

Board Office Use: Legislative File Info.	
File ID Number	21-1608
Introduction Date	6/30/21
Enactment Number	21-1269
Enactment Date	6/30/2021 er



Board Cover Memorandum

To Board of Education

From Joshua R. Daniels, General Counsel

Meeting Date June 30, 2021

Subject Approval of Amendment No. 1 to Lease Agreement with Kidango, Inc. for Use of Building H & I at Castlemont High School

Action Requested Approval by the Board of Education of Amendment No. 1 to Agreement between Oakland Unified School District and Kidango, Inc. to extend the term of the Agreement through June 30, 2022 for revenue in the amount of \$18,000.

Background Kidango, Inc. is an organization of more than 50 child development centers across the Bay Area. It provides an early childhood education and family support program to low income children in the Castlemont High School community. Kidango has served the Castlemont High School community since 2016.

On August 12, 2020, the Board of Education approved a one-year agreement with Kidango, Inc. the term of which expires on June 30, 2021 (Enactment 20-1176).

Discussion Staff recommend extending the term of the Agreement with Kidango, Inc. as the services provided by Kidango are of great necessity for the community. The term will be extended from June 30, 2021 to June 30, 2022 for four rent payments totaling \$18,000 for the 2021-2022 school year.

Fiscal Impact Revenue of \$18,000.

Attachment(s)

- Amendment No. 1
- Lease Agreement between Oakland Unified School District and Kidango, Inc. for Use of Building H & I at Castlemont High School (Enactment 20-1176)

Board Office Use: Legislative File Info.	
File ID Number	21-1608
Introduction Date	6/30/2021
Enactment Number	21-1269
Enactment Date	6/30/2021 er



OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

AMENDMENT NO. 1

to

Lease Agreement between the Oakland Unified School District and Kidango, Inc. for use of Building H & I at Castlemont High School

This Amendment amends the attached legal agreement (“Original Agreement”) and any prior amendments (“Prior Amendments,” together with Original Agreement, “(Amended) Agreement”), incorporated herein by reference, which includes the following information:

- The (Amended) Agreement is between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”): Kidango, Inc.
- The Parties entered into the Original Agreement on the below date: August 20, 2020
- The Enactment Number of the Original Agreement is below: 20-1176

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. Services:

The scope of work of the (Amended) Agreement is unchanged.

The scope of work of the (Amended) Agreement has changed. If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:

Revised scope of work attached

VENDOR agrees to provide the following amended services:

2. **Term** (duration): The term of the (Amended) Agreement is unchanged
 The term of the (Amended) Agreement has changed.
If the term has changed: The parties agree to amend the below original End Date of the (Amended) Agreement to the below new End Date:
Original End Date: **June 30, 2021**
New End Date: **June 30, 2022**

3. **Rent:** The rent amount in the (Amended) Agreement is unchanged
 The rent amount in the (Amended) Agreement has changed. If the rent amount has changed: The amount in the (Amended) Agreement is amended as follows:
 Increase not-to-exceed amount by:

 Decrease not-to-exceed amount by:

The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is

4. **Payment:** The term of the (Amended) Agreement is unchanged
 The payment provision (Section 12) of the (Amended) Agreement has changed. The parties agree to amend the below original payment dates of the \$18,000 of rent to the below new payment dates:

Original Payment Dates: 25% by August 1, 2020; 25% by November 1, 2020; 25% by March 1, 2021; 25% by June 1, 2021.

New Payment Dates: 25% by August 1, 2021; 25% by November 1, 2021; 25% by March 1, 2022; 25% by June 1, 2022.

5. **COVID-19:** To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, VENDOR agrees that:
a. Through its execution of this Amendment, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar)

requirements.

- b. VENDOR agrees to notify OUSD within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
- c. VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing.
- d. VENDOR shall bear all costs of compliance with this Paragraph.

6. **Remaining Provisions:** All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.

7. **Amendment Publicly Posted.** 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.

8. **Signature Authority.**

- a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
- b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.

9. **Amendment Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

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

VENDOR

Name: Noelle Payomo Signature: 

Position: Chief Operations Officer Date: 6/15/21

By its signature, VENDOR acknowledges and agrees not to expect or demand compensation pursuant to this Amendment prior to the PARTIES, particularly OUSD, validly and properly executing this Amendment until this Amendment is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Amendment. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Shanthi Gonzales Signature: 

Position: _____ Date: 7/1/2021

- Board President
- Superintendent
- Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: 

Position: Secretary, Board of Education Date: 7/1/2021

Board Office Use: Legislative File Info.	
File ID Number	20-1589
Introduction Date	8/12/2020
Enactment Number	20-1176
Enactment Date	8/12/2020 os



Memo

To Board of Education

From Joshua R. Daniels, General Counsel

Board Meeting Date August 12, 2020

Subject Lease Agreement between the Oakland Unified School District and Kidango, Inc. for Use of Building H & I at Castlemont High School

Action Ratification by the Board of Education of a Lease Agreement between the Oakland Unified School District and Kidango, Inc. for Use of Building H & I at Castlemont High School

Background Kidango, Inc. is an organization of more than 50 child development centers across the Bay Area. It provides a early childhood education and family support program to low income children in the Castlemont High School community. Kidango has been using space at Castlemont since at least July 1, 2016 via a lease (“Prior Lease”) with Castlemont Community Transformation Schools (“CCTS”). OUSD was not a party to the Prior Lease and did not authorize it. The District previously attempted to enter into an agreement authorizing Kidango to operate in the same location but that effort was not completed. Kidango ceased its operations at Castlemont on or about March 17, 2020 as a result of the shelter-in-place order issued by the Alameda County Public Health Officer. Kidango sought to resume operations as it is an essential services.

Discussion The District reached a one-year Lease with Kidango to operate at Castlemont in the same building and under the same basic conditions as it had been under CCTS, but with increased rent. The rent charged by the District includes a one-time payment of \$18,000 and an annual rent amount an additional \$18,000. The Superintendent signed the Lease on behalf of the District in accordance with, separately and

together, her authority under Resolution No. 1920-0262 (delegation of authority under COVID-19) due to the fact that Kidango is seeking to reoccupy the Premises due to the COVID-19 pandemic and her authority under Board Policy 3312 (Superintendent can act in place of the Board if the Board is in recess for at least 30 days, which it was).

Fiscal Impact

Revenue of \$36,000

Attachment

Lease Agreement between the Oakland Unified School District and Kidango, Inc. for Use of Building H & I at Castlemont High School

LEASE AGREEMENT
BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND
KIDANGO, INC. FOR USE OF BUILDING H & I
AT CASTLEMONT HIGH SCHOOL

This lease agreement (“Agreement”) is by and between the Oakland Unified School District (“District” or “OUSD”) and Kidango, Inc. (“Kidango”). District and Kidango may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Kidango, an organization of more than 50 child development centers across the Bay Area, provides a comprehensive, high quality early childhood education and family support program to low income children in the Castlemont High School community, including providing the California State Preschool Program, Head Start, and Early Head Start services in four classrooms;

WHEREAS, Kidango has been using space at Castlemont High School (“Castlemont”) in the District since at least July 1, 2016 via a lease signed (“Prior Lease”) by Castlemont Community Transformation Schools (“CCTS”);

WHEREAS, OUSD was not a party to the Prior Lease and did not authorize it, nor did OUSD authorize CCTS Schools to sublease space to any entity, including any sublease to Kidango;

WHEREAS, although CCTS ceased to be located at Castlemont on or about DATE, Kidango kept operating without an agreement with OUSD and without any rent being paid to OUSD during that time;

WHEREAS, the Parties previously attempted to enter into an agreement authorizing Kidango to operate in the same location but that effort was not completed;

WHEREAS, Kidango ceased its operations at Castlemont on or about March 17, 2020 as a result of the shelter-in-place order issued by the Alameda County Public Health Officer;

WHEREAS, Kidango seeks to resume operations as it is an essential services.

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

AGREEMENT

1. **Term.** This Agreement shall commence on July 8, 2020, and, unless sooner terminated under any provision hereof, shall end on June 30, 2021 (“Term”).
2. **Premises.**
 - a. The Premises shall include, and only include, the following:
 - The building marked a “BLDG H & I” in Exhibit A.
 - Five parking spaces to be determined jointly by Kidango and Castlemont and memorialized in

writing. The specific parking spaces may be changes at any time by mutual written agreement by the Parties.

- Access to one male restroom and one female restroom in the building marked at “BLDG B” in Exhibit A. The specific restrooms shall be determined jointly by Kidango and Castlemont and memorialized in writing. The specific restrooms may be changes at any time by mutual written agreement by the Parties.

b. Nothing in this provision shall be construed to authorize Kidango to allow or cause to be placed any liens, claims and/or encumbrances of any kind, unless expressly permitted in this Agreement. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises.

3. Use of Premises. District agrees to allow use of the Premises at Castlemont, as defined herein, for the sole purpose of operating Kidango’s child development center program in accordance with all applicable federal, state and local regulations relating to the Premises and to the operation of Kidango’s educational program, and all associated uses therewith. Kidango shall not use the Premises for any use other than that specified in this Agreement without the prior written consent of District.

- a. Kidango shall not commit, or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
- b. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Kidango shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises at all times.
- c. Kidango shall not use or permit the use of the Premises or any part thereof for any purpose not consistent with a public educational facility.
- d. Kidango shall require all invitees and guests to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.
- e. Kidango shall comply with school district policies regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent variation is approved by the District or set forth within this Agreement. The District’s most recently published policies are accessible at www.OUSD.org under dropdown menu “Board of Education”, “Board Policies.” Where the Premises are damaged by Kidango’s invitees and/or guests, and Kidango’s negligence in supervising its invitees and/or guests was a contributing factor, Kidango’s insurance shall be primary for this damage.
- f. Kidango shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the District’s existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises, nor shall Kidango sell or permit to be kept, used, or sold in or about the Premises any articles which may be prohibited by

a standard form policy of fire insurance.

- g. Kidango agrees to comply with the provisions of the Civic Center Act (Education Code § 38131 *et seq.*) to make the Premises accessible to members of the community. Any request received by Kidango for use of the Premises pursuant to the Civic Center Act shall be promptly forwarded to the District. District shall be responsible for coordinating access to the Premises under the Civic Center Act, and any fee paid for use of the Premises under the Civic Center Act shall be paid to the District.
- h. Kidango acknowledges and understands that the Premises are located in an operating public school site. As such, Kidango may not use or occupy any part of Castlemont, other than the Premises, without written permission of the District.

4. Condition of Premises.

- a. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises.
- b. Kidango acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for Kidango's Program except as set forth herein. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District or Kidango, and District and Kidango expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
- c. The Parties agree that if the structural elements of the Premises become damaged to a lesser condition than currently exists, and if the structural damage is due to no negligence or fault of Kidango, then District will repair the damage at its sole discretion and Kidango will reimburse the District for the full cost of repairs.

5. Title. The Parties acknowledge that title to Castlemont and the Premises is held by District.

6. District's Entry and Access to Premises.

- a. District and its authorized representatives shall have the right, after one business day's prior written notice to Kidango, to enter the Premises during normal business hours for the purpose of inspection ("Inspection"). However, the District may provide less than one business day's prior written notice with good cause. Provided, however, that in an emergency situation, no prior notice shall be required. In an emergency, District shall give notice to Kidango immediately upon District's receipt of notification of any emergency. If Kidango is not present to open and permit an entry into the Premises in an emergency situation as reasonably determined by District, District may enter by means of a master key without liability to Kidango.
- b. Kidango shall ensure that the District may be able to access all parts of the Premises with a use of a master key.
- c. Kidango expressly waives any claim for damages for any inconvenience to or interference with Kidango's educational program, any loss or use of quiet enjoyment of the Premises related to District's entry into the Premises for the purposes identified in this Section.

7. Signs. Kidango may, at Kidango's sole cost, have the right and entitlement to place onsite signs on the Premises to advertise Kidango's educational program, provided Kidango obtains the prior written approval and consent of District. District's approval and consent shall not be unreasonably withheld. Any signs shall be in compliance with the local ordinances pertaining thereto. In connection with the placement of any of Kidango's signs, District agrees to cooperate with Kidango in obtaining any governmental permits which may be necessary. Throughout the Term of the Agreement Kidango shall, at its sole cost and expense, maintain any of its signage and all appurtenances in good condition and repair. At the termination of the Agreement, Kidango shall remove any signs which it has placed on the Premises and School Site, and shall repair any damage caused by the installation or removal of Kidango's signs.

8. Title to and Removal of Kidango's Improvements/Premises.

- a. Kidango shall not construct or cause to be constructed on the Premises any improvements ("Kidango's Improvements") without express prior written consent and approval from the District. For District consent and approval, Kidango's Improvements must be considered necessary to the operation of Kidango's educational program. The District shall have sole discretion to determine whether or not to provide approval. At the time the District considers Kidango's request to construct improvements on the Premises, the District will inform Kidango, in writing, whether it will require Kidango to remove Kidango Improvements at the expiration or earlier termination of the Term.
- b. If required by the District, Kidango shall remove an existing improvements made by Kidango at its sole expense. Kidango shall repair any damage to Castlemont and/or the Premises caused by removal of Kidango's Improvements and restore Castlemont and the Premises to good condition, less ordinary wear and tear. In the event that Kidango fails to timely remove Kidango's Improvements, District, upon fifteen (15) calendar days written notice, may either (1) accept ownership of Kidango's Improvements with no cost to District, or (2) remove Kidango's Improvements at Kidango's sole expense. If the District chooses to accept ownership of Kidango's Improvements, Kidango shall execute any necessary documents to effectuate the change in ownership of Kidango's Improvements. If the District removes Kidango's Improvements, Kidango shall pay all invoices for the removal of Kidango's Improvements within thirty (30) calendar days of receipt of an invoice.

9. Safety of Premises. Kidango specifically acknowledges, understands, and agrees that it—and not District—is responsible for the safety and security of Kidango students and families as well as Kidango employees and contractors.

10. Surrender of Premises.

- a. On the last day of the Term, or on sooner termination of this Agreement, Kidango shall surrender in good order, condition, and repair the Premises to District.
- b. Kidango shall remove from the Premises all of Kidango's personal property, trade fixtures, and any improvements made by Kidango which Kidango and District agreed would be removed by Kidango.
- c. All property that is not removed on or before the end of the Term shall be deemed abandoned by Kidango and associated costs to store, remove or dispose of abandoned property shall be the

responsibility of Kidango. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Kidango shall indemnify District against loss or liability resulting from delay by Kidango in surrendering the Premises including, without limitation, any claims made by any succeeding Kidango or loss to District due to lost opportunities to timely obtain succeeding tenants.

- d. If Kidango remains in possession of the Premises or any part thereof after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Kidango's occupancy shall be a tenancy on a month-to-month basis for a pro rata share equal to one hundred fifty percent (150%) of all monthly sums charged and owing the previous thirty (30) calendar day period.
- e. No payment of money by Kidango after the termination of the Agreement, or after the giving of notice of termination by the District to Kidango, shall reinstate, continue or extend the Term.

11. Kidango's Program.

- a. Children's eligibility to receive services by Kidango pursuant to this Agreement will be determined by Kidango in accordance with all relevant regulations and guidelines, including the terms set forth in Kidango's contracts with the California Department of Education and the federal Office of Head Start regarding families' employment/enrollment in education and income level.
- b. Kidango shall follow the California Department of Education's Title 5 quality standards and federal Head Start and Early Head Start quality standards.
- c. To the extent permitted by law, Kidango shall grant enrollment priority to students with a family member who attends Castlemont or is employed by OUSD and works at Castlemont. Kidango will verify with OUSD that a student should be granted enrollment priority pursuant to this provision.
- d. Kidango will work in partnership with Castlemont to provide the work-based learning component for Castlemont students working towards a Teacher's Aide Certificate of Achievement or an Intro to Infant/Toddler Care Certificate of Completion.

12. Payment.

- a. For and in consideration of the use of the Premises for the Term of this Agreement, Kidango agrees to pay District \$18,000, which shall be paid according to the following schedule: 25% by August 1, 2020; 25% by November 1, 2020, 25% by March 1, 2021; 25% by June 1, 2021. Additionally, Kidango agrees to pay District an additional \$18,000 by January 1, 2021 in consideration for Kidango's prior use of the Premises in which no rent was paid.
- b. Kidango acknowledges that late payment by Kidango to District due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Use Fee or any other sum due from Kidango by 4:00 p.m. within fourteen (14) calendar days after such amount is due, Kidango shall pay to District, as an additional payment, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason

of late payment by Kidango. Acceptance of any late charge by District shall in no event constitute a waiver of Kidango's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

13. Utilities.

- a. District shall furnish or cause to be furnished to the Premises necessary utilities. For purposes of the Agreement, utilities include electrical, natural gas, sewer, waste disposal/recycling and water services. The District's failure to furnish or cause to be furnished utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of the Agreement and shall not result in any liability of the District. Kidango shall comply with all District energy conservation policies relating to use of the Premises.
- b. Notwithstanding the prior paragraph, Kidango shall obtain its own internet service and telephone provider and shall assume sole responsibility for obtaining all hardware at its own expense, as well as upkeep and maintenance of all telephone systems, data lines, and related equipment, software and hardware. Kidango may use any pre-existing T-1 Line located in the Premises, if any.

14. Furnishings and Equipment. Kidango shall provide its own furnishings and equipment at the Premises.

15. Parking and Vehicle Use. The Premises includes the parking spaces to which Kidango is entitled under this Agreement. Kidango shall abide by District and Castlemont policies and practices concerning the use of vehicles, including the District policy relating to the drop-off and pick-up of students. Kidango may instruct its visitors, invitees and guests to park on available street parking. Kidango shall not abandon any inoperative vehicles or equipment on any portion of Castlemont. District shall not be liable for any personal injury suffered by Kidango or Kidango's visitors, invitees and guests arising out of the use of vehicles, including parking, at or near Castlemont. District shall not be responsible for any damage to or destruction or loss of any of Kidango or Kidango's visitors, invitees, or guests' personal property located or stored in street parking, or Castlemont, except where such damage is caused by the District's negligence or misconduct.

16. Maintenance/Custodial.

- a. Kidango agrees to provide, at its own cost and expense, any and all day-to-day maintenance and custodial operations for the Premises. District shall have no day-to-day maintenance or repair obligations with respect to the Premises. Kidango hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of the Civil Code.
- b. District shall be responsible for the major maintenance of the Premises. For purposes of the Agreement, "major maintenance" includes, for example, the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code section 17582. The District shall only be obligated to perform deferred maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites.

17. Fingerprinting and Criminal Background Verification. Kidango shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements.

18. Coronavirus/COVID-19. Kidango agrees to operate in strict compliance with any shelter-in-place (or similar) order or curfew (or similar) (together "Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements. District reserves the right to request documentation of compliance with any applicable Order and Kidango shall provide such documentation to the satisfaction of the District within five (5) calendar days. Unless the Alameda County Health Office (or designee) details otherwise in writing, Kidango shall comply with District's interpretation of any applicable Order.

19. Kidango's Default.

- a. The occurrence of any one of the following events shall be considered a default of the Agreement by Kidango:
 - The failure of Kidango to comply with the requirement under this Agreement to ensure that the District may be able to access all parts of the Premises with a use of a master key, which failure continues for fifteen (15) calendar days after written notice thereof by District to Kidango
 - The failure of Kidango to promptly make any payment identified herein when due hereunder, which failure continues for fifteen (15) calendar days after written notice thereof by District to Kidango; provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the three (3) calendar day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;
 - The failure of Kidango to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) calendar days after written notice thereof by District to Kidango (unless the nature of the default is such that more than thirty (30) calendar days are required for its cure and Kidango shall have commenced a cure within the thirty (30) calendar day period and thereafter diligently prosecute the same to completion; provided, however, in no event shall the default continue for more than ninety (90) calendar days after written notice thereof by District to Kidango); provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure section 1161, and the thirty (30) calendar day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure section 1161;
 - The making by Kidango of any general assignment or general arrangement for the benefit of creditors; the filing by or against Kidango or any guarantor of the Agreement of a petition to have Kidango or any guarantor of the Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Kidango or any guarantor of the Agreement, the same is dismissed within sixty (60) calendar days); the appointment of a trustee or receiver to take possession of substantially all of Kidango's assets located at the Premises, or of Kidango's interest in the Agreement, where possession is not restored to Kidango within thirty (30) calendar days; or the attachment, execution or other judicial seizure of substantially all of Kidango's assets located at the Premises or of Kidango's interest in the Agreement, where such seizure is not

discharged within thirty (30) calendar days;

- The making or furnishing by Kidango of any warranty, representation or statement to District in connection with the Agreement, which is false or misleading in any material respect when made or furnished; or
 - The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of the Agreement.
- b. In the event of any default by Kidango, District shall have the right, in addition to all other rights available to District under the Agreement or now or later permitted by law or equity, to terminate the Agreement by providing Kidango with a notice of termination. Upon termination of the Agreement, District may recover from Kidango the worth at the time of award of the unpaid Rent and any other accrued fees which are due at the time of termination. In addition, upon termination, Kidango shall immediately vacate the Premises.
- c. The rights and remedies of District set forth herein are not exclusive, and District may exercise any other right or remedy now or later available to it under the Agreement, at law or in equity.

20. **District's Default.** District shall not be in default of any of its obligations hereunder, unless District fails to perform such obligations within a reasonable time, but in no event less than thirty (30) calendar days, after written notice by Kidango to District specifying that District has failed to perform its obligations; provided, however, that if the nature of District's default requires more than thirty (30) calendar days to cure, District shall not be in default if District commences a cure within thirty (30) calendar days and thereafter diligently prosecutes the same to completion. If the District defaults hereunder, then Kidango may have by reason of such default all remedies available at law or equity, which includes the remedy of self-help and deduction of reasonable self-repair costs from the pro rata share payments owed.

21. Kidango Indemnification of District.

- a. Except where the losses, costs, damages, expenses, and liabilities (including without limitation court costs and reasonable attorneys' fees) are caused by District's negligence or misconduct, to the fullest extent permitted by law, Kidango ("Indemnifying Party") shall indemnify, defend, release and protect District as well as its Governing Board and Governing Board members, officers, directors, employees, and agents ("Indemnified Party" or "Indemnified Parties") and hold the Indemnified Parties harmless from any and all losses, costs, damages, expenses and liabilities (including without limitation court costs and reasonable attorneys' fees) (collectively "Claims") incurred in connection with or arising from any cause (i) in the use or occupancy by Kidango of the Premises or (ii) in connection with the operations by Kidango at the Premises, including without limiting the generality of the foregoing:
- Any default by Kidango in the observance or performance of any of the terms, covenants or conditions of the Agreement on Kidango's part to be observed or performed;
 - The use or occupancy of the Premises by Kidango of any person claiming by, through or under Kidango or Kidango's employees, agents, contractors, licensees, directors, officers, partners, trustees, visitors or invites, or any such person in, on or about the Premises either prior to, during, or after the expiration of the Term of the Agreement (singularly, "Liability"; collectively,

“Liabilities”); and

- Any claim by a third party that District is responsible for any actions by Kidango in connection with any use or occupancy of the Premises or in any way related to this Agreement.

b. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

22. Insurance.

a. Kidango shall, at Kidango's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Kidango against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Kidango's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Kidango'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 One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and Two Million dollars (\$2,000,000) general aggregate policy limit. In addition, Kidango shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, Kidango 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:

- State the coverage is primary and any coverage by District is in excess thereto;
- Contain a cross liability endorsement; and
- Include a separate endorsement naming District as an additional insured.

b. At least thirty (30) calendar days prior to the expiration of each certificate, and every subsequent certificate, Kidango 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 herein.

c. During the Term, Kidango shall comply with all provisions of law applicable to Kidango with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Kidango's occupancy of the Premises, Kidango shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) calendar days prior written notice to District. If the insurer does not provide such notice, Kidango shall provide the District with notice of cancellation of coverage as soon as it becomes aware of such cancellation.

23. Legal Notice.

a. Any legal notice required or permitted to be given under the Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or

sent by overnight delivery service or email, addressed as follows:

<u>District</u>	<u>Kidango</u>
Joshua R. Daniels	Name: _____
General Counsel	Position/Title: _____
1000 Broadway, Suite 300	Address: _____
Oakland, CA 94607	_____
510-879-8535	Phone: _____
ousdlegal@ousd.org	Email: _____

b. Any notice personally given or sent by email shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) calendar days after deposit in the United States mail.

24. Subcontract, Assignment and Sublease. Kidango shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber the Agreement or sublet all or part of the Premises. Any purported transfer shall be void and shall, at District’s election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.

25. Joint and Several Liability. If Kidango is more than one person or entity, each person or entity shall be jointly and severally liable for the obligations of Kidango hereunder.

26. Relationship.

- a. District and Kidango hereby agree and acknowledge that the relationship between District and Kidango for purposes of this Agreement is solely a landlord/tenant relationship and not a principal/agent relationship or any other relationship. Kidango is acting on its own behalf in operating from the Premises any service thereon and is not operating as an agent of District.
- b. The Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

27. Entire Agreement of Parties. The Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. The Agreement may be amended or modified only by a written instrument executed by both Parties.

28. California Law. The Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of the Agreement shall be maintained in Alameda County.

29. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

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 and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 32. Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified.
- 33. Counterparts and Electronic Signature.** 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.
- 34. Signature Authority.** 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. The District Superintendent is signing this Agreement on behalf of the District in accordance with, separately and together, her authority under Resolution No. 1920-0262 due to the fact that Kidango is seeking to reoccupy the Premises due to the COVID-19 pandemic and her authority under Board Policy 3312; both bases for authority require ratification by the OUSD Governing Board for the Agreement to remain in effect.
- 35. Attorneys’ Fees.** If either Party files any action or brings any proceedings against the other arising out of the Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.
- 36. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

//
//
//
//
//
//
//
//

ACCEPTED AND AGREED on the date(s) indicated below:

Kidango, Inc.

Name: Scott Moore Position: Chief Executive Officer

Signature: 
Scott Moore (Jul 7, 2020 07:38 PDT) Date: 7/7/2020

Oakland Unified School District

Name: _____ Position: _____

Signature: See next page Date: _____

Name: _____ Position: _____

Signature: _____ Date: _____

ACCEPTED AND AGREED on the date(s) indicated below:

Kidango, Inc. See Previous Page

Name: _____ Position: _____

Signature: _____ Date: _____

Oakland Unified School District

Name: Jody London Position: President, Board of Education

Signature:  Date: 8/13/2020

Name: Kyla Johnson Trammell Position: Superintendent and Secretary, Board of Education

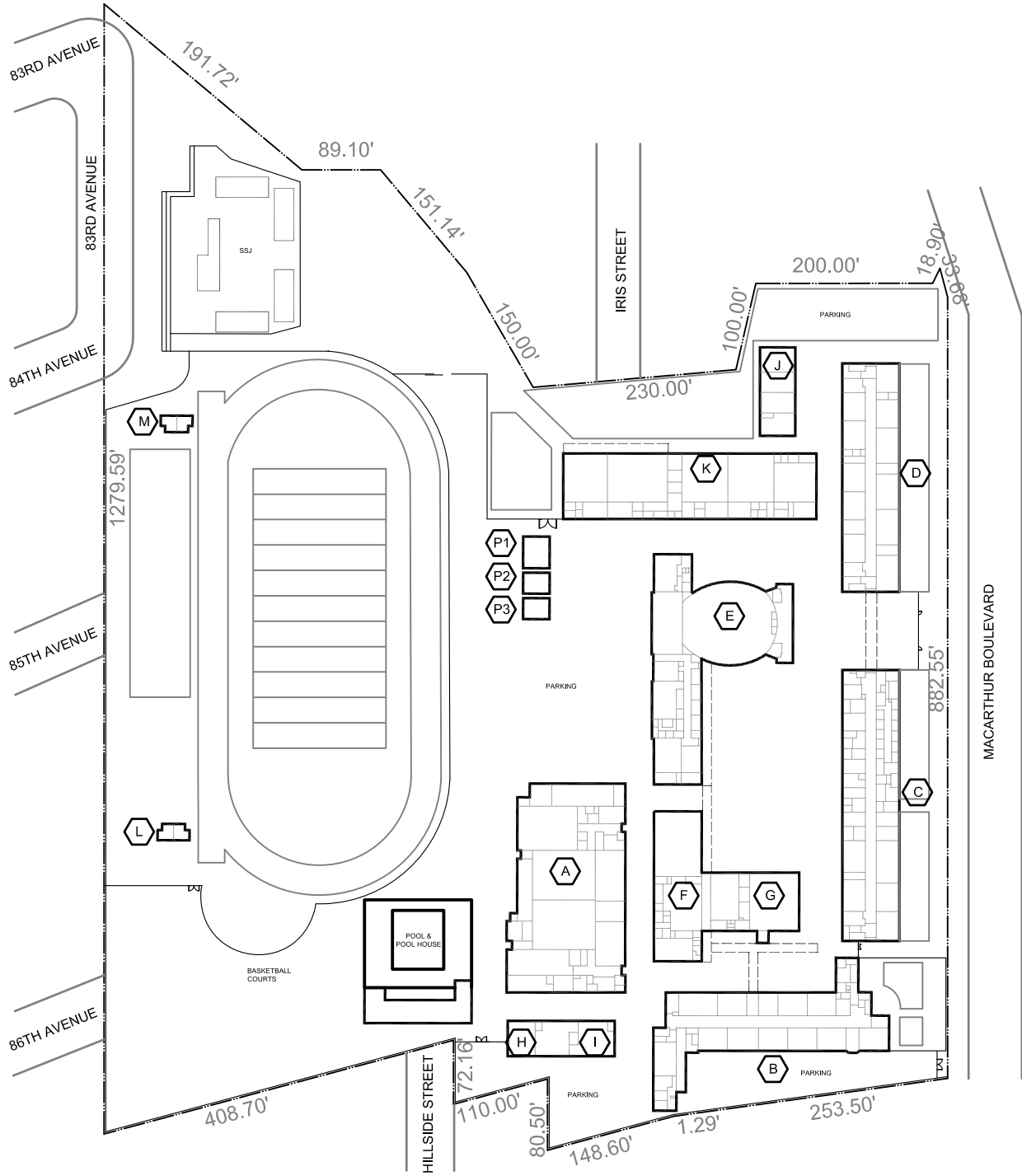
Signature:  Date: 8/13/2020

Approved as to form
Joshua R. Daniels

July 7, 2020



EXHIBIT A



SITE PLAN 301 - CASTLEMONT COMMUNITY OF SMALL SCHOOLS

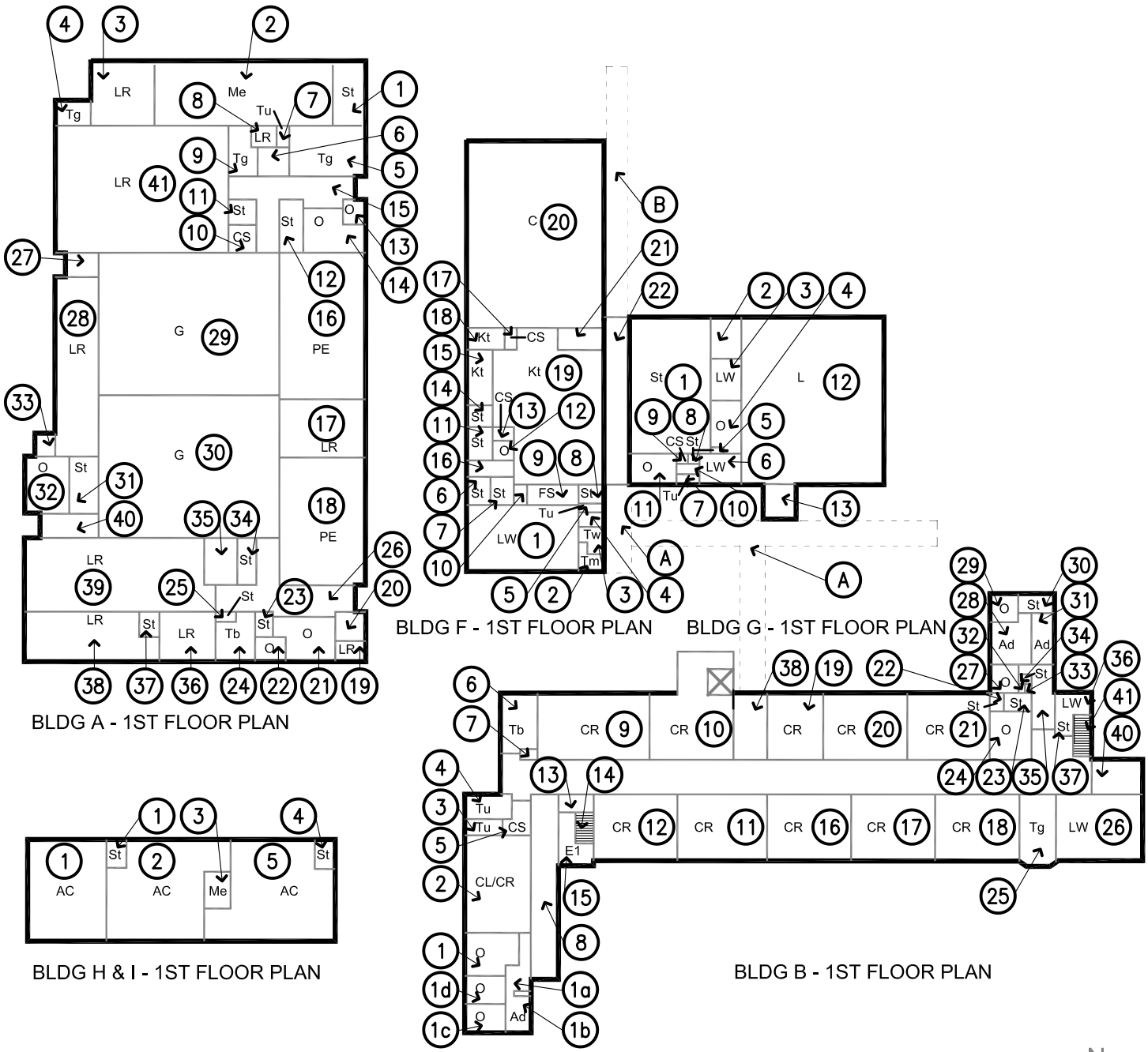
8601 MACARTHUR BOULEVARD, OAKLAND, CA 94605



Date: 1/18/2013

Scale: 1"=180'-0"

EXHIBIT A



BLDG A, B, F, G, H, I - 1ST FLOOR PLAN
301 - CASTLEMONT COMMUNITY OF
SMALL SCHOOLS
 8601 MACARTHUR BOULEVARD, OAKLAND, CA 94605



Date: 1/18/2013

Scale: 1"=60'-0"