

**Cedar Hill Independent School District  
BOARD OF TRUSTEES**

**Meeting Date:** December 13, 2010  
**Presented by:** Mr. Horace Williams, Superintendent of Schools  
**Subject:** Trinity Church Proposed Use Agreement for B. Coleman Driveway

**Information Item**

**BOARD GOAL:**

*Expect, promote and support a safe and orderly learning environment.*

**BACKGROUND INFORMATION:**

As previously reported, Trinity Church has asked to use a portion of the Bessie Coleman Middle School driveway as an exit from their school campus to west bound Pleasant Run Rd.

The Board has indicated an interest in accommodating Trinity. To that end, CHISD Staff has begun to assemble the legal documents to accomplish such a thing. A copy of the latest version of a proposed use agreement is attached. At the time of this writing Trinity Church's legal counsel has not responded to the provisions of this latest draft.

**RECOMMENDATION:**

For information only.

**BOARD ACTION REQUIRED:**

No formal action required.

**POLICY AUTHORIZATION:**

N/A

**CONTACT PERSON:**

L. Kim Lewis, Chief Operating Officer

**FUNDING SOURCE:**

N/A

**ENCLOSURES:**

Latest version of the proposed Use Agreement with Trinity Church

## USE AGREEMENT

This Use Agreement ("Agreement") is made and entered into by and between the CEDAR HILL INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision of the State of Texas ("District") and the TRINITY CHURCH OF THE ASSEMBLIES OF GOD, a Texas Nonprofit Corporation sometimes doing business as TRINITY CHRISTIAN SCHOOL ("Trinity").

1. District and Trinity hereby agree that, on the terms and conditions set forth herein, District shall permit Trinity the non-exclusive use of the following described property ("Premises"): the outbound portion of the District's Bessie Coleman Middle School one-way driveway from the closest point to the Trinity parking lot to be connected by Trinity (the "Drive") to the District driveway exiting to E. Pleasant Run Road, as depicted in the diagram attached hereto as Exhibit "A" and fully incorporated herein. Bessie Coleman Middle School is located at 1208 E. Pleasant Run Road.

2. The purpose of this Agreement is that the Trinity shall use the said Premises only for the purposes of promoting student safety and improved traffic flow by permitting use of the District's outbound one-way driveway to facilitate the exit of Trinity's vehicles on to E. Pleasant Run Road from the Bessie Coleman Middle School main drive. Trinity's entry onto the Premises must be kept gated and locked by Trinity to prohibit access during time periods not authorized for Trinity's use. The Premises may only be utilized by Trinity from 7:00 a.m. to 9:00 a.m. and 2:00 p.m. to 4:00 p.m. on regular school days, from 8:00 a.m. to 12:00 p.m. on Sundays and from 5:00 p.m. to 9:00 p.m. on Wednesdays. The Premises may not be used for any other purpose by Trinity. All activities conducted by Trinity on the Premises shall be under the direct supervision of Trinity.

3. The term ("Term") of this Trinity shall be for a period of one school year, from \_\_\_\_\_, 2010 to June 15, 2011. Upon mutual agreement of the District and Trinity, the Agreement may be renewed each year for up to nine (9) one-year Renewal Terms. The Term and any Renewal Term is subject to termination in accordance with the terms hereof.

4. In consideration for the non-exclusive use of the Premises by Trinity pursuant to the terms hereof Trinity shall pay to District one thousand, two hundred dollars (\$1,200.00), payable as follows: installments of one hundred dollars (\$100.00) a month, payable on the first business day of each month. At the time of any Renewal Term, the District may increase the consideration to continue to reflect the fair market value for the use made the subject of this Agreement.

5. Trinity acknowledges and agrees that the Premises are in good order and repair. Trinity shall, at no cost to the District, construct a drive from Trinity's south campus parking lot onto the District's driveway ("Drive") in order to allow Trinity's exiting traffic to utilize the District's driveway to enter Pleasant Run Road from the Coleman Middle School main drive. Trinity shall

maintain the Drive in good and safe condition during the Term hereof, and shall be responsible for all repairs and maintenance to the Drive during the Term hereof. Trinity's construction of the connecting Drive, and any repairs and maintenance of the Drive, shall be performed upon the consultation and approval of the District. Trinity shall be responsible for all facets of the construction of the connecting Drive, including but not limited to design, permitting, utility identification and routing, construction, and administration. The gate to restrict access shall be maintained on Trinity's side of the constructed connecting Drive and kept locked by Trinity during all hours outside the scope of the use set forth in this Agreement.

6. Trinity shall not, without first obtaining the written consent of District, make any alterations additions or improvements in, to or about the Drive.

7. Trinity acknowledges and agrees that all costs associated with additions, improvements or modifications to the Drive shall be paid by Trinity including, but not limited to cost of surveys, costs arising or resulting from the location or the relocation of utilities, and costs arising or resulting from the existence of or requirement for utility easements on the Premises or on other property owned by District. Any physical additions, improvements or modifications to the Premises, including the portion of the Drive on District property, made by Trinity will become the property of District.

8. Trinity shall reimburse the District for any and all attorneys' fees and expenses incurred by the District for the drafting and facilitation of this Agreement.

9. Trinity shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Trinity.

10. Trinity shall not assign all or any portion of this Agreement or sublet all or any portion of the Premises without the prior written consent of District. Any attempted assignment or subletting without District's prior written consent shall be void, and, at the option of the District, may terminate this Trinity.

**11. DISTRICT SHALL NOT BE LIABLE TO TRINITY OR TO TRINITY'S AGENTS, GUESTS, REPRESENTATIVES OR INVITEES, OR TO ANY OTHER PERSON, FOR ANY INJURY TO PERSONS OR DAMAGE TO PROPERTY OCCURRING ON OR ABOUT THE PREMISES IN ANY WAY RELATED TO THIS AGREEMENT. TRINITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DISTRICT, AND ITS PAST, PRESENT, AND FUTURE TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES AND REPRESENTATIVES, WHETHER SPECIFICALLY NAMED HEREIN OR NOT, IN DEMANDS, DAMAGES, EXPENSES, FEES, FINES, PENALTIES, SUITS, PROCEEDINGS AND ACTIONS OF ANY AND EVERY KIND AND NATURE ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH**

**DAMAGE OR INJURY. THIS OBLIGATION TO INDEMNIFY SHALL INCLUDE REASONABLE LEGAL AND INVESTIGATION COSTS AND ALL OTHER REASONABLE COSTS, EXPENSES AND/OR LIABILITIES INCURRED BY DISTRICT AND/OR DISTRICT'S AFFILIATES FROM THE FIRST NOTICE THAT ANY CLAIM OR DEMAND IS TO BE MADE OR MAY BE MADE. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

12. Throughout the Term hereof, Trinity shall maintain, at its sole cost and expense, a policy or policies of commercial general liability insurance insuring Trinity, District, and District's affiliates against any and all liability for injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises by Trinity or by the condition of the Premises. Such policy or policies shall contain a blanket contractual liability endorsement (including the contractual liability of Trinity to indemnify District contained herein) and shall contain a combined single limit of not less than \$ 1,000,000.00 in respect of injuries to or death of any person(s), or property damaged or destroyed, or such other limits as may be required by District, and shall be written by an insurance company or companies satisfactory to District and licensed to do business in the State of Texas. Trinity shall provide District with a Certificate or Certificates of Insurance showing District as additional insured. Trinity shall obtain a written obligation on the part of each insurance company issuing a policy or policies to Trinity to notify District at least 30 days prior to any cancellation of, or material change of coverage under, any such policy(ies). If Trinity fails to comply with the foregoing requirements, District may, but shall have no obligation to, obtain such insurance, and Trinity shall pay District, on demand, the cost thereof.

13. Either party hereto may terminate this Agreement at any time, for any reason or for no reason, by written notice of termination to the other party hereto, such termination to be effective 30 days after the date of such notice (unless a longer period of time is specified in the notice of termination).

14. In the event it is necessary or reasonable for either party ("the Enforcing Party") to retain the services of any attorney in connection with enforcement of any provision hereof, the Enforcing Party shall be responsible for reimbursing the Enforcing Party for the reasonable attorney's fees incurred by the Enforcing Party if the Enforcing Party prevails in the enforcement action.

15. No failure of a party to enforce any provision hereof shall be deemed to constitute a waiver of such provision or of any of that party's rights hereunder.

16. Any notice given hereunder shall be given by mailing the same, certified mail, return receipt requested, postage prepaid, to the parties at the addresses appearing below, or to such other address as may be designated by a party pursuant to notice given as described herein.

CEDAR HILL INDEPENDENT SCHOOL DISTRICT

285 Uptown Blvd.  
Building 300  
Cedar Hill, Texas 75104  
Attn: Superintendent of Schools

TRINITY CHURCH OF THE ASSEMBLIES OF  
GOD

1231 East Pleasant Run Road  
Cedar Hill, Texas 75104

Attn: Business Administrator

17. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties relating to the subject matter hereof which are not fully expressed herein. This Agreement may not be modified or amended except by written agreement executed by the parties hereto. This Agreement supersedes and makes void all prior Agreement agreements between District and Trinity regarding the Premises and/or the Drive.

18. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives.

19. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision. It is the intention of the parties that each provision hereof be construed in a manner designed to effectuate the purposes of such provision to the maximum extent enforceable under applicable law.

20. District does not waive or relinquish any immunity or defense on behalf of itself, its trustees, its officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein. Nothing in this agreement shall be deemed to create a partnership, agency, or joint venture relationship between the parties.

21. This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, Agreement or other consideration under this Agreement.

22. This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue and place of jurisdiction shall also be the County of Dallas and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review, revise and negotiate the terms of this Agreement, and that if in the future there is a dispute as to the meaning of any provision herein, then no such provision shall be construed against the drafter of the Agreement.

23. The signatories to this Agreement represent that they have the authority to execute this Agreement on behalf of the District and Trinity, respectively.

24. This Agreement has been approved by the governing bodies of the District and Trinity.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

TRINITY CHURCH OF THE ASSEMBLIES OF GODE:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CEDAR HILL INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_  
President of the Board of Trustees

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, of Trinity Church of the Assemblies of God, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC - STATE OF TEXAS

\_\_\_\_\_  
(type or print - notary name)

MY COMMISSION EXPIRES: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, of Cedar Hill Independent School District, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC - STATE OF TEXAS

\_\_\_\_\_  
(type or print - notary name)

MY COMMISSION EXPIRES: \_\_\_\_\_