

<b>Board Office Use: Legislative File Info.</b>	
File ID Number	21-1568
Introduction Date	6/23/2021
Enactment Number	21-1177
Enactment Date	6/23/2021 os



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tadashi Nakadagawa, Deputy Chief of Facilities  
Jody Talkington, Senior Director of Strategic Projects

**Board Meeting Date** June 30, 2021

**Subject** Joint Use Lease Agreement with Unity Council for Occupancy for the Former Webster CDC located at 7980 Plymouth Street, Oakland

**Action** Approval by the Board of Education of the Joint Use Lease Agreement between the District and Unity Council for occupancy of a portion of the Former Webster Child Development Center (“CDC”) Property.

**Background** On December 9, 2020, by Enactment 20-1803, the Oakland Unified School District (“District”) entered into a binding letter of intent with Unity Council agreeing to enter into a joint use agreement with Unity Council upon confirmation of Unity Council’s receipt of Head Start funding. Unity Council informed District staff by June 1, 2021, that Unity Council will receive the grant from the Office of Head Start as identified in the letter of intent. Thus, triggering the District’s commitment to enter into a Joint Use Lease Agreement with Unity Council.

Unity Council provides services in support of pre-Kindergarten through elementary level students and families. This programming is compatible with the District’s interest in expanding early childhood development programs within the District. Additionally, the program offered by Unity Council compliments the educational program at the adjacent school.

This property and leasing opportunity are made in conformance with the requirements of Education Code §17527. Lease terms are limited to five years (5 years), with options for renewal. Lease terms longer than five years may be considered consistent with tenant expenditure for recreational facilities at the site.

**Discussion**

The Board is being asked to approve a Joint Use Lease Agreement with Unity Council that includes the following terms:

RENT: \$5,000 per month.

TENANT IMPROVEMENTS: Premises to be delivered in its as-is condition. Tenant shall be responsible for all improvements required for Tenant's use of the Premises with Landlord's reasonable consent, including but not limited to, maintenance and improvements to the Building, removal of the existing play structure, construction of fence and gate to create a parking area per the Site Plan.

RENT COMMENCEMENT: Upon Substantial Completion of Tenant Improvements, not to exceed 3 months from the Lease Commencement Date.

TERM: Five (5) years from Rent Commencement.

**Fiscal Impact**

Revenue of \$5,000 per month NNN with Base Rent increasing by three percent (3%) per annum. Tenant to be responsible for maintenance, utilities, and applicable taxes and insurance.

**Attachments**

- Joint Use Lease Agreement
- Letter of Intent (Enactment 20-1803)

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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools, Thriving Students*

**JOINT USE AGREEMENT  
WEBSTER CHILD DEVELOPMENT CENTER**

This Joint Use Agreement (“Agreement”) is made June 24, 2021, by and between the Oakland Unified School District and, a California public school district (“District”) and Unity Council, a non-profit Social Equity Development Corporation (“Tenant”), herein referred to individually as “Party” and collectively as “Parties”).

RECITALS

WHEREAS, Tenant requires space for operation of an infant-toddler child care program for children of the Oakland community, including children who reside outside of Oakland but are eligible to enroll in the District, consistent with the program specifications provided in Exhibit A attached hereto and made a part of this Agreement; and

WHEREAS, District has available space on its property located at former Webster Child Development Center, located at 7980 Plymouth St. Oakland, California, as depicted in Exhibit “B” attached hereto and made a part of this Agreement (“Property”); and

WHEREAS, District desires to allow Tenant to use a certain portion of the Property as more specifically shown in Exhibit “C” attached hereto and made a part of this Agreement (“Premises”) for operation of its Program; and

WHEREAS, pursuant to section 17527, et seq., of the California Education Code, District is authorized to rent or lease its property via a joint use agreement “to make vacant classrooms or other space in operating school buildings available . . . to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals ...”; and

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

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

## AGREEMENT TERMS

### Section 1. Title to Property.

The Parties acknowledge that title to the Property, including the Premises and Improvements thereon, is held by District.

### Section 2. Use of Property.

District agrees to allow use of the Premises and portions of the Property by Tenant for the operation of Tenant's Program, more specifically described in Exhibit "A". Tenant shall not use, or permit the Premises or Property to be used, for any purpose other than for operation of Tenant's Program as specified in the Agreement. Tenant shall have non-exclusive use of the portions of the Property described and shown on Exhibit "B" and exclusive use of the Premises described and shown on Exhibit "C" at all times as set forth herein to administer and operate the Program, subject to modification by the Parties. The Improvements consist of the portable building and appurtenant fixtures set forth and depicted in Exhibit "C".

### Section 3. Custodial Services, Maintenance, and Repairs.

Tenant shall provide custodial services, maintenance and repairs to the Premises. Tenant shall maintain the Premises in a safe condition in conformance with all laws, rules, and regulations applicable to the use of the Premises by Tenant or District. Tenant shall cause all garbage, recyclables, and other debris emanating from the Premises to be removed to such reasonable locations and spaces as may be specified by District from time to time during hours and subject to such reasonable controls as may be established by District. If District provides custodial services, maintenance and/or repairs, Tenant shall pay District for those services within thirty (30) days of receipt of an invoice from District. District shall have no maintenance or repair obligations with respect to the Premises, and Tenant hereby expressly waives the provisions of California Civil Code sections 1932(1), 1941, and 1942, including all rights to make repairs at the expense of District.

### Section 4. Utilities and Security.

Tenant shall be responsible for and fully and promptly pay all utilities and services to and for the Premises, which may include water, gas, electricity, telephone, internet, and other data transmission and communication lines and service, security service, sewage fees, janitorial, trash-pick up, as well as the removal of garbage and rubbish from the Premises. Tenant shall be responsible for security of the Premises at all times, including locking all windows and doors of the Premises when not in use.

### Section 5. Term.

The term of this Agreement shall commence on July 1, 2021, and shall remain in effect for five (5) years, if not sooner terminated pursuant to the terms of this Agreement, ending on June 30, 2026, at 11:59 p.m. ("Term"). Tenant agrees to yield and peaceably deliver possession of the Premises to District on the date of expiration of Term of the Agreement or earlier termination of this Agreement, whatsoever the reason for such termination.

#### Section 6. Renewal.

The Long Term Joint Use Agreement (“Agreement”) may be renewed for additional five (5) year terms (“Renewed Terms”) upon the mutual written agreement of the Parties. If either Party wishes to renew the Agreement for the Renewed Term, it shall notify the other Party in writing at least ninety (90) days before the expiration of the Term. Prior to the Renewed Term, the District shall make the findings required by Education Code section 17529.

#### Section 7. Rent.

For and in consideration of the use of the Premises and the Property for the Term of the Agreement, Tenant agrees to pay District monthly payments of Five-Thousand-Dollars (\$5,000.00) for a total of Sixty-Thousand-Dollars (\$60,000.00) per year (“Rent”). The first Rent payment shall be due upon Tenant’s completion of property improvements, not to exceed three (3) months from the effective date of this Agreement. Rent shall be thereafter due on or before the first day of each month of each and every year of the Term of the Agreement.

Tenant shall pay a security deposit of \$6,000 due prior to occupancy.

- A. Annual Adjustment. The annual Rent shall be adjusted annually by no more than three percent (3%).
- B. Notification. District shall notify Tenant of the adjusted annual Rent, to be calculated as provided by this Section, by July 1 of each year. Increases in annual Rent shall not require an amendment to the Agreement.
- C. Interest. Each monthly rental payment shall bear interest if not paid promptly on the date it becomes due as specified in this Section at the rate of ten percent (10%) or the maximum allowed by law per annum from the date it became due until it is paid by Tenant to District.
- D. Place of Payment. All Rent that becomes due and payable under the Joint Use Agreement shall be paid to District at the District’s Office located at Office of the Controller, 1000 Broadway Suite 450, Oakland, CA 94607, or any other place or places that District may designate by written notice to Tenant.
- E. Renewed Term Rent. For the Renewed Term, if any, Rent shall be assessed at the then-current fair market rent for the Premises as determined by District, and shall be subject to the annual adjustments and interest set forth above. District shall notify Tenant of the monthly amount of Renewed Term Rent to be charged at least 120 days before the expiration of the Term.

#### Section 8. Condition of Premises.

The Premises and leased portions of the Property are leased to Tenant on an “as is” basis. District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises. By entry into and taking possession of the Premises pursuant to this Joint Use Agreement, Tenant shall accept the Premises/Property as being in good and sanitary order, condition, and repair and accepts the Premises/Property in the condition existing as of the commencement date of the Agreement. Tenant acknowledges that

neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises/Property for the conduct of Tenant's Program. Any statement, agreements, warranties, or representations not expressly contained herein shall in no way bind District, and Tenant expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in the Agreement.

#### Section 9. Tenant Improvements or Alterations.

Tenant shall not construct or cause to be constructed on the Premises or Property any improvements or alterations of any kind without the prior written approval of District. Tenant shall, at its own expense, obtain all necessary environmental and governmental approvals and permits, including, without limitation, any necessary approvals from the City of Oakland, and any local authority including any site, grading, zoning, design review, and other required permits or approvals, if applicable, prior to commencing construction, and shall provide District with evidence of approval by all applicable governmental agencies. All contractors and subcontractors of Tenant, if any, shall be duly licensed in the State of California by the Contractor's State License Board and properly registered as a public works contractor by the Department of Industrial Relations as required by law, and shall pay all workers prevailing wage in compliance with California Labor Code section 1770, et seq., and Title 8 of the California Code of Regulations, as required. Tenant shall be solely responsible for maintaining the Premises and improvements installed thereon during the term of the Agreement, including any extensions, and while otherwise occupying the Premises, and for compliance with all applicable laws, ordinances, rules and regulations.

#### Section 10. Termination.

##### A. Termination for Convenience.

1. District shall have the right to terminate this Agreement, without liability on the part of District except as otherwise provided herein, by giving Tenant written notification at least ninety (90) days' prior to the effective date of the termination.
2. Tenant shall have the right to terminate this Agreement, without liability on the part of Tenant except as otherwise provided herein, by giving District written notification at least ninety (90) days' prior to the effective date of the termination.
3. Neither Party shall be required to provide just cause for termination for convenience in the written notification.

B. Termination for Cause. Either Party may terminate the Agreement immediately after the expiration of any applicable cure period for cause. Cause shall include, without limitation the following and the Parties shall have the cure periods provided below:

1. Material violation of the Agreement by either Party if such violation shall continue for ten (10) days after written notice is given by either Party to the other Party of such violation; or
2. If, in the reasonable judgment of District, Tenant's acts or omissions: (i) jeopardize the safety

of the District students or represent an immediate threat to the health, welfare or safety of District's students, staff, or the public; or (ii) violate applicable laws, codes, rules, regulations, or ordinances; or (iii) subject or expose District and/or its Board of Trustees ("Board") to liability to others for personal injury or property damage; or (iv) interferes with the educational programs or activities conducted on the Property or the adjacent East Oakland Pride Elementary School; or (v) unduly disrupts the residents of the surrounding neighborhood, then District shall have the right, in its sole discretion, to terminate this Agreement immediately, unless, at District's sole option, Tenant cures such default within twenty-four (24) hours of notice of termination; or

3. Tenant is adjudged bankrupt, Tenant makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Tenant's insolvency.

C. Restoration of Premises. Upon expiration or earlier termination of this Agreement, Tenant shall be responsible for restoring the Premises, and other portions of the Property that were affected by Tenant's occupancy of the Premises, to its condition that existed on the date of Tenant's first occupancy with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on District's title, unless otherwise approved by the District, in writing, prior to construction.

D. No Limitation of Rights. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District or Tenant.

#### Section 11. Title to and Removal of Tenant's Equipment.

Title to Tenant's equipment, personal property, and/or chattels ("Tenant's Equipment") on the Premises shall be held solely by Tenant. All of Tenant's Equipment shall remain the personal property of Tenant and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination hereof, Tenant shall remove Tenant's Equipment, at its sole expense. Tenant shall repair any damage to the Premises, caused by said removal and restore the Premises to good condition, less ordinary wear and tear.

In the event that Tenant fails to timely remove Tenant's Equipment, District, upon fifteen days written notice, may, without liability on the part of District to Tenant or any person or entity claiming under Tenant, either (1) accept ownership of Tenant's Equipment with no cost to the District, or (2) remove and/or dispose of Tenant's Equipment at Tenant's sole cost. In the event that the District chooses to accept ownership of Tenant's Equipment, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Equipment to District. If Tenant fails to execute any such necessary documents, Tenant hereby authorizes District's Superintendent to execute those documents on Tenant's behalf. In the event that the District removes and/or disposes of Tenant's Equipment, Tenant shall pay all costs for the removal and/or disposal of Tenant's Equipment within thirty (30) days of receipt of an invoice.

#### Section 12. Destruction.

- A. If the Premises or the Property is damaged or destroyed so as, in District's judgment, to hinder Tenant's normal operations, Rent shall abate in proportion to the loss of use from the date such damage or destruction occurs until Tenant is able to commence normal operations.
- B. District and Tenant waive any statutory rights to terminate the Agreement on account of damage or destruction as set forth above.

Section 13. Licenses & Permits; Program Staffing & Background Verification.

Tenant warrants and represents that it is duly authorized and properly licensed by the California Department of Social Services ("CDSS"), and any other applicable federal, state, or local agency, to administer and operate its Program, and holds a current and active "School Age Day Care Center" license issued by CDSS for Tenant's Program at the Property. Tenant shall be solely responsible for obtaining and maintaining for the Term of the Agreement all necessary permits, licenses, and approvals from any and all applicable federal, state, local or other regulatory agencies related to the operation of its Program or otherwise connected to Tenant's use of the Premises, including without limitation, use permits and compliance with the California Environmental Quality Act ("CEQA"), and shall comply at all times with any and all legal requirements for providing such its Program on the Premises and Property, as permitted herein. At District's request, Tenant shall provide copies of relevant license(s), permit(s), accreditation(s), and/or certification(s) to District.

Tenant shall be solely responsible for the administration and operation of its Program, including the hiring of all employees. Prior to commencement of its Program, Tenant shall complete the Fingerprinting/Criminal background verification certificate upon execution of the Long Term Joint Use Agreement and shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1 or as otherwise may be required by CDSS or any other federal, state, or local governmental entity or regulatory agency. Tenant shall provide to District written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements prior to each individual's commencement of employment or participation in any Tenant activity. Tenant shall not allow any person for whom the District has not received satisfactory written verification of compliance to enter the Property for any purpose related to or arising out of the Agreement at any time that District pupils may be present or otherwise have contact with District pupils.

Section 14. Prohibited Uses.

The following uses and types of activities are prohibited on the Premises and Property: (1) Any use or activity which involves the possession, service, consumption, and/or sale of alcoholic beverages, illegal drugs, intoxicants, narcotics, tobacco products, and/or any other restricted substances; (2) Any use or activity which involves gambling, the conducting of games of chance, or any sale by auction upon the Premises or Property; (3) Any use or activity which is inconsistent with the use of the Premises and Property for childcare services, the use of the Property for school purposes, or which otherwise interferes with school or District activities or the regular conduct of schoolwork; (4) Any use or activity which is discriminatory against any group or individual protected under state or federal antidiscrimination laws or District policy; (5) Any use



or activity that includes fighting, quarrelling, abusive language or noise, which may be offensive to other uses, activities, or the neighborhood; (6) Any use or activity which involves the commission of any crime or which is prohibited by or in violation of any applicable federal, state, or local law, rule, regulation, requirement, or ordinance, including District's Board Policies and Administrative Regulations; (7) Any use or activity that would unduly disrupt the residents in the surrounding neighborhood; (8) Any use or activity that would jeopardize the safety of students or children of Tenant's Program; (9) Any use or activity in or about the Premises or Property that may cause an increase in the existing rate of insurance upon the Premises or Property or cause the cancellation of any insurance policy covering the Premises or Property; (10) Any use or activity that would cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises or Property; (11) Any use or activity which is inimical or contrary to public morals, good manners, taste and/or welfare or which is morally objectionable as unsuitable for a public educational facility; and (12) Any use or activity which involves the possession, use, or storage of explosive materials, including fireworks, or related items which may be prohibited by the standard form of fire insurance policies or which otherwise is prohibited by the fire marshal.

Additionally, firearms, including, without limitation, pellet guns, BB guns, sling shots, knives, and other weapons are prohibited on the Premises and Property. No animals are allowed on the Premises or Property, except for certified service animals or unless otherwise required by law. Tenant shall comply with the District-wide policy prohibiting the use of tobacco products, including e-cigarettes, on the Premises and the Property at all times. Tenant agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Program, Premises or use of the Premises and/or Property. Tenant shall not commit or suffer to be committed, any waste upon the Premises or Property, or allow the Premises or Property to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Premises or Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property or Premises except in trash containers designated for that purpose.

#### Section 15. Hold Harmless/Indemnification.

To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its Board and members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement, Tenant's Program, or from any activity, work, or thing done, permitted, or suffered by Tenant, its agents, contractors, employees, representatives, officers, servants, tenants, concessionaires, or volunteers in conjunction with the performance of the Agreement or operation of Tenant's Program, unless caused wholly by the sole negligence or willful misconduct of District; and in case any action or proceeding be brought against District, Tenant, upon notice from District, shall defend the same at Tenant's expense by counsel approved in writing by District.

#### Section 16. Insurance.

- A. Commercial General Liability Insurance. Tenant shall, during the Term of the Agreement, maintain in force, a combined, single-limit liability commercial general insurance policy in the amount of not less than two million dollars (\$2,000,000) with District, its Board, employees and agents, at Tenant's expense, named as additional insureds under such policy. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of the Agreement, upon each policy renewal and upon request of District during the Term of the Agreement.
- B. Auto Insurance. Tenant shall, during the Term of the Agreement, maintain in force, a comprehensive auto liability policy naming District, its Board, employees and agents, at Tenant's expense, as additional insured's under such policy. The policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant agrees to provide District in advance a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of the Agreement, upon renewal of each policy and upon request of District during the Term of the Agreement.
- C. Workers' Compensation Insurance. During the Term of the Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of the Agreement and Tenant's occupancy of the Premises, Tenant 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) days prior written notice to District.
- D. Tenant's Equipment (Personal Property) Insurance. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's Equipment, property or any improvements made by Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Tenant 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 Tenant's property.
- E. Other. Each insurance policy required by the Agreement shall: (i) not be cancelled, limited in scope of coverage or non-renewed until after thirty (30) days written notice has been given to District; and (ii) contain a clause waiving all rights of subrogation against District, its Board, members of the Board, and elective or appointive officers or employees, when acting within the scope of their employment or appointment. The Parties agree that any insurance maintained by District will apply in excess of, and not contribute with insurance provided by the policies required by the Agreement. Tenant agrees that if the premium on District's basic fire insurance policy covering the premises is increased as a result of Tenant's use of the Premises, Tenant shall reimburse District for the additional premium amount within thirty (30) days of receipt of notice from District.

Section 17. Cooperation with Other Occupants of the Property, District, & Regulatory Agencies.

It is understood and recognized by Tenant that the Property, of which the Premises is a part, will be used by other parties, including District, and Tenant shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, and security measures, etc. Without limitation, Tenant acknowledges and understands that the City of Oakland Parks and Recreation operates an after-school recreation program for children in grades 1 through 5 on the Property.

Tenant shall cooperate with any and all federal, state, or local governmental entities or regulatory agencies in connection with Tenant's operation of its Program or use of the Premises or Property, including, without limitation, DSA, CDSS, the City of Oakland, the County of Alameda, the California Fair Employment Practices Commission, the California Department of Industrial Relations, and the California Department of Justice.

Section 18. Notice.

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

OAKLAND UNIFIED SCHOOL DISTRICT  
1000 Broadway, Suite 300  
Oakland, CA 94607  
Attn: Office of the General Counsel  
Phone: 510 879 3535

UNITY COUNCIL  
1900 Fruitvale Ave. #2a  
Oakland, CA 94601  
Attn: Luis Arenas  
Phone: 510 535 6900  
Facsimile: 510 534 7771

Any notice personally given or sent by facsimile transmission 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 five (5) days after deposit in the United States mail.

Section 19. Sublease and Assignment.

Tenant shall not assign its rights, duties or privileges under the Agreement, nor shall Tenant sublease or attempt to confer any of its rights, duties or privileges under the Agreement on any third party, without the written consent of District. Any such attempt without District written consent shall be void.

Section 20. Independent Status.

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. Tenant shall be solely responsible for its own Workers' Compensation insurance and other required insurance policies, taxes, and other similar charges or obligations. Tenant shall be liable for its own actions and inactions, including its negligence or gross negligence, and shall be

liable for the acts, omissions, or errors of its employees, agents, officers, trustees, or representatives.

Section 21. Entire Agreement of Parties.

This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior discussions, negotiations, memorandums of understanding, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 22. California Law.

This 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 this Agreement shall be maintained in Alameda County, California.

Section 23. Attorneys' Fees.

In the event of any dispute under this Agreement, or the default by any Party of that Party's obligations hereunder, then the prevailing Party shall be entitled to recover, in addition to all other sums which may be due under the terms of this Agreement, all costs of suit, including reasonable attorneys' fees.

Section 24. 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.

Section 25. Successors and Assigns.

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

Section 26. Counterparts.

This Agreement and all amendments and supplements may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 27. Captions.

The captions contained in the Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 28. Severability.

Should any provision of the Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

Section 29. Incorporation of Recitals and Exhibits.

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

Section 30. Non-Discrimination.

Tenant and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, gender identification, national origin or physical handicap. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, gender identification, age, national origin or physical handicap. Tenant covenants to meet all requirements of District pertaining to non-discrimination in employment. If Tenant is found in violation of the non-discrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under the Agreement by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of the Agreement.

Section 31. Inspection.

District's employees and agents shall have the right at all reasonable times upon reasonable prior written notice to Tenant to inspect the Premises to determine if the provisions of the Agreement are being complied with.

Section 32. Taxes and Assessments.

It is understood and agreed that all taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen as well as foreseen of any kind or nature whatsoever, which during the Term of the Agreement become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, or which Tenant is otherwise required to pay hereunder, shall be the full responsibility of Tenant, and Tenant shall pay all sums prior to delinquency. Tenant is responsible for any interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, along with all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of the Agreement. In the event of nonpayment by Tenant, District shall have all the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent. This provision shall survive the expiration or earlier termination of the Agreement.

Section 33. Authority.

Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and this Agreement is valid and an agreement binding on such Party and is enforceable in accordance with its terms.

Section 34. Reservation of Rights.

The Premises are accepted as is and where is by Tenant subject to any and all existing easements and encumbrances. District reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; data cables; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. District also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the Premises. Notwithstanding the foregoing, no rights reserved by District in this clause shall be so exercised as to interfere unreasonably with the use and operation of the Premises by Tenant as permitted under the terms of this Agreement.

Section 35. Construction-Related Accessibility Standards.

Pursuant to Civil Code section 1938, District states that the Premises and Property leased hereunder have not undergone inspection by a Certified Access Specialist (CASp).

Section 36. Coronavirus/COVID-19.

Tenant 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/sanitation (or similar) requirements. District reserves the right to request documentation of compliance with any applicable Order and Tenant 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, Tenant shall comply with District's interpretation of any applicable Order.

Section 37. Contract Contingent on Governing Board Approval.

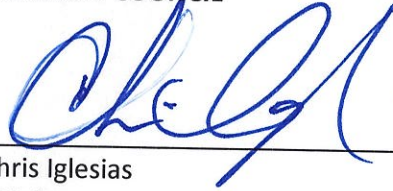
OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board.

[SIGNATURES TO FOLLOW]

In witness whereof, the Parties hereto have executed this Agreement.

Legislative File	
File ID Number:	21- 1568
Introduction Date:	6/23/2021
Enactment Number:	21-1177
Enactment Date:	6/23/2021
By:	os

**THE UNITY COUNCIL**



Chris Iglesias  
Chief Executive Officer

6/10/21

Date

Approved as to form



Deputy General Counsel

**OAKLAND UNIFIED SCHOOL DISTRICT**



Shanthi Gonzales  
President, Board of Education



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

Exhibit A



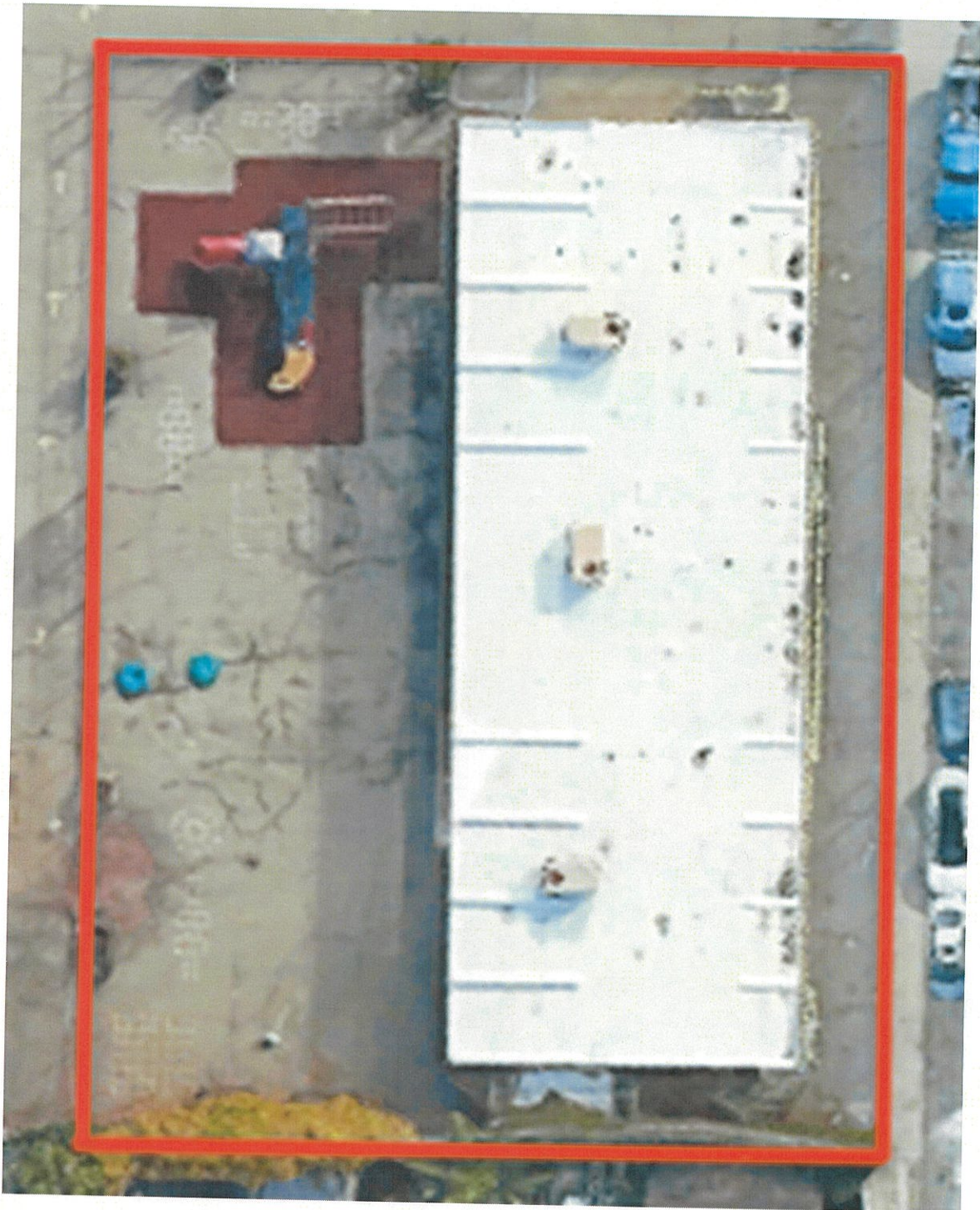
The Unity Council

Child Development Center—Program Description

7980 Plymouth St

The Child Development Center located at 7980 Plymouth St. will be a 0-5 center. It will consist of 16 Early Head Start slots for children ages 6 months to 3 years of age, and 16 Head Start slots for children ages 3-5 years of age. The program will be funded by Office of Head Start and will meet the high quality standards of child development required by Head Start. Additionally, as a low-income program, all children and families enrolled in the program will be families classified as low-income, according to Federal poverty guidelines. Families will not be charged for families enrolled in the program. The program will offer up to 8 hours of service for working families as needed.

Exhibit B



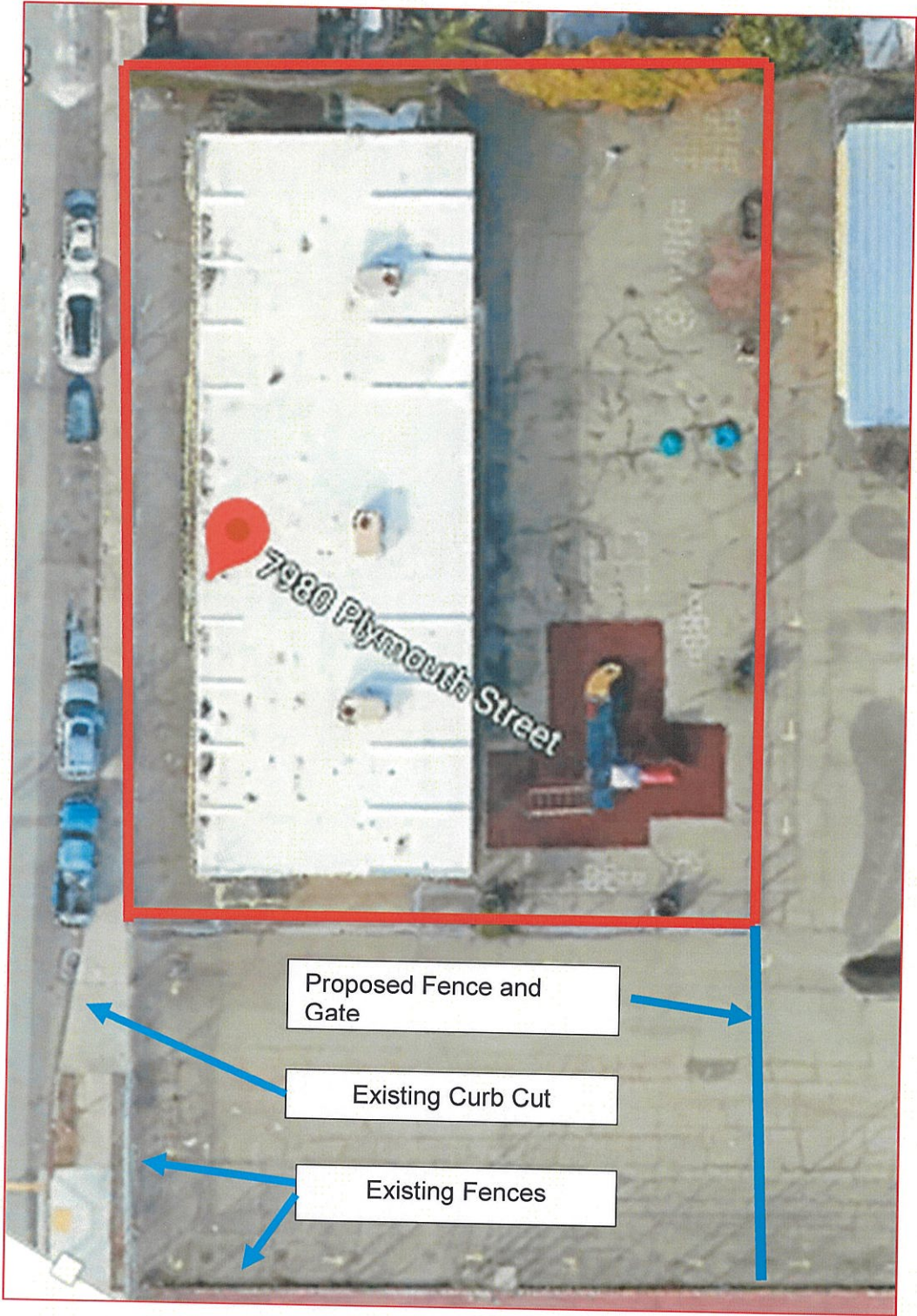
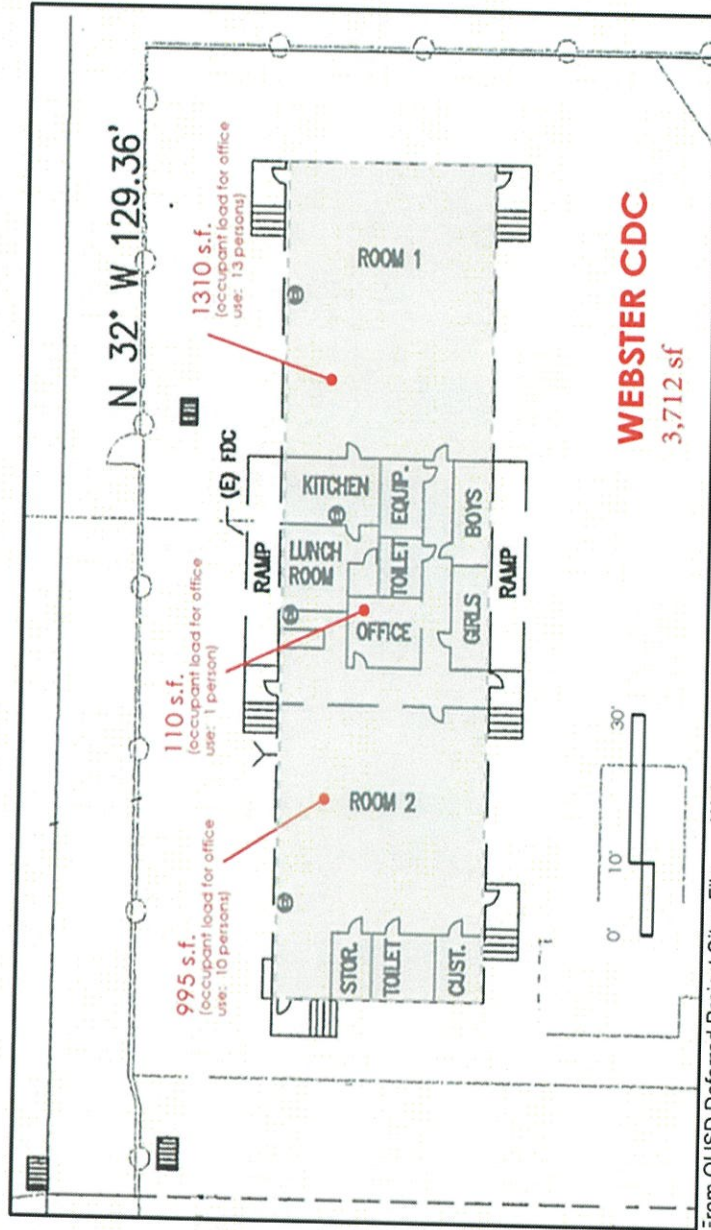


Exhibit C



from OUSD Deferred Project Sites File Webster CDC Floor Plan

Board Office Use: Legislative File Info.	
File ID Number	20-2390
Introduction Date	12/9/2020
Enactment Number	20-1803
Enactment Date	12/9/2020 ER



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tadashi Nakadagawa, Interim Deputy Chief of Facilities  
Jody Talkington, Senior Director of Strategic Projects

**Board Meeting Date** December 9, 2020

**Subject** Letter of Intent- Unity Council for Occupancy of the Former Webster CDC (7980 Plymouth St) via a Joint Use Lease Agreement

**Action** Approval by the Board of Education of the Letter of Intent with The Unity Council for occupancy of the Former Webster CDC Property and mutual intent to enter into a Joint Use Lease Agreement.

**Background** The Oakland Unified School District (“District”) is seeking a Joint Lease tenant for the former Webster Child Development Center. The Unity Council provides services in support of pre-Kindergarten through elementary level students and families. This programming is compatible with and complement the educational program at the adjacent school.

This property and leasing opportunity are made in conformance with the requirements of Education Code §17527. Lease terms are limited to five years (5 years), with options for renewal. Lease terms longer than five years may be considered consistent with tenant expenditure for recreational facilities at the site.

**Discussion** The Board is being asked to approve a Letter of Intent with The Unity Council that includes:

A Long Term Joint Occupancy Lease shall be entered into upon Unity Council's confirmation of receipt of funds designated or appropriated to Tenant to pay for the Lease, by the Office of Head Start funding. Tenant is seeking a grant from the Office of Head Start and will submit a funding application by January 5, 2021. Announcement of grant funds will be made in Spring 2021 with notice of funding/contingency not to extend beyond June 1, 2021. District agrees to enter into Long Term Joint Use Agreement when Unity Council is awarded Head Start funding.

It is expressly understood by both parties that this proposal is binding and is intended only to outline the basic terms and conditions under which both parties would enter into a Joint Use Lease Agreement of the Premises after Unity Council confirms receipt of the funding required to enter into a Joint Use Lease Agreement. The Lease agreement for the Premises between the Parties shall incorporate the general provisions as may be agreed to by the Parties and will be contingent upon Oakland Unified School District Board approval.

RENT: \$5,000 per month.

TENANT IMPROVEMENTS: Premises to be delivered in its as-is condition. Tenant shall be responsible for all improvements required for Tenant's use of the Premises with Landlord's reasonable consent, including but not limited to, maintenance and improvements to the Building, removal of the existing play structure, construction of fence and gate to create a parking area per the Site Plan.

RENT COMMENCEMENT: Upon Substantial Completion of Tenant Improvements, not to exceed 3 months from the Lease Commencement Date.

TERM: Five (5) years from Rent Commencement.

**Fiscal Impact**

\$5,000 per month NNN with Base Rent increasing by three percent (3%) per annum. Tenant to be responsible for maintenance, utilities, and applicable taxes and insurance.

**Attachment**

Letter of Intent

Legislative File Info.	
District	20-2390
Effective Date	12/9/20
Assembly Bill	20-1803
Effective Date	12/9/2020 ER



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools, Thriving Students*

**LETTER OF INTENT: UNITY COUNCIL LONG-TERM JOINT USE AGREEMENT  
AT WEBSTER CHILD DEVELOPMENT CENTER**

This binding letter of intent, subject to approval by the Board of Education of Oakland Unified School District (the “District”) memorializes the mutual intent of the District and Unity Council, a non-profit Social Equity Development Corporation (“Tenant,” together with District, “Parties”) to negotiate and enter into a prospective Joint Use Agreement between the District and Unity Council for the use of space more fully described herein as Webster Child Development Center (“CDC”) located at 7980 Plymouth Street, Oakland, CA.

RECITALS

WHEREAS, Tenant requires space for operation of an infant-toddler child care program for children of the Oakland community, including children who reside outside of Oakland but are eligible to enroll in the District; and

WHEREAS, District has available space on its property located at former Webster Child Development Center, 7980 Plymouth St. Oakland, California, as depicted in Exhibit “A” attached hereto and made a part of this Agreement (“Property”); and

WHEREAS, District desires to allow Tenant to use a certain portion of the Property as more specifically shown in Exhibit “B” attached hereto and made a part of this Agreement (“Premises”) for operation of its Program; and

WHEREAS, pursuant to section 17527, et seq., of the California Education Code, District is authorized to rent or lease its property via a joint use agreement “to make vacant classrooms or other space in operating school buildings available . . . to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals ...”; and

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

WHEREAS, Tenant made a written counter dated November 2, 2020 (incorporated herein by reference) setting forth the terms of a Long Term Joint Use Agreement (“Agreement”) and Parties desire to enter a Long Term Joint Use Agreement; and

WHEREAS, Tenant will apply for grant funding that will enable Tenant to satisfy its financial responsibility under the terms of a Long Term Joint Use Agreement (“Agreement”) and Parties desire to enter a Long Term Joint Use Agreement when of funds designated or appropriated to Tenant to pay for the Lease by the Office of Head Start funding are secured; and

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and Tenant agree as follows in this Letter of Intent:

### AGREEMENT TERMS

#### Section 1. Title to Property.

The Parties acknowledge that title to the Property, including the Premises and Improvements thereon, is held by District.

#### Section 2. Use of Property.

District agrees to allow use of the Premises and portions of the Property by Tenant for the operation of Tenant’s Program, more specifically described in Exhibit “A”. Tenant shall not use, or permit the Premises or Property to be used, for any purpose other than for operation of Tenant’s Program as specified in the Agreement. Tenant shall have non-exclusive use of the portions of the Property described and shown on Exhibit “B” and exclusive use of the Premises described and shown on Exhibit “C” at all times as set forth herein to administer and operate the Program, subject to modification by the Parties. The Improvements consist of the portable building and appurtenant fixtures set forth and depicted in Exhibit “C”.

#### Section 3. Custodial Services, Maintenance, and Repairs.

Tenant shall provide custodial services, maintenance and repairs to the Premises. Tenant shall maintain the Premises in a safe condition in conformance with all laws, rules, and regulations applicable to the use of the Premises by Tenant or District. Tenant shall cause all garbage, recyclables, and other debris emanating from the Premises to be removed to such reasonable locations and spaces as may be specified by District from time to time during hours and subject to such reasonable controls as may be established by District. If District provides custodial services, maintenance and/or repairs, Tenant shall pay District for those services within thirty (30) days of receipt of an invoice from District. District shall have no maintenance or repair obligations with respect to the Premises, and Tenant hereby expressly waives the provisions of California Civil Code sections 1932(1), 1941, and 1942, including all rights to make repairs at the expense of District.

#### Section 4. Utilities and Security.

Tenant shall be responsible for and fully and promptly pay all utilities and services to and for the Premises, which may include water, gas, electricity, telephone, internet, and other data transmission and communication lines and service, security service, sewage fees, janitorial, trash-pick up, as well as the removal of garbage and rubbish from the Premises. Tenant shall be responsible for security of the Premises at all times, including locking all windows and doors of the Premises when not in use.



#### Section 5. Term.

The Parties agree to execute a Long Term Joint Use Agreement (“Agreement”) upon Unity Council’s receipt of the Office of Head Start grant funding necessary to honor the financial responsibilities identified in a Long Term Joint Use Agreement. The obligation to enter into a long term joint use agreement under this Letter of Intent shall expire on June 1, 2021. Unity Council must confirm award of grant funding to trigger the District’s obligation to enter into a Long Term Joint Use Agreement (“Agreement”). Any joint use agreement entered into under the terms of this Letter of Intent shall commence no later than July 1, 2021, and shall remain in effect for five (5) years, if not sooner terminated pursuant to the terms of the long term joint use agreement (“Term”). Tenant agrees to yield and peaceably deliver possession of the Premises to District on the date of expiration of Term of the Agreement or earlier termination of this Agreement, whatsoever the reason for such termination.

#### Section 6. Renewal.

The Long Term Joint Use Agreement (“Agreement”) may be renewed for additional five (5) year terms (“Renewed Terms”) upon the mutual written agreement of the Parties. If either Party wishes to renew the Agreement for the Renewed Term, it shall notify the other Party in writing at least ninety (90) days before the expiration of the Term. Prior to the Renewed Term, the District shall make the findings required by Education Code section 17529.

#### Section 7. Rent.

For and in consideration of the use of the Premises and the Property for the Term of the Agreement, Tenant agrees to pay District monthly payments of Five-Thousand-Dollars (\$5,000.00) for a total of Sixty-Thousand-Dollars (\$60,000.00) per year (“Rent”). The first Rent payment shall be due upon Tenant’s completion of property improvements, not to exceed three (3) months from the effective date of the Long Term Joint Use Agreement. Rent shall be thereafter due on or before the first day of each month of each and every year of the Term of the Agreement. Tenant shall pay a security deposit of \$6,000 due prior to occupancy.

Annual Adjustment. The annual Rent shall be adjusted annually by no more than three percent (3%).

Notification. District shall notify Tenant of the adjusted annual Rent, to be calculated as provided by this Section, by July 1 of each year. Increases in annual Rent shall not require an amendment to the Agreement.

Interest. Each monthly rental payment shall bear interest if not paid promptly on the date it becomes due as specified in this Section at the rate of ten percent (10%) or the maximum allowed by law per annum from the date it became due until it is paid by Tenant to District.

Place of Payment. All Rent that becomes due and payable under the Long Term Joint Use Agreement shall be paid to District at District’s office, located at 1000 Broadway Suite 300, Oakland, CA 94607, or any other place or places that District may designate by written notice to Tenant.

Renewed Term Rent. For the Renewed Term, if any, Rent shall be assessed at the then-current fair market rent for the Premises as determined by District, and shall be subject to the annual adjustments and interest set forth above. District shall notify Tenant of the monthly amount of Renewed Term Rent to be charged at least 120 days before the expiration of the Term.

#### Section 8. Condition of Premises.

The Premises and leased portions of the Property are leased to Tenant on an “as is” basis. District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises. By entry into and taking possession of the Premises pursuant to the Long Term Joint Use Agreement, Tenant shall accept the Premises/Property as being in good and sanitary order, condition, and repair and accepts the Premises/Property in the condition existing as of the commencement date of the Agreement. Tenant acknowledges that neither the District nor District’s agents have made any representation or warranty as to the suitability of the Premises/Property for the conduct of Tenant’s Program. Any statement, agreements, warranties, or representations not expressly contained herein shall in no way bind District, and Tenant expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in the Agreement.

#### Section 9. Tenant Improvements or Alterations.

Tenant shall not construct or cause to be constructed on the Premises or Property any improvements or alterations of any kind without the prior written approval of District. Tenant shall, at its own expense, obtain all necessary environmental and governmental approvals and permits, including, without limitation, any necessary approvals from the City of Oakland, and any local authority including any site, grading, zoning, design review, and other required permits or approvals, if applicable, prior to commencing construction, and shall provide District with evidence of approval by all applicable governmental agencies. All contractors and subcontractors of Tenant, if any, shall be duly licensed in the State of California by the Contractor’s State License Board and properly registered as a public works contractor by the Department of Industrial Relations as required by law, and shall pay all workers prevailing wage in compliance with California Labor Code section 1770, et seq., and Title 8 of the California Code of Regulations, as required. Tenant shall be solely responsible for maintaining the Premises and improvements installed thereon during the term of the Agreement, including any extensions, and while otherwise occupying the Premises, and for compliance with all applicable laws, ordinances, rules and regulations.

#### Section 10. Termination.

Termination for Convenience. Parties shall have the right to negotiate a Termination for Convenience provision for the Long Term Joint Use Agreement.

Termination for Cause. Either Party may terminate the Agreement immediately after the expiration of any applicable cure period for cause. Cause shall include, without limitation the following and the Parties shall have the cure periods provided below:

Material violation of the Agreement by either Party if such violation shall continue for ten (10) days

after written notice is given by either Party to the other Party of such violation; or If, in the reasonable judgment of District, Tenant's acts or omissions: (i) jeopardize the safety of the District students or represent an immediate threat to the health, welfare or safety of District's students, staff, or the public; or (ii) violate applicable laws, codes, rules, regulations, or ordinances; or (iii) subject or expose District and/or its Board of Trustees ("Board") to liability to others for personal injury or property damage; or (iv) interferes with the educational programs or activities conducted on the Property or the adjacent East Oakland Pride Elementary School; or (v) unduly disrupts the residents of the surrounding neighborhood, then District shall have the right, in its sole discretion, to terminate this Agreement immediately, unless, at District's sole option, Tenant cures such default within twenty-four (24) hours of notice of termination; or Tenant is adjudged bankrupt, Tenant makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Tenant's insolvency.

Restoration of Premises. Upon expiration or earlier termination of this Agreement, Tenant shall be responsible for restoring the Premises, and other portions of the Property that were affected by Tenant's occupancy of the Premises, to its condition that existed on the date of Tenant's first occupancy with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on District's title, unless otherwise approved by the District, in writing, prior to construction.

No Limitation of Rights. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District or Tenant.

#### Section 11. Title to and Removal of Tenant's Equipment.

Title to Tenant's equipment, personal property, and/or chattels ("Tenant's Equipment") on the Premises shall be held solely by Tenant. All of Tenant's Equipment shall remain the personal property of Tenant and shall not be treated as real property or become a part of the Premises. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination hereof, Tenant shall remove Tenant's Equipment, at its sole expense. Tenant shall repair any damage to the Premises, caused by said removal and restore the Premises to good condition, less ordinary wear and tear.

In the event that Tenant fails to timely remove Tenant's Equipment, District, upon fifteen days written notice, may, without liability on the part of District to Tenant or any person or entity claiming under Tenant, either (1) accept ownership of Tenant's Equipment with no cost to the District, or (2) remove and/or dispose of Tenant's Equipment at Tenant's sole cost. In the event that the District chooses to accept ownership of Tenant's Equipment, Tenant shall execute any necessary documents to effectuate the change in ownership of Tenant's Equipment to District. If Tenant fails to execute any such necessary documents, Tenant hereby authorizes District's Superintendent to execute those documents on Tenant's behalf. In the event that the District removes and/or disposes of Tenant's Equipment, Tenant shall pay all costs for the removal and/or disposal of Tenant's Equipment within thirty (30) days of receipt of an invoice.

#### Section 12. Destruction.

If the Premises or the Property is damaged or destroyed so as, in District's judgment, to hinder Tenant's normal operations, Rent shall abate in proportion to the loss of use from the date such damage or destruction occurs until Tenant is able to commence normal operations. District and Tenant waive any statutory rights to terminate the Agreement on account of damage or destruction as set forth above.

#### Section 13. Licenses & Permits; Program Staffing & Background Verification.

Tenant warrants and represents that it is duly authorized and properly licensed by the California Department of Social Services ("CDSS"), and any other applicable federal, state, or local agency, to administer and operate its Program, and holds a current and active "School Age Day Care Center" license issued by CDSS for Tenant's Program at the Property. Tenant shall be solely responsible for obtaining and maintaining for the Term of the Agreement all necessary permits, licenses, and approvals from any and all applicable federal, state, local or other regulatory agencies related to the operation of its Program or otherwise connected to Tenant's use of the Premises, including without limitation, use permits and compliance with the California Environmental Quality Act ("CEQA"), and shall comply at all times with any and all legal requirements for providing such its Program on the Premises and Property, as permitted herein. At District's request, Tenant shall provide copies of relevant license(s), permit(s), accreditation(s), and/or certification(s) to District.

Tenant shall be solely responsible for the administration and operation of its Program, including the hiring of all employees. Prior to commencement of its Program, Tenant shall complete the Fingerprinting/Criminal background verification certificate upon execution of the Long Term Joint Use Agreement and shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1 or as otherwise may be required by CDSS or any other federal, state, or local governmental entity or regulatory agency. Tenant shall provide to District written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements prior to each individual's commencement of employment or participation in any Tenant activity. Tenant shall not allow any person for whom the District has not received satisfactory written verification of compliance to enter the Property for any purpose related to or arising out of the Agreement at any time that District pupils may be present or otherwise have contact with District pupils.

#### Section 14. Prohibited Uses.

The following uses and types of activities are prohibited on the Premises and Property: (1) Any use or activity which involves the possession, service, consumption, and/or sale of alcoholic beverages, illegal drugs, intoxicants, narcotics, tobacco products, and/or any other restricted substances; (2) Any use or activity which involves gambling, the conducting of games of chance, or any sale by auction upon the Premises or Property; (3) Any use or activity which is inconsistent with the use of the Premises and Property for childcare services, the use of the Property for school purposes, or which otherwise interferes with school or District activities or the regular conduct of schoolwork; (4) Any use or activity which is discriminatory against any group or individual protected under state or federal antidiscrimination laws or District policy; (5) Any use or activity that includes fighting, quarrelling, abusive language or noise, which may be offensive to other uses, activities, or the neighborhood; (6) Any use or activity which involves the commission

of any crime or which is prohibited by or in violation of any applicable federal, state, or local law, rule, regulation, requirement, or ordinance, including District's Board Policies and Administrative Regulations; (7) Any use or activity that would unduly disrupt the residents in the surrounding neighborhood; (8) Any use or activity that would jeopardize the safety of students or children of Tenant's Program; (9) Any use or activity in or about the Premises or Property that may cause an increase in the existing rate of insurance upon the Premises or Property or cause the cancellation of any insurance policy covering the Premises or Property; (10) Any use or activity that would cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises or Property; (11) Any use or activity which is inimical or contrary to public morals, good manners, taste and/or welfare or which is morally objectionable as unsuitable for a public educational facility; and (12) Any use or activity which involves the possession, use, or storage of explosive materials, including fireworks, or related items which may be prohibited by the standard form of fire insurance policies or which otherwise is prohibited by the fire marshal.

Additionally, firearms, including, without limitation, pellet guns, BB guns, sling shots, knives, and other weapons are prohibited on the Premises and Property. No animals are allowed on the Premises or Property, except for certified service animals or unless otherwise required by law. Tenant shall comply with the District-wide policy prohibiting the use of tobacco products, including e-cigarettes, on the Premises and the Property at all times. Tenant agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the Program, Premises or use of the Premises and/or Property. Tenant shall not commit or suffer to be committed, any waste upon the Premises or Property, or allow the Premises or Property to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Premises or Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property or Premises except in trash containers designated for that purpose.

#### Section 15. Hold Harmless/Indemnification.

To the fullest extent permitted by California law, Tenant shall defend, indemnify, and hold harmless District, its Board and members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement, Tenant's Program, or from any activity, work, or thing done, permitted, or suffered by Tenant, its agents, contractors, employees, representatives, officers, servants, tenants, concessionaires, or volunteers in conjunction with the performance of the Agreement or operation of Tenant's Program, unless caused wholly by the sole negligence or willful misconduct of District; and in case any action or proceeding be brought against District, Tenant, upon notice from District, shall defend the same at Tenant's expense by counsel approved in writing by District.

#### Section 16. Insurance.

Commercial General Liability Insurance. Tenant shall, during the Term of the Agreement, maintain in force, a combined, single-limit liability commercial general insurance policy in the amount of not

less than two million dollars (\$2,000,000) with District, its Board, employees and agents, at Tenant's expense, named as additional insureds under such policy. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of the Agreement, upon each policy renewal and upon request of District during the Term of the Agreement.

Auto Insurance. Tenant shall, during the Term of the Agreement, maintain in force, a comprehensive auto liability policy naming District, its Board, employees and agents, at Tenant's expense, as additional insured's under such policy. The policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of coverage. Tenant agrees to provide District in advance a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of the Agreement, upon renewal of each policy and upon request of District during the Term of the Agreement.

Workers' Compensation Insurance. During the Term of the Agreement, Tenant shall comply with all provisions of law applicable to Tenant with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of the Agreement and Tenant's occupancy of the Premises, Tenant 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) days prior written notice to District.

Tenant's Equipment (Personal Property) Insurance. Tenant acknowledges that the insurance to be maintained by District on the Premises will not insure any of Tenant's Equipment, property or any improvements made by Tenant. Accordingly, Tenant shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by Tenant 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 Tenant's property.

Other. Each insurance policy required by the Agreement shall: (i) not be cancelled, limited in scope of coverage or non-renewed until after thirty (30) days written notice has been given to District; and (ii) contain a clause waiving all rights of subrogation against District, its Board, members of the Board, and elective or appointive officers or employees, when acting within the scope of their employment or appointment. The Parties agree that any insurance maintained by District will apply in excess of, and not contribute with insurance provided by the policies required by the Agreement. Tenant agrees that if the premium on District's basic fire insurance policy covering the premises is increased as a result of Tenant's use of the Premises, Tenant shall reimburse District for the additional premium amount within thirty (30) days of receipt of notice from District.

Section 17. Cooperation with Other Occupants of the Property, District, & Regulatory Agencies. It is understood and recognized by Tenant that the Property, of which the Premises is a part, will

be used by other parties, including District, and Tenant shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, and security measures, etc. Without limitation, Tenant acknowledges and understands that the City of Oakland Parks and Recreation operates an after-school recreation program for children in grades 1 through 5 on the Property.

Tenant shall cooperate with any and all federal, state, or local governmental entities or regulatory agencies in connection with Tenant's operation of its Program or use of the Premises or Property, including, without limitation, DSA, CDSS, the City of Oakland, the County of Alameda, the California Fair Employment Practices Commission, the California Department of Industrial Relations, and the California Department of Justice.

Section 18. Notice.

Any notice required or permitted to be given under this Letter of Intent and the Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

OAKLAND UNIFIED SCHOOL DISTRICT  
1000 Broadway, Suite 300  
Oakland, CA 94607  
Attn: Office of the General Counsel  
Phone: 510 879 3535

UNITY COUNCIL  
1900 Fruitvale Ave. #2a  
Oakland, CA 94601  
Attn: Luis Arenas  
Phone: 510 535 6900  
Facsimile: 510 534 7771

Any notice personally given or sent by facsimile transmission 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 five (5) days after deposit in the United States mail.

Section 19. Sublease and Assignment.

Tenant shall not assign its rights, duties or privileges under the Agreement, nor shall Tenant sublease or attempt to confer any of its rights, duties or privileges under the Agreement on any third party, without the written consent of District. Any such attempt without District written consent shall be void.

Section 20. Independent Status.

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. Tenant shall be solely responsible for its own Workers' Compensation insurance and other required insurance policies, taxes, and other similar charges or obligations. Tenant shall be liable for its own actions and inactions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its employees, agents, officers, trustees, or representatives.

Section 21. Entire Agreement of Parties.

This Letter of Intent constitutes the entire agreement between the Parties concerning the subject matter of the District's obligation to enter into a Long Term Joint Use Agreement with Tenant, and supersedes all prior discussions, negotiations, memorandums of understanding, and agreements, whether oral or written. This Letter of Intent and the Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 22. California Law.

This letter of intent and 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, California.

Section 23. Attorneys' Fees.

In the event of any dispute under the Letter of Intent or the Agreement, or the default by any Party of that Party's obligations hereunder, then the prevailing Party shall be entitled to recover, in addition to all other sums which may be due under the terms of the Letter of Intent and the Agreement, all costs of suit, including reasonable attorneys' fees.

Section 24. 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.

Section 25. Successors and Assigns.

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

Section 26. Counterparts.

This Letter of Intent and the Agreement and all amendments and supplements may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 27. Captions.

The captions contained in the Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 28. Severability.

Should any provision of the Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.



Section 29. Incorporation of Recitals and Exhibits.

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

Section 30. Non-Discrimination.

Tenant and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, gender identification, national origin or physical handicap. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, gender identification, age, national origin or physical handicap. Tenant covenants to meet all requirements of District pertaining to non-discrimination in employment. If Tenant is found in violation of the non-discrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under the Agreement by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of the Agreement.

Section 31. Inspection.

District's employees and agents shall have the right at all reasonable times upon reasonable prior written notice to Tenant to inspect the Premises to determine if the provisions of the Agreement are being complied with.

Section 32. Taxes and Assessments.

It is understood and agreed that all taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen as well as foreseen of any kind or nature whatsoever, which during the Term of the Agreement become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, or which Tenant is otherwise required to pay hereunder, shall be the full responsibility of Tenant, and Tenant shall pay all sums prior to delinquency. Tenant is responsible for any interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, along with all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of the Agreement. In the event of nonpayment by Tenant, District shall have all the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent. This provision shall survive the expiration or earlier termination of the Agreement.

Section 33. Authority.

Each person signing the Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute this Letter of Intent. Each Party represents and warrants to the other that the execution and delivery of the Letter of Intent and the performance of such Party's obligations hereunder have been duly authorized, and this Letter of Intent is valid and an agreement binding on such Party and is enforceable in accordance with its terms.

Section 34. Reservation of Rights.

The Premises are accepted as is and where is by Tenant subject to any and all existing easements and encumbrances. District reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; data cables; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. District also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the Premises. Notwithstanding the foregoing, no rights reserved by District in this clause shall be so exercised as to interfere unreasonably with the use and operation of the Premises by Tenant as permitted under the terms of the Agreement.

Section 35. Construction-Related Accessibility Standards.

Pursuant to Civil Code section 1938, District states that the Premises and Property leased hereunder have not undergone inspection by a Certified Access Specialist (CASP).

Section 36. Contract Contingent on Governing Board Approval.

OUSD shall not be bound by the terms of this Letter of Intent until it has been formally approved by OUSD's Governing Board. This Letter of Intent shall be deemed approved when it has been approved or ratified by the OUSD Governing Board.

IN WITNESS WHEREOF, District and Unity Council execute this letter of intent effective the date and year approved by the Board of Education of the Oakland Unified School District.

**UNITY COUNCIL**

\_\_\_\_\_  
Luis Arenas  
Director of Children and Family Services

11-30-2020

\_\_\_\_\_  
Date

Legislative File	
File ID Number:	20- 2390
Introduction Date:	12/9/2020
Enactment Number:	20-1803
Enactment Date:	12/9/2020
By:	er

Approved as to form

Deputy General Counsel

**OAKLAND UNIFIED SCHOOL DISTRICT**

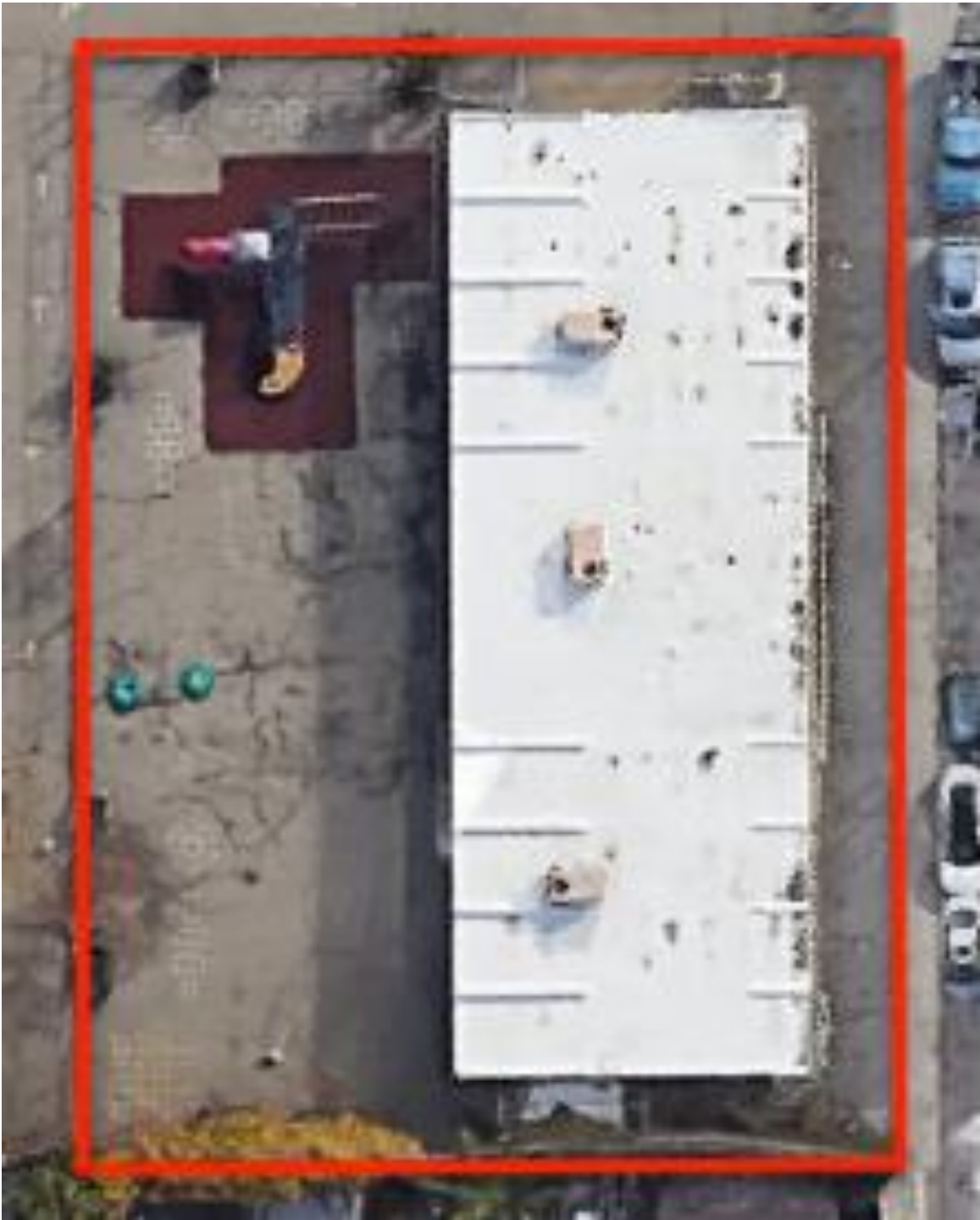
12/10/2020

\_\_\_\_\_  
Jody London  
President, Board of Education

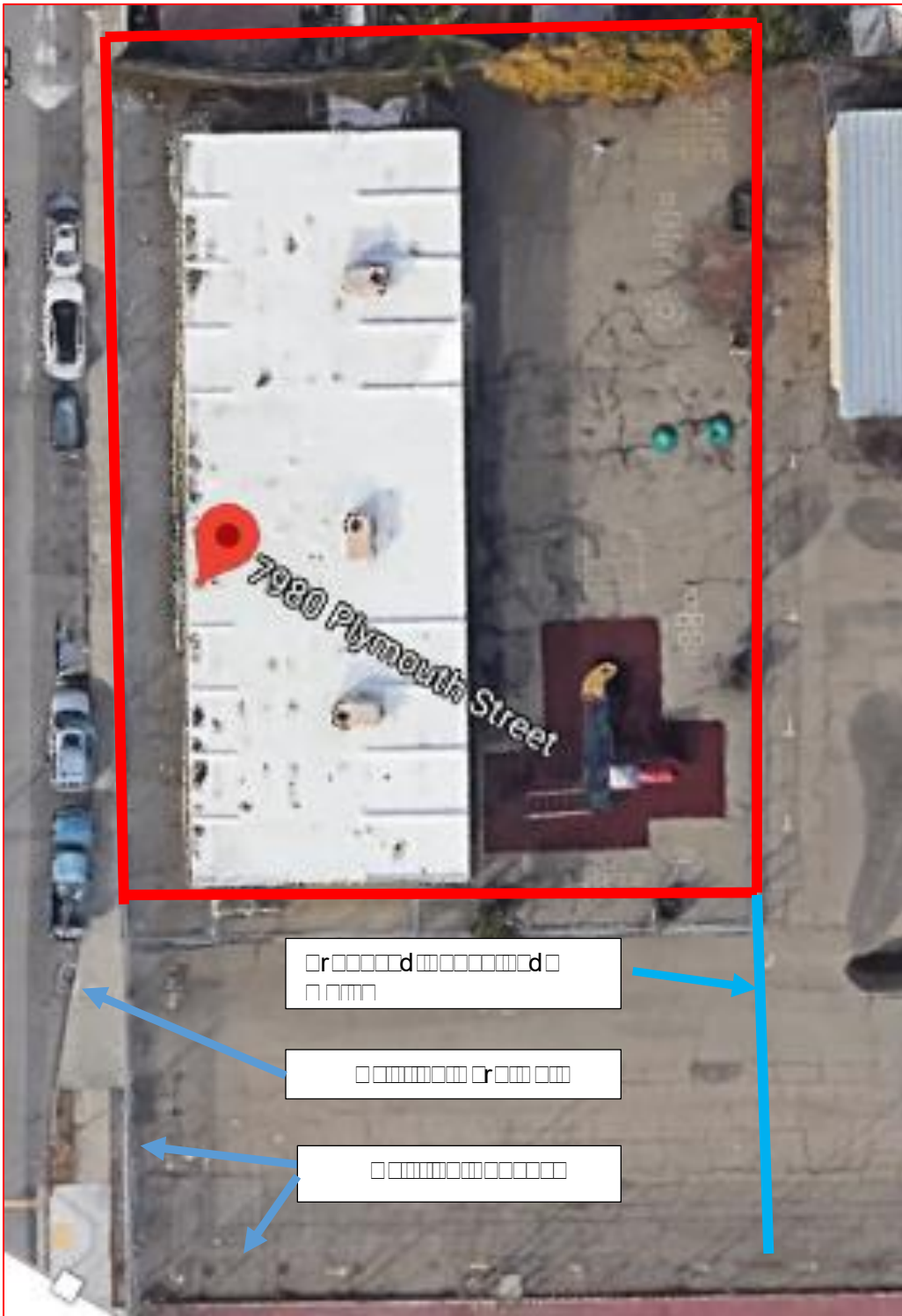
12/10/2020

\_\_\_\_\_  
Kyla Johnson-Trammell  
Superintendent and Secretary, Board of Education

Exhibit A

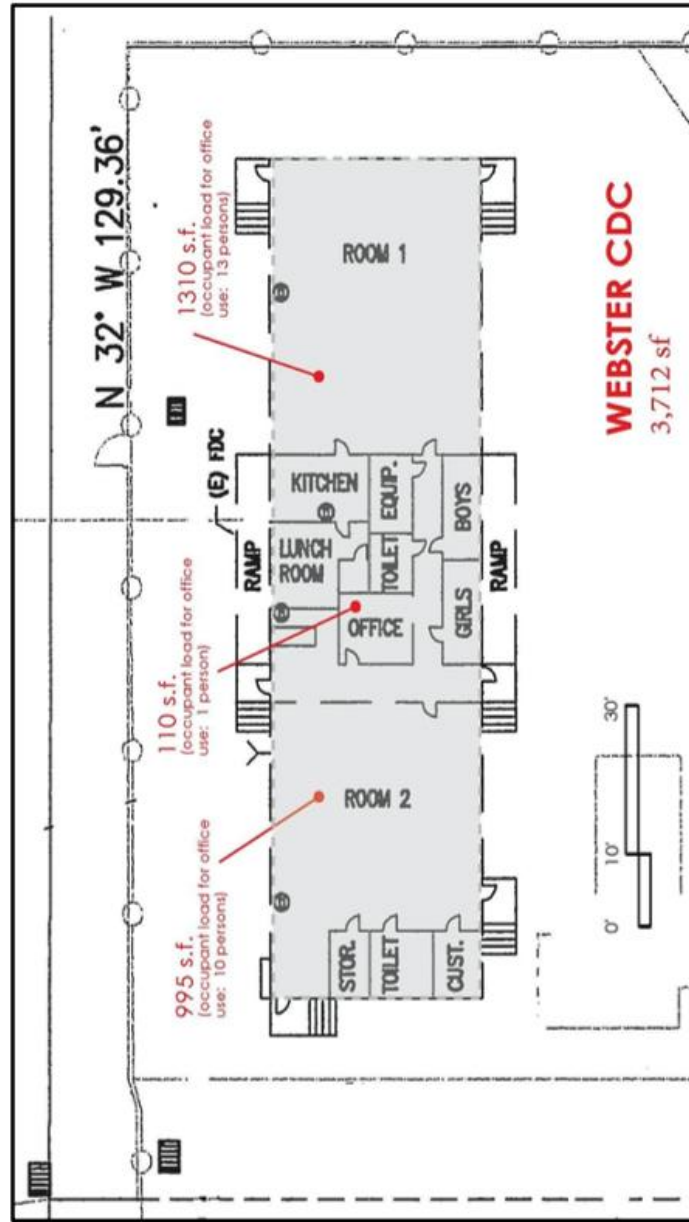


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Exhibit B



From OUSD Deferred Project Sites File Webster CDC Floor Plan

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