to safety concerns (ie. fire curtain drops, flooding occurs in the bathrooms and/or lobby area, etc.), Occupant shall be responsible for vacating the premises and notifying the designated District personnel immediately.
- 14. CAPITAL IMPROVEMENTS: The Occupant and the District may agree from time to time to jointly fund capital improvements for addition to or improvement of the EPAC. Such projects may, upon mutual agreement, be funded jointly by the District and by contributions from the public or corporate sponsors. Any resulting capital improvements shall be the property of the District. All capital improvement projects must be approved in

advance by the District's Board of education in accordance with Board Policies and Administrative Regulations then in effect.

15. INSURANCE COVERAGES CARRIED BY OCCUPANT:

- a. Occupant shall maintain public liability insurance and Errors and Omissions liability insurance.
- b. The Occupant shall also provide and maintain a Comprehensive General Liability insurance policy to include the following coverages: Premises/Operations Liability, Products and Completed Operations Liability, and Personal Injury and Property Damage, in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate and provide a Certificate of Insurance naming the Santa Barbara Unified School District as additional insured. All such insurance policies provided shall stipulate that they are primary over any insurance or self-insurance maintained by the District. They shall also provide that the District will not be given less than thirty (30) days advance notice of any termination or material change to the policy.
- c. Occupant shall procure adequate all risk coverage to protect personal property owned by it.
- d. Property Insurance: The District shall maintain any and all fire, casualty, and extended coverage insurance on the EPAC premises and any contents owned by it in such form and appropriate amount as deemed necessary by the District's insurance carrier

16. INDEMNIFICATION:

- a. The Occupant shall defend, indemnify, and hold District harmless from any and all claims, demands, actions or damages arising out of the Occupant's use or management of the Premises 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 sole negligence or willful misconduct of the District, its officers, agents, and employees.
- b. The District shall defend, indemnify, and hold Occupant harmless from any and all claims, demands, actions or damages arising out of the District's use of the Premises to which the Occupant may be subjected as a direct consequence of this Agreement except for those claims, demands, actions, or damages resulting solely from the sole negligence or willful misconduct of the Occupant, its officers, agents, and employees.

17. DRUGS, ALCOHOL, AND TOBACCO RESTRICTIONS: Smoking is prohibited in all areas of the Premises. Possession or consumption of alcohol and other drugs is prohibited on campus at all times.

18. LICENSING AND TAXES: Occupant is solely responsible for compliance with all state and local laws relative to obtaining proper business registration and license requirements,

and for the payment of such state and local taxes, license fees, permits, and other obligations of whatever nature imposed by a governmental agency which are related to Occupant's use of the Premises.

- 19. SIGNS: Occupant shall not permanently place, nor have placed, any sign on or about the Premises without the prior consent of the District. All signage shall be removed the day of use.
- 20. NOTICE: All notices to be given under this Agreement shall be in writing and shall be served by personal delivery or by mail, postage prepaid, addressed to the applicable party at the address indicated below, or at such other address as may be designated by either party in writing to the other party:

To District:
Assistant Superintendent of Business Services
Santa Barbara Unified School District
720 Santa Barbara Street
Santa Barbara CA 93101

To Occupant:
Hope Community Church
560 N. La Cumbre Road
Santa Barbara, CA 93110

- 21. SEVERABILITY: The parties acknowledge the provisions of this Agreement are severable, and if any one or more of the provisions contained within this Agreement, or the application thereof, is declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement and the application thereof shall not be affected or impaired thereby.
- 22. APPLICABLE LAW: Occupant shall abide by all applicable federal and California State laws and regulations, and all Santa Barbara County and Goleta City Ordinances. The proper venue for any dispute arising from the terms of this Agreement shall be the Santa Barbara County Superior Court.
- 23. ASSIGNMENT: Occupant shall not transfer, assign, or sublet, in whole or in part, any of its right and obligations under the Agreement without prior written consent of District.
- 24. NO WAIVER: No waiver of a breach of any of the covenants contained in this Agreement shall be construed as a waiver of any subsequent breach of the same, or any other, covenant.
- 25. AMENDMENT: This Agreement shall not be altered, changed or amended except by an amendment in writing executed by the parties hereto.

26. **BINDING EFFECT:** The parties acknowledge this Agreement is a valid, enforceable contract, and shall be binding upon the parties hereto and their respective successors.
27. **FORCE MAJEURE:** District and Occupant shall have no liability to each other, because of their failure to perform any of their obligations in the Agreement if said failure is due to reasons beyond their reasonable control, including without limitation, strikes or other labor difficulties, war, riot, terrorism, civil insurrection, accidents, acts of God (excluding rainy weather) or governmental authorities in connection with a national, state or local emergency. In such event, their sole remedy shall be limited to cancellation of this Agreement and return to Occupant of a pro-rata portion of the rental fee.
28. **NON-DISCRIMINATION; AMERICANS WITH DISABILITIES:** Occupant shall not unlawfully discriminate in the admission of any person to the Event, upon the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status. Occupant shall be responsible for non-permanent accessibility requirements under the Americans With Disabilities Act and regulations thereunder, including, but not limited to, auxiliary aids for the visually impaired, hearing impaired and mobility impaired, meeting room seating arrangements and exhibition accessibility.
29. **ENTIRE AGREEMENT:** The foregoing constitutes the entire Agreement between District and Occupant, represents the parties' entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are superseded by this Agreement.

In Witness Whereof, the parties have executed the Facility Use Agreement as of the date first written above.

DISTRICT: Santa Barbara Unified School District

By:

Title:

OCCUPANT: Hope Community Church

By:

Title: