

Board Office Use: Legislative File Info.	
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Introduction Date	6/28/2023
Enactment Number	23-1317
Enactment Date	6/28/2023 CJH



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Pranita Ranbhise, Director, Facilities Planning & Management
Joshua R. Daniels, Chief Governance Officer

Meeting Date June 28, 2023

Subject Amendment No. 1 to Joint Use Agreement with the Alameda County Office of Education Regarding 750 International Blvd.

Ask of the Board Adoption by the Board of Education of Amendment No. 1 to the Joint Use Agreement between the District and the Alameda County Office of Education Regarding 750 International Blvd.

Background The Alameda County Office of Education has an existing joint use agreement with the District to use the District-owned facilities at 750 International Blvd.

ACOE currently uses the site for the following:

- **Quest Academy.** This is an independent study program for District-referred students, grades 7 to 12, who are expelled, SARB-referred students or students eligible for 601 truancy referral, Probation-referred students who are approved by District for enrollment, and Social Services-referred students. Most of the students are from Oakland.
- **Opportunity Academy.** This is a non-classroom based reengagement diploma program serving students ages 16 years and older who have previously disengaged from school. Students self-select this school option, often as a result of recommendation from school districts or community-based organizations. Opportunity Academy utilizes independent studies for attendance accounting. Based on students' individual needs, Opportunity Academy creates a learning plan that may include 1:1 meetings with teachers, small group instruction, and/or classroom or learning lab structures. For many students, it is much more structured than traditional independent studies. Some students, particularly those who are working or engaged in full time

employment training, have a learning plan with more typical independent studies consisting of 1:1 weekly meetings. Most of the students enrolled in the program are from Oakland.

- **Staff Offices.** In addition to staff for the Quest Academy and the Opportunity Academy, there are staff from the Foster Youth Program, McKinney-Vento Program, and Mental Health Services.

The Agreement expires at June 30, 2023.

Discussion The proposed amendment would extend the Agreement by five years and increase the annual payments overtime from \$44,373.12 in 2022-23 to \$54,697.78 the propose last year under the amendment (2027-28). ACOE would continue to be responsible for maintenance, utilities, repair, replacement, and applicable taxes and insurance while the District would be responsible for major safety repairs and required major maintenance obligations. The District could also terminate the Agreement with 270 days' notice.

Fiscal Impact Revenue of \$ 248,653.41 over the term of the proposed Amendment No. 1.

- Attachments**
- Amendment No 1. to Joint Use Agreement Between the Oakland Unified School District and the Alameda County Office of Education Regarding 750 International Blvd.
 - Joint Use Agreement Between the Oakland Unified School District and the Alameda County Office of Education Regarding 750 International Blvd.

AMENDMENT NO. 1
to
JOINT USE AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND THE ALAMEDA COUNTY OFFICE OF EDUCATION REGARDING 750 INTERNATIONAL BLVD.

This Amendment amends the attached legal agreement (“Agreement”), incorporated herein by reference, which includes the following information:

- The Agreement is between the Oakland Unified School District (“OUSD” or “District”) and the below named entity or individual (“ACOE,” together with OUSD, “Parties”):
Alameda County Office of Education
- The Parties entered into the Agreement on the below date:
8/10/2022
- The Enactment Number of the Agreement is below:
22-1404

The Parties hereby agree to amend the Agreement as stated herein. Additions are indicated with underline; deletions are indicated with ~~striketrough~~.

1. Section 2 (Term) of the Agreement is modified as follows:

The term of the Agreement (“Term”) is from July 1, 2020 to June 30, ~~2023~~ 2028.

2. Subsection (a) of Section 4 (Payments) of the Agreement is modified as follows:

- a. In consideration for the beneficial use and occupancy of the Premises during the Term, ACOE agrees to make to the District, its successors, and assigns, ~~at one time payment of Forty Four Thousand Three Hundred Seventy Three Dollars and Twelve Cents (\$44,373.12) shall sixty (60) days of the execution of this Agreement~~ annual payments as follows:

2023-24 Fiscal Year: \$45,000.00

2024-25 Fiscal Year: \$47,250.00

2025-26 Fiscal Year: \$49,612.50

2026-27 Fiscal Year: \$52,093.13

2027-28 Fiscal Year: \$54,697.78

Each annual payment shall be due in full on December 31 of each fiscal year. The District shall invoice ACOE for each annual payment, although a failure by OUSD to invoice ACOE does not relieve ACOE of its payment obligation under this Section.

3. Subsection (a) of Section 5 (Condition of Premises; Disclaimer of Warranties) is modified as follows:

- a. Condition of Premises. The Premises are leased to ACOE on an "AS-IS" basis. District shall not be required to make or construct any alterations, including but not limited to structural changes, additions, or improvements to the Premises. By entry and

taking possession of the Premises pursuant to this Agreement, ACOE accepts the Premises in "AS-IS" condition. ACOE acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of ACOE's business. Any agreements, warranties, or representations not expressly contained herein shall in no way bind District, and ACOE expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement. District shall be responsible for maintaining the building integrity of the Premises including, but not limited to, all required major safety-related repairs and upgrades. Additionally, District shall be responsible for any required major maintenance obligations and all required capital improvements.

4. A new Section 8.5 (Termination) is added to the Agreement as follows:

8.5. TERMINATION. At its convenience, OUSD may at any time terminate this Agreement upon two hundred and seventy (270) days prior written notice to ACOE. If this occurs, the applicable annual payment shall be prorated based on the number of calendar days in the fiscal year for which ACOE used the Premises in that fiscal year. (For instance, if the termination date is July 1, then the prorated payment shall be 1/365 of the applicable payment.)

4. All other provisions of the Agreement remain unchanged and in full force and effect as originally stated.
5. The Parties understand and acknowledge that this Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

REST OF PAGE INTENTIONALLY LEFT BLANK


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

VENDOR


Name: Alysse Castro Signature: 
Position: County Superintendent Date: 6/27/2023

OUSD

Name: Mike Hutchinson Signature: 
Position: President, Board of Education Date: 6/29/2023
 Board President
 Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: 
Position: Secretary, Board of Education Date: 6/29/2023

Approved as to form by OUSD Legal Department

 6/20/2023

Board Office Use: Legislative File Info.	
File ID Number	22-1886
Introduction Date	August 10, 2022
Enactment Number	22-1404
Enactment Date	8-10-2022 CJH



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Jody Talkington, Senior Director of Strategic Projects
Joshua R. Daniels, Chief Governance Officer

Meeting Date August 10, 2022

Subject Joint Use Agreement with the Alameda County Office of Education Regarding 750 International Blvd.

Ask of the Board Adoption by the Board of Education of the Joint Use Agreement between the District and the Alameda County Office of Education Regarding 750 International Blvd.

Background The Alameda County Office of Education has previously leased the 750 International site (“Site”), the approximate square footage of which is between 5,576 to 5,818 square feet, from OUSD. ACOE currently uses all space within the site.

ACOE currently uses the site for the following:

- **Quest Academy.** This is an independent study program for District-referred students, grades 7 to 12, who are expelled, SARB-referred students or students eligible for 601 truancy referral, Probation-referred students who are approved by District for enrollment, and Social Services-referred students. Most of the students are from Oakland.
- **Opportunity Academy.** This is a non-classroom based reengagement diploma program serving students ages 16 years and older who have previously disengaged from school. Students self-select this school option, often as a result of recommendation from school districts or community-based organizations. Opportunity Academy utilizes independent studies for attendance accounting. Based on students’ individual needs, Opportunity Academy creates a learning plan that may include 1:1 meetings with teachers, small group instruction, and/or classroom or learning lab structures. For many students, it is

much more structured than traditional independent studies. Some students, particularly those who are working or engaged in full time employment training, have a learning plan with more typical independent studies consisting of 1:1 weekly meetings. Most of the students enrolled in the program are from Oakland.

- **Staff Offices.** In addition to staff for the Quest Academy and the Opportunity Academy, there are staff from the Foster Youth Program, McKinney-Vento Program, and Mental Health Services.

Discussion The term of the proposed Joint Use Agreement is three years, retroactive from July 1, 2020 (when the most recent lease expired) through June 30, 2023. The rent of 2022-23 would be \$44,373.12. ACOE would be responsible for maintenance, utilities, repair, replacement, and applicable taxes and insurance throughout the term of the Agreement.

Fiscal Impact Revenue of \$44,373.12.

Attachments

- Joint Use Agreement Between the Oakland Unified School District and the Alameda County Office of Education Regarding 750 International Blvd.

JOINT USE AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND THE ALAMEDA COUNTY OFFICE OF EDUCATION REGARDING 750 INTERNATIONAL BLVD.

THIS JOINT USE AGREEMENT ("Agreement") is made by and between the Oakland Unified School District ("District" OR "OUSD") and the Alameda County Office of Education ("ACOE"). District and ACOE may be individually referred to herein as a "Party," or may be collectively referred to herein as the "Parties."

WHEREAS, District owns that certain real property located at and commonly known as 750 International Boulevard, Oakland, California 94606 ("Property"), as depicted in Exhibit "A," attached hereto and incorporated herein by this reference, and consisting of an approximately 9,168 square feet building ("Premises");

WHEREAS, ACOE requires space for operation of the following: Quest Academy; Opportunity Academy; McKinney-Vento coordinating services; Foster Youth coordinating services; student and family support services associated with social work/mental health services, after school "Learning Hubs" for homeless and McKinney-Vento students, family resource center for food bank distribution and referral services, tutoring services, special Education support services, and COVID testing services) (collectively, the "Programs");

WHEREAS, District has available space on the Premises;

WHEREAS, ACOE has previously operated the Programs on the Premises, and District desires to continue to allow ACOE to use the Premises for operation of the Programs;

WHEREAS, ACOE desires to pay District for its use of the Premises;

WHEREAS, pursuant to Education Code section 17527, District is authorized to lease its property through a joint use agreement "to make vacant classrooms or other space in operating school buildings available . . . to . . . educational agencies"; and

WHEREAS, pursuant to Education Code section 17529, District has determined that this Agreement and ACOE's joint occupancy and use of the Premises for the Programs as set forth herein will not: (1) interfere with the educational programs or activities of any school or class conducted on the Premises; (2) unduly disrupt the residents in the surrounding neighborhood; or (3) jeopardize the safety of students on the Premises.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and ACOE agree as follows:

1. LEASE OF PREMISES. District hereby leases the Premises to ACOE, and ACOE hereby leases the Premises from the District, upon the terms and conditions set forth in this Agreement.

2. TERM. The term of the Agreement (“Term”) is from July 1, 2020 to June 30, 2023.
3. PURPOSE OF AGREEMENT. The purpose of this Agreement is for District to provide ACOE the use of the Premises for operation by ACOE of the following: Quest Academy; Opportunity Academy; McKinney-Vento coordinating services; Foster Youth coordinating services; and student and family support services associated with social work/mental health services, after school “Learning Hubs” for homeless and McKinney-Vento students, family resource center for food bank distribution and referral services, tutoring services, special Education support services, and COVID testing services) (collectively , the “Programs”). ACOE also agrees to enroll and serve, within ACOE’s Programs on the Premises, eligible District students who opt in to any of the Programs.
4. PAYMENTS.
 - a. In consideration for the beneficial use and occupancy of the Premises during the Term, ACOE agrees to make to the District, its successors, and assigns, at one-time payment of Forty-Four Thousand Three Hundred Seventy-Three Dollars and Twelve Cents (\$44,373.12) shall sixty (60) days of the execution of this Agreement.
 - b. ACOE shall be responsible for maintenance, utilities, repair, replacement, applicable taxes, and insurance throughout the Term.
5. CONDITION OF PREMISES; DISCLAIMER OF WARRANTIES.
 - a. Condition of Premises. The Premises are leased to ACOE on an “AS-IS” basis. District shall not be required to make or construct any alterations, including but not limited to structural changes, additions, or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, ACOE accepts the Premises in “AS-IS” condition. ACOE acknowledges that neither the District nor District’s agents have made any representation or warranty as to the suitability of the Premises to the conduct of ACOE’s business. Any agreements, warranties, or representations not expressly contained herein shall in no way bind District, and ACOE expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
 - b. Disclaimer of Warranties. Neither the District nor its assigns make any warranty or representation, either express or implied, as to the value, design, condition, merchantability, or fitness for any particular purpose or fitness for the use contemplated by ACOE of the Premises or any other representation or warranty with respect to the Premises. In no event shall the District or its assigns be liable for incidental, indirect, special, or consequential damages in connection with or arising out of this Agreement for the existence, furnishing, functioning, or ACOE’s

use of the Premises.

6. USE OF PREMISES. ACOE shall use the Premises solely for operating the Programs. ACOE shall not use the Premises for any use other than that specified in Section 3 and this Section without the prior written consent of the District. ACOE agrees to maintain the Premises and to conduct the Programs in a manner that meets all federal, state, and local regulations relating to the Premises and to the operation of the Programs, and to comply with all federal, state, and local laws, regulations, and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Programs. ACOE shall not use or permit the Premises to be used in whole or in part during the Term for any purpose or use in violation of the laws or ordinances applicable thereto. Any uses that involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. ACOE shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times. ACOE agrees to immediately respond to concerns expressed by neighbors or District relating to the operation of the Premises.

7. INDEMNIFICATION.
 - a. ACOE agrees to indemnify, reimburse, hold harmless, and defend District, its trustees, officers, employees, and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same, on account of, or arising out of, the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto or from the conduct of ACOE's Programs or from any activity, work, or other things done, permitted or suffered by ACOE in or about the Premises. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property from whatever cause in any way connected with the condition, use, or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the ACOE, its agents, officers, employees, licensees, and invitees.

 - b. Any reasonable costs incurred (including but not limited to filing fees and attorney's fees) by District after providing written request for indemnification to ACOE shall be owed to District if it is determined the indemnification was owed. In addition, ACOE shall pay reasonable attorneys' fees and costs incurred to enforce the indemnity obligations of this Agreement to District.

8. WAIVER OF PERSONAL LIABILITY. The District and its members, directors, officers, agents, employees, successors, and assignees shall not be liable to ACOE or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in, on or about the Premises. ACOE, to the extent permitted by law, shall indemnify and hold the District and its members,

directors, officers, agents, employees, successors, and assignees, harmless from, and defend each of them against, any and all claims, liens, and judgments arising from the operation of the Premises, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on, or about the Premises regardless of responsibility for negligence, but excepting the negligence of the person or entity seeking indemnity.

9. INSURANCE.

- a. Commercial General Liability Insurance and Auto Insurance. During the Term, ACOE shall, at ACOE's expense, obtain, and keep in force during the Term a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and ACOE against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. ACOE's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. ACOE's commercial general insurance shall be at least as broad as the insurance Service Office (ISO) CG 00-01 form and in an amount of not less than Five Million dollars (\$5,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Five Million dollar (\$5,000,000) general aggregate policy limit. In addition, ACOE shall obtain a products/completed operations aggregate policy in the amount of Two Million dollars (\$2,000,000) and a personal injury policy in the amount of One Million dollars (\$1,000,000). The deductible/occurrence for said insurance shall not exceed Five Thousand dollars (\$5,000) for any and all losses resulting from negligence, errors, and omissions of the ACOE, its Board, officers, agents, employees, invitees, and/or students.
- b. Fire Insurance. During the Term, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the Premises as of the Commencement Date. In the event of loss or damage to the buildings, the Premises, or any contents, each of the Parties hereto, and all persons claiming under each of the Parties, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.
- c. Workers' Compensation Insurance. During the Term, ACOE shall comply with all provisions of law applicable to ACOE with respect to obtaining and maintaining workers' compensation insurance.
- d. ACOE's Property Insurance. ACOE acknowledges that the insurance to be maintained by District on the Premises will not insure any of ACOE's Property or

Premises, or improvements made by ACOE. Accordingly, ACOE shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, and improvements made by ACOE, and personal property in, about, or on the Premises. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of ACOE's property.

- e. Certificates of Insurance and Endorsements. Within thirty (30) of the execution of this Agreement, ACOE shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:
 - i. Not be canceled or altered without thirty (30) days' prior written notice to District; and
 - ii. Insure performance of the indemnity set forth in this Agreement; and
 - iii. State the coverage is primary and any coverage by District is in excess thereto; and
 - iv. Contain a cross liability endorsement; and
 - v. Include a separate endorsement naming District as an additional insured.
- f. At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, ACOE shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

10. MAINTENANCE AND REPAIRS.

- a. ACOE, at its sole cost, shall maintain the Premises and the interior of the facilities located thereon in a good condition consistent with the condition of the Facility existing at the time of delivery in accordance with applicable provisions of the Education Code, the implementing regulations and the District's policies and/or practices. ACOE acknowledges and accepts that the Premises are leased in "AS IS" condition.
- b. District shall not be required to maintain, repair, or replace the interior spaces, including but not limited to the interior surface of exterior walls. If District is required to perform maintenance that is not District's obligation, ACOE shall reimburse District, as additional cost, within thirty (30) days after receipt of billing, for the cost of such maintenance and repairs which are the obligation of ACOE hereunder.

- c. Except as expressly provided in above, ACOE shall, at its cost, maintain and repair the Premises including windows, skylights, doors, door hardware, walls, partitions, ceilings, and all other surfaces visible to public or ACOE and the electrical, plumbing, lighting, heating, ventilating, and air conditioning systems in a condition similar to that which exists at the time ACOE takes possession of the Premises. The term "maintain and repair" shall be defined as routine, regular, or necessary maintenance. If plumbing, heating, ventilating, and electrical systems can be accessed without the removal of walls or floors, repairs and maintenance shall be the ACOE's responsibility. For example, ACOE shall be responsible for toilet replacements and clogged toilets, while the District shall be responsible for main sewer lines that are clogged, damaged or broken due to no fault of ACOE. District shall have no responsibility for the air conditioning systems.
- d. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. ACOE hereby expressly waives the provisions of Civil Code sections 1932, 1941, and 1942, and all rights to make repairs at the expense of District as provided in Civil Code section 1942.

11. ALTERATIONS AND IMPROVEMENTS.

- a. With prior written approval of the District, ACOE may, at its sole cost and expense, construct or cause to be constructed on the Premises those improvements which ACOE deems necessary to the operation of its business, provided that such improvements are subject to local site, zoning, and design review and other required approvals, and provided that District has approved all such improvements.
- b. In regard to the improvements constructed on the Premises consistent with the provisions of this Agreement, ACOE shall, prior to construction, major repair, renovation, or demolition of any improvements on the Premises, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof. ACOE shall also, prior to construction of any improvements, obtain written approval from District for the improvements and their related costs. Said approval or disapproval must be expressly made by District in writing. ACOE agrees not to proceed with any construction of improvements until ACOE has obtained District's written approval. District and ACOE recognize that such approvals may be completed in phases, such that ACOE initially requests conceptual approval and, if approved by District, ACOE then proceeds to draw the plans and specifications. District shall respond to ACOE with said approval or disapproval within fifteen (15) days after District receives a written request with architectural plans and drawings from ACOE. District's approval shall be at its discretion, but shall not be unreasonably withheld. As a condition of such approval, District may require that ACOE agree

to remove certain improvements and restore the Premises to its original condition upon expiration or earlier termination of this Agreement, and/or provide District with adequate security for such removal.

- c. Not less than fifteen (15) days prior to the construction, major repair, renovation, or demolition of any improvements on the Premises, ACOE shall provide District with information regarding the contractor's financial condition and evidence to District's satisfaction that adequate funds to complete the improvements are committed and available or that completion has been otherwise adequately assured. Such assurances may include, in District's discretion, a completion guarantee. No construction shall commence until District has given ACOE written acceptance of such assurances.
- d. ACOE shall give District fifteen (15) days' prior written notice before commencing any work on the Premises so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate.
- e. Not less than fifteen (15) days prior to the construction, major repair, renovation, or demolition of any improvements on the Premises, ACOE shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that ACOE or ACOE's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers compensation that is satisfactory to District in its sole discretion.
- f. Upon commencement of construction of any improvements, ACOE shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes, or acts of God.
- g. All work or improvements shall be performed in a sound and workmanlike manner, in compliance with all applicable laws and building codes, in conformance with the plans and specifications approved by District and the Division of the State Architect ("DSA"), if applicable, or any modifications thereto which have been approved in writing by District. If an improvement project requires the use of DSA-approved Inspector services, ACOE shall reimburse District for the costs related to said services.
- h. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed on the Premises to enter the Premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction. ACOE shall require its contractors who construct improvements on the Premises to reasonably cooperate with District or its agent in such inspections.

- i. Within ninety (90) days after completion of construction of any work of improvement on the Premises, ACOE shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- j. Upon the expiration or sooner termination of the Agreement, ACOE shall, upon written demand by District, at ACOE's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by ACOE that have been expressly designated by District, in writing, to be removed, and ACOE shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

12. CASUALTY DAMAGE.

- a. In the event that any portion of the Premises are destroyed or damaged by an uninsured peril, District or ACOE may, upon written notice given to the other within sixty (60) days after the occurrence of the damage or destruction, elect to terminate this Agreement; provided, however, that either Party may, within thirty (30) days after receipt of notice, elect to make the required repairs and/or restoration at that Party's sole cost and expense, in which event this Agreement shall remain in full force and effect, and the Party having made the election to restore or repair shall thereafter diligently proceed with the repairs and/or restoration.
- b. In the event the Premises are damaged or destroyed from any insured peril to the extent of fifty percent (50%) or more of the then replacement cost of the Premises, District or ACOE may, upon written notice given to the other within sixty (60) days after the occurrence of the damage or destruction, elect to terminate this Agreement. If neither Party gives notice in writing within this period, District shall be deemed to have elected to rebuild or restore the Premises, in which event District shall, at its expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. In the event the Premises are damaged or destroyed from any insured peril to the extent of less than fifty percent (50%) of the then replacement cost of the Premises, District shall at District's expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction.
- c. In the event that, pursuant to the foregoing provisions, District is to rebuild or restore the Premises, District shall, within thirty (30) days after the notice of the intent to rebuild or restore the Premises, provide ACOE with written notice of the time required for such repair or restoration. If this period is longer than one hundred twenty (120) days from the issuance of a building permit, ACOE may, within thirty (30) days of receipt of District's notice, elect to terminate the Agreement by giving written notice to District of this election, whereupon the

Agreement shall immediately terminate. The period of time for District to complete the repair or restoration shall be extended for delays caused by the fault or neglect of ACOE or because of acts of God, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers, or fuels, acts of contractors or subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of District. District's obligation to repair or restore the Premises shall not include restoration of ACOE's trade fixtures, equipment, merchandise, or any improvements, alterations, or additions made by ACOE to the Premises.

13. DEFAULT.

- a. Events of Default. A breach of this Agreement shall exist if any of the following events (hereinafter referred to as "Event of Default") shall occur:
- i. Default in the payment when due by ACOE hereunder, and the default shall not have been cured within ten (10) days after written notice from District.
 - ii. The vacating or abandonment of the Premises by ACOE before the expiration of the Term.
 - iii. The failure by ACOE to utilize the Premises for the sole purpose of operating of the Programs as authorized by this Agreement and the terms and conditions set forth herein.
 - iv. Failure to keep in effect insurance as required herein.
 - v. Failure by ACOE or any guarantor of ACOE's obligations to pay its debts as they become due, or where ACOE or any guarantor of ACOE's obligations admits in writing its inability to pay ACOE's debts.
 - vi. ACOE's failure to perform any other term, covenant, or condition contained in this Agreement and the failure shall have continued for thirty (30) days after written notice of such failure is given to ACOE; however, should ACOE's default involve a serious risk to the safety of the students or an illegal use of the Premises, such cure must occur immediately. In the event the District has notified ACOE of default on the same basis on two prior occasions, the period to cure shall be reduced to five (5) business days. On the fourth occasion of default, the District may dispense with a cure period and determine that ACOE is in material default and commence termination of this Agreement pursuant to Section 13(b) herein.

b. Remedies. Upon any Event of Default, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:

i. Recovery of Payment. District shall be entitled to keep this Agreement in full force and effect (whether or not ACOE shall have abandoned the Premises) and to enforce all of its rights and remedies under this Agreement, including the right to recover or seek payment and other sums as they become due, plus interest at the rate of Bank of America's, or its successor's, reference rate plus three percent (3%) per annum from the due date of each payment or other sum until paid.

ii. Termination. District may terminate this Agreement by giving ACOE written notice of termination. Upon the giving of the notice of termination, all of ACOE's rights in the Premises shall terminate, ACOE shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject ACOE or any of ACOE's subtenants, assignees, or other person or persons claiming any right under or through ACOE or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release ACOE from the payment of any sum then due District or from any claim for damages or payment previously accrued or then accruing against ACOE. In no event shall any one or more of the following actions by District constitute a termination of this Agreement:

1. Maintenance and preservation of the Premises; or
2. Efforts to relet the Premises; or
3. Appointment of a receiver in order to protect District's interest hereunder; or
4. Consent to any subletting of the Premises or assignment of this Agreement by ACOE, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or
5. Any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Agreement by ACOE.

iii. Damages. In the event this Agreement is terminated, District shall be entitled to damages in the following sums:

1. The worth of any outstanding payment that is due before or after the time of termination; and
 2. Any other amount necessary to compensate District for all detriment proximately caused by ACOE's failure to perform ACOE's obligation under this Agreement, or which in the ordinary course of business would be likely to result there from including, without limitation, the following: (i) expenses for cleaning, repairing, or restoring the Premises; (ii) real estate broker's fees, reasonable advertising costs, and other expenses of reletting the Premises; (iii) costs of carrying the Premises and insurance premiums thereon, utilities, and security precautions; (iv) expenses in retaking possession of the Premises; (v) reasonable attorneys' fees and court costs; and (vi) any unamortized real estate brokerage commission paid in connection with this Agreement; and
 3. No remedy herein conferred upon or reserved to the District is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
14. LIENS. ACOE shall: (i) pay for all labor and services performed for, and materials used by or furnished to, ACOE or any contractor employed by ACOE with respect to the Premises; and, (ii) indemnify, defend, and hold District and the Premises harmless and free from the perfection of any liens, claims, demands, encumbrances, or judgments created or suffered by reason of any labor or services performed for, or materials used by or furnished to, ACOE or any contractor employed by ACOE with respect to the Premises; and, (iii) give notice to District in writing fifteen (15) days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon, the Premises; and (iv) permit District to post a notice of non-responsibility in accordance with all applicable legal requirements. In the event ACOE is required to post an improvement bond with a public agency in connection with the above, ACOE agrees to include District as an additional obligee.
15. INSPECTION OF PREMISES. ACOE agrees to provide District with a set of keys for emergency repairs. ACOE shall permit District and its agents to enter the Premises at any reasonable time for the purpose of inspecting the same, performing District's

maintenance and repair responsibilities, or posting a notice of non-responsibility for alterations, additions, or repairs. In addition to the right granted to District under this Agreement to inspect improvements under construction on the Premises, District and its authorized agents and representatives shall have the right throughout the Term to enter the Premises at all reasonable times during usual business hours and upon reasonable notice for the purpose of inspecting the Premises or exhibiting them to prospective lessees or occupants.

16. HOLDING OVER. Should ACOE hold over in possession after the expiration of the Term or any extended term of this Agreement, the holding over shall not be deemed to extend the Term or to renew the Agreement, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth at a monthly rent of six thousand dollars (\$6,000) unless ACOE and District mutually agree to a different rental amount.
17. EMINENT DOMAIN. In the event the whole or any part of the Premises is taken by eminent domain proceedings, the interest of the District shall be recognized and is hereby determined to be the amount of the then unpaid or outstanding Lease Payment and shall be paid to the District, and the balance of the award, if any, shall be paid to ACOE.
18. TITLE TO PROPERTY. The Parties acknowledge that title to the Property, including but not limited to the Premises and improvements thereon, is held by District.
19. NOTICES. Except as otherwise expressly provided by law, any and all notices, demands, or other communications required or desired to be given by either Party hereunder, or required or permitted by law to be served on or given to either Party, shall be in writing and shall be delivered either (i) in the United States mail, certified or registered, postage prepaid, in which case delivered will be deemed to be three (3) business days after depositing the notice or demand or (ii) via email addressed to each Party respectively at the following addresses:

Oakland Unified School District
ATTN: Office of the General Counsel
1000 Broadway, Suite 440
Oakland, CA 94607
ousdlegal@ousd.org

Alameda County Office of Education
ATTN: Superintendent
313 W. Winton Avenue
Hayward, CA 94544
mvaughan@acoe.org

20. ASSIGNMENT. ACOE may not assign this Agreement without prior District's written consent and approval. Any assignment of this Agreement must be in writing and signed by District and ACOE. No assignment or transfer shall be effective until there shall have been delivered to District an agreement, or a duplicate original of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee whereby such assignee agrees, expressly for the benefit of District, to assume, keep and perform, and be bound by each and all of the covenants, conditions, restrictions, and provisions herein contained on the part of ACOE, and any such assignment or transfer shall be subject to each and all of the covenants, conditions, restrictions, and provisions hereof. Any assignment in violation of this Section shall be void and of no effect. ACOE agrees that the District may assign any interest in this Agreement, as required or desired at any time, provided that the assignment will not disturb ACOE's possession and quiet enjoyment of the Premises.
21. SUBLEASING. ACOE shall not have the right to sublease the Premises or any other portion of the Facility, without the prior written consent of the District.
22. SUCCESSORS. This Agreement contains all of the covenants, agreements, representations, and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors, and assigns of the Parties hereto, except as otherwise prohibited herein this Agreement.
23. SURRENDER OF AGREEMENT NOT MERGER. The voluntary or other surrender of this Agreement by ACOE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancy.
24. WAIVER. The waiver by District or ACOE of any breach of any term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained shall not be deemed to be a waiver of the term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.
25. SIGNS. ACOE shall, at ACOE's sole cost and expense, have the right and entitlement to place ACOE's signs on the Premises, and otherwise to advertise its services, without obtaining prior approval and consent of District. Any signs shall be in compliance with the local ordinances pertaining thereto. In connection with ACOE's placement of such signs, District agrees to cooperate and assist ACOE in obtaining any governmental permits which may be necessary. Throughout the Term, ACOE shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, ACOE shall remove any signs that it has placed on the Premises, and shall repair any damage caused by the installation or removal of those signs.

26. SURRENDER OF THE PREMISES. On the last day of the Term, or on sooner termination of this Agreement, ACOE shall surrender to District the Premises and any then-existing improvements in good order, condition, and repair, reasonable wear and tear excepted, free and clear of all liens, claims, and encumbrances. This condition shall be similar to when ACOE first occupied the Premises, excepting normal ordinary wear and tear and any structural improvements made by District during the Term. This Agreement shall operate as a conveyance and assignment to the District of any improvements identified by the District to remain on the Facility. ACOE shall remove from the Premises all of ACOE's personal property, trade fixtures, and any improvements made by ACOE which District agrees will be removed by ACOE. All property not so removed shall be deemed abandoned by ACOE. If the Premises are not so surrendered at the termination of this Agreement, ACOE shall indemnify District against loss or liability resulting from delay by ACOE in so surrendering the Premises including, without limitation, any claims made by any succeeding subtenants or losses to District due to lost opportunities to Agreement to succeeding subtenants.
27. HAZARDOUS MATERIALS. District and ACOE agree as follows with respect to the existence or use of Hazardous Materials on the Premises, including any improvements made by ACOE.
- a. Definition. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, polychlorinated biphenyls ("PCBs"), and any material or substance that is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq.; (ii) defined as a "hazardous waste" pursuant to Section 14 of the federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. section 6903); or (iii) defined as a "hazardous substance" pursuant to Section 10 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. section 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release, or disposal of any Hazardous Material.
 - b. Hazardous Materials. ACOE shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by ACOE or its agents, employees, contractors, sub-ACOE's, or invitees, except for limited quantities of standard office, classroom, and janitorial supplies (which shall be used and stored in strict

compliance with all applicable laws). ACOE shall comply with all applicable laws.

- c. Responsibility of ACOE. From and after the Commencement Date, ACOE shall be solely responsible for all environmental matters affecting the Premises and any improvements. Without limiting the preceding sentence:
- i. Any handling, transportation, storage, treatment, disposal, or use of Hazardous Materials in or about the Premises and any improvements by any person or entity shall be the responsibility of ACOE and shall strictly comply with all applicable laws and the provisions of this Agreement; and
 - ii. It shall be the duty of ACOE to insure that the Premises and any improvements are at all times in strict compliance with all applicable laws and that all activities conducted in or about the Premises and improvements comply in every respect with all applicable laws, including, but not limited to, all notification, record keeping, and maintenance requirements of such laws; and
 - iii. ACOE shall have and discharge all of the duties and obligations of the owner of the Premises and improvements under applicable laws, including, but not limited to, response and remediation; and
 - iv. ACOE shall be responsible for all liability to third parties who may be harmed or claim harm resulting from an environmental condition on or about the Premises and any improvements.
- d. Notice. District and ACOE shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials that relates to the Premises and any improvements; and (ii) any contamination of the Premises and any improvements by Hazardous Materials which constitutes a violation of any applicable laws. ACOE and subtenants may use small quantities of household chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct their business on the Premises and any improvements and such other Hazardous Materials as are necessary for the operation of their respective businesses of which District receives notice prior to such Hazardous Materials being brought onto the Premises and any improvements and to which District consents in writing. As a condition to its consent, District may require from ACOE or any subtenant additional security and/or indemnification against potential claims or losses resulting from the presence or use of such Hazardous Materials at or on the Premises and any improvements. At any time during the Term, ACOE shall, within thirty (30) days written request therefore received from District, disclose in writing all Hazardous Materials that are being used by ACOE or subtenants on the Premises and any improvements, the nature of the use, and the manner of

storage and disposal.

28. SEVERABILITY. The provisions of this Agreement are declared to be severable, and if any provision herein is invalidated by any court, the remaining provisions shall not be affected thereby and shall be fully enforceable, unless such enforcement would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement.
29. JURISDICTION AND VENUE. This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. To the fullest extent permitted by California law, Alameda County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.
30. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
31. CAPTIONS, HEADING, AND TIME. The captions and section headings used in this Agreement are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Agreement. Time is of the essence for the performance of each term, covenant, and condition of this Agreement.
32. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding between the Parties hereto and no addition to or modification of any term or provision of this Agreement shall be effective until set forth in writing signed by both District and ACOE.
33. AGREEMENT PUBLICLY POSTED. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
34. EXECUTION.
 - a. Each Party has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
 - b. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable

document format) by either Party and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing Party and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each Party waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

- c. OUSD shall not be bound by the terms of this Agreement unless and until it has been formally approved by OUSD's Governing Board.

IN WITNESS WHEREOF, DISTRICT and ACOE have executed this Agreement as of the date written on the first paragraph of this Agreement.

DISTRICT:


8-11-2022

Dr. Gary Yee
President, Board of Education

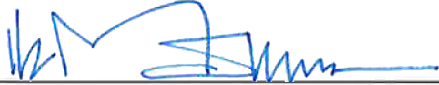

8-11-2022

Dr. Kyla Johnson-Trammel
Superintendent and Secretary,
Board of Education

ACOE:



Aisha Knowles
President, County Board of Education



L.K. Monroe
County Superintendent and Board Secretary

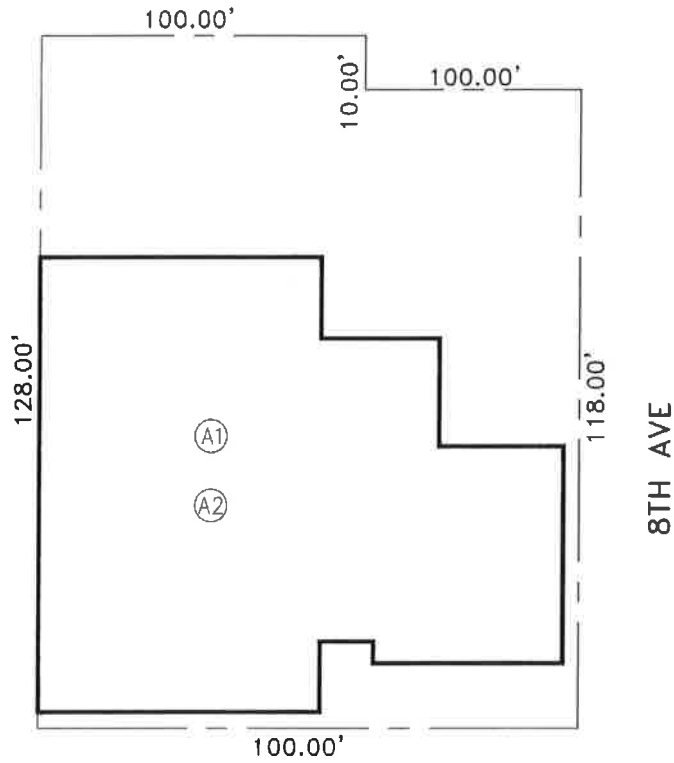
Approved as to Form


June 21, 2022

Chief Governance Officer

EXHIBIT "A"

Depiction of Property



Not drawn to scale

288 - Neighborhood Center Adult Ed. Center - Site Plan

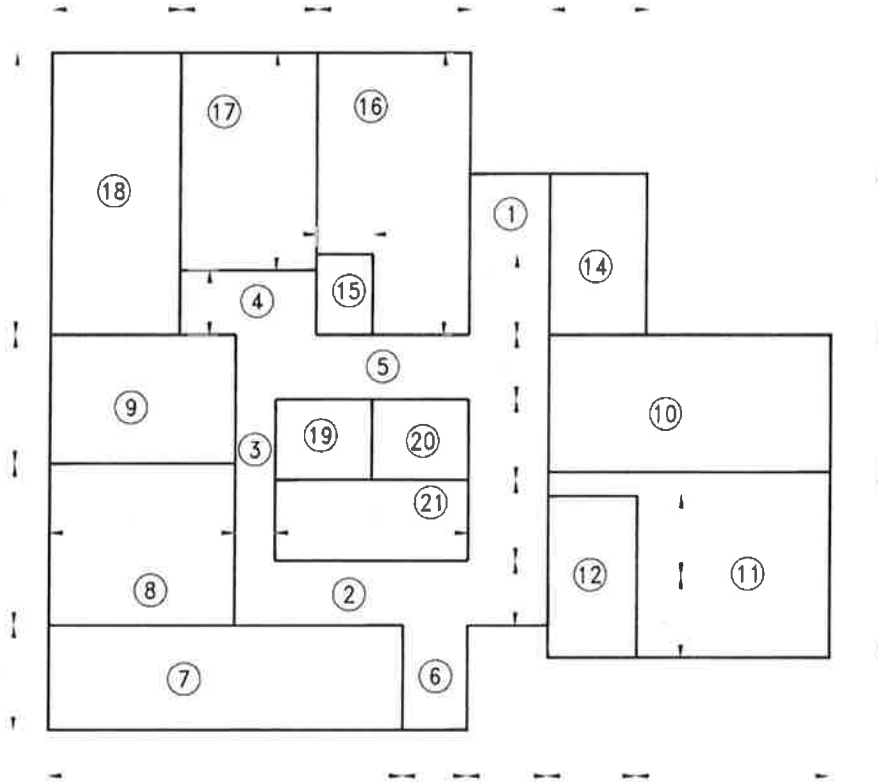
750 International Boulevard - Oakland, CA 94606-2212

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2011





Not drawn to scale



288 - Neighborhood Center Adult Ed. Center - Unit A1

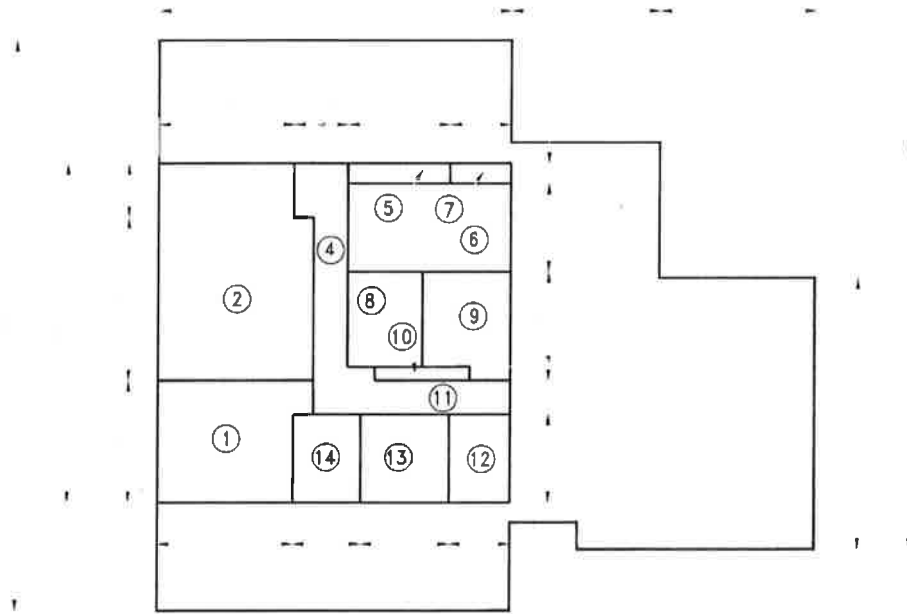
750 International Boulevard - Oakland, CA 94606-2212

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2011





Not drawn to scale



288 - Neighborhood Center Adult Ed. Center - Unit A2

750 International Boulevard - Oakland, CA 94606-2212

THINK

Architectural Co. 4500 Spaulding Avenue, Suite 100, Oakland, CA 94612
 Phone: (415) 402-2898

2011

