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Enactment Date	10/28/2020 If



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

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Christie Herrera, Executive Director, Early Learning

Board Meeting Date October 28, 2020

Subject Lease Agreement between The Oakland Unified School District and The City of Oakland, Head Start Program

Action Requested and Recommendation Approval by the Board of Education of Lease Agreement between the Oakland Unified School District and The City of Oakland, Head Start Program, Oakland, CA. The City of Oakland, Head Start Program will use classroom 1, 2, and 3 at Brookfield Elementary School, 401 Jones Avenue, Oakland, CA 94603, for the period of November 1, 2020 through June 30, 2021.

Background Approval by the Board of Education, Authorizing The City of Oakland, Head Start Program to use classroom 1, 2 and 3 at Brookfield Elementary School, 401 Jones Avenue, Oakland, CA 94603 to Operate Head Start program for infants, toddlers and preschoolers in addition to serving as office and meeting space. Services for the period of November 1, 2020 through June 30, 2021

Fiscal Impact Lessee will pay \$1.00 per month (\$12 per year) to Oakland Unified School District.



Attachments

- Lease Agreement
- Certificate of Insurance

LEASE AGREEMENT

This LEASE AGREEMENT (the "Lease") is entered into as of November 1, 2020 by and between the, OAKLAND UNIFIED SCHOOL DISTRICT, 1000 Broadway, City of Oakland, County of Alameda, State of California ("Lessor") and the City of Oakland, Head Start Program, 150 Frank Ogawa Plaza, Ste. 5352, City of Oakland, County of Alameda, State of California ("Lessee").

RECITALS

- A.** Lessee and Lessor desire to enter into a lease for Lessee to operate Lessee's Head Start program.
- B.** Lessor has space within the Brookfield Elementary School, 401 Jones Ave, Oakland, CA 94603, County of Alameda, State of California ("Building") suitable to this need.
- C.** Lessor is willing to lease such space to Lessee on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. LEASE

- 1.1. Lessor hereby leases to Lessee those certain premises described as classrooms 1, 2 and 3 in the Building (the "Premises") for Lessee's exclusive use, as further depicted and described in **Exhibit A** attached hereto and incorporated herein. Lessee accepts the Premises in "as is" condition.
- 1.2. Non-exclusive access to all areas and facilities that are provided and designated by Lessor from time to time for the general use and convenience of Lessee, its directors, officers, agents, partners, employees, contractors, customers and invitees including, without limitation, parking lots, walkways and patios, breezeways, throughways, loading areas, driveways, common corridors and hallways, stairwells, restrooms, kitchens, lobbies and other public areas ("Common Areas") shall also be provided. Lessor reserves to itself the right to use the Common Areas, together with others who are entitled to use the Common Areas, subject to the provisions of this Lease. Lessor may require that automobiles operated by Lessee or its employees, contractors, or invitees be parked in specific portions of the Common Areas.

2. USE

- 2.1. Lessee shall use the Premises to house and operate a Head Start program serving infants, toddlers, and preschoolers, and their families, and to serve as office/meeting space for staff and families. Specifically, the Lessee shall not use or permit the use of the Premises for overnight living accommodations. Lessee shall not permit noises which may interfere with the other programs operating at the Building. Each anniversary date, Lessee shall provide Lessor with a calendar of its activities.

- 2.2. Notwithstanding Section 2.1 of this Lease, Lessee may not use, operate, access, or otherwise be present on the Premises for any reasons without separate written permission from Lessor if there is one or more active Orders, as defined in Section 5.1 in this Lease.

3. **TERM**

- 3.1. Initial Term. The “Initial Term” of this lease shall commence November 1, 2020 (the “Commencement Date”) and expire on June 30, 2021 (the “Expiration Date”). Either party may terminate this Lease or any renewal of it by giving the other party written notice of its intention not to renew at least 60 days prior to the expiration of this Lease or any extension thereof. However, should legislation be passed which affects the use of public schools as child care center, either party may terminate this Lease on 10 days' notice, rent to be prorated accordingly.
- 3.2. Extension Option. Lessor grants to Lessee, subject to the terms and conditions set forth in this Lease, two (2) options (each an “**Extension Option**”) to extend the term for one (1) year each (each an “**Extension Option Term**”). Each Extension Option may be exercised by written notice from Lessee to Lessor no earlier than six (6) months and no later than three (3) months prior to the Expiration Date or expiration of the Extension Option Term, as applicable. If Lessee exercises an Extension Option, all of the terms, covenants and conditions of this Lease shall apply during that Extension Option Term. Notwithstanding anything herein to the contrary, if Lessee is then in default under any of the terms, covenants or conditions of this Lease beyond any applicable notice and cure periods at the time Lessee exercises an Extension Option, Lessor shall have, in addition to all of Lessor’s other rights and remedies provided in this Lease, the right to nullify the exercise of the Extension Option upon notice to Lessee, in which event (1) the expiration date of this Lease shall be and remain the Expiration Date or the expiration date of the particular Extension Option Term, as applicable, and (2) if the second Extension Option has not been exercised, then the second Extension Option shall be null and void and shall not be available to Lessee. If Lessee fails to (a) validly exercise an Extension Option, or (b) timely exercise the first Extension Option, then Lessee shall have no further right to extend the term of the Lease and the second Extension Option shall be null and void.

4. **SECURITY**

Lessor shall responsible for maintenance of security over the Premises, including restroom facilities and all Common Areas.

5. **Incident/Accident/Mandated Reporting**

- 5.1. Lessee 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. Lessor reserves the right to request documentation of compliance with any applicable Order and Lessee 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, Lessee shall comply with Lessor's interpretation of any applicable Order.

- 5.2. Lessee shall notify Lessor, via email pursuant to Section 27 of this Lease, within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. Lessee shall properly submit required accident or incident reports within one business day of the request of Lessor and pursuant to the procedures specified by Lessor. Lessee shall bear all costs of compliance with this Paragraph.
- 5.3. To the extent that an employee, subcontractor, agent, or representative of Lessee is included on the list of mandated reporters found in Penal Code section 11165.7, Lessee agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

6. CONFORMANCE WITH APPLICABLE REGULATIONS

Lessee shall maintain the facility in a manner that meets all the zoning, building, safety, fire, and licensing regulations relating to the operation of the Premises for the use specified in Section 2 of this Lease in the State of California, City and County of Alameda or adopted by the OUSD Board of Education.

- 6.1. Lessee shall vacate the Premises during school fire drills.
- 6.2. Lessee will establish and maintain a safety program that satisfies all Lessors' reasonable requirements for conduct, behavior and safety and will otherwise comply with all Lessor's reasonable policies and regulations.
- 6.3. Lessee shall comply with all regulations of any State of California agency having jurisdiction over child care programs.
- 6.4. Lessee shall comply with all provisions of the Child Care Guidelines adopted by the Board of Education of Lessor as amended from time to time. Failure to comply with any of the conditions and requirements of permitted use described above shall constitute a default and be grounds for termination of this Lease.

7. LIABILITY INSURANCE

Lessee shall keep in force during the term of this Lease, at Lessee's expense, liability insurance in companies and through brokers approved by Lessor to protect against liability to the public incident to the use or: by or resulting from any acts or omissions of Lessee, the liability under said insurance to be not less than one million dollars (\$1,000,000) for any one person injured, or one million dollars (\$1,000,000) for any one accident, and one million dollars (\$1,000,000) for property damage. Lessee shall procure and maintain Workers' Compensation Insurance in accordance with California Law. Lessee shall furnish Lessor a certificate of insurance in a form satisfactory to Lessor naming Lessor, its employees, directors and agents as additional insurers on said policy, or said certificate may be a certificate of self-insurance. Lessor acknowledges that Lessee may be self-

insured. If Lessee should fail to procure and maintain said insurance, Lessor may terminate this Lease, or at its option may procure and maintain the same, at the expense of Lessee.

8. FIRE AND EXTENDED COVERAGE

Lessor at its sole cost and expense shall keep in force during the term of this Lease an "all risk" policy, with vandalism and malicious mischief endorsements, to the extent of at least ninety (90%) of replacement cost of the Building. Lessee shall maintain a policy of public liability and property damage insurance insuring against death or injury to persons or damage to property occurring within the Common Areas. Lessee shall not do or permit anything to be done in or about the Premises or bring or keep anything in the Premises that will in any way increase the rate of fire insurance upon the Building in which the Premises are situated.

9. INSTALLATION AND REMOVAL OF FURNITURE, FIXTURES AND EQUIPMENT

9.1. Lessee shall be permitted to move into the Premises, furniture and/or equipment used in its program. Lessee shall remove said furniture and equipment at the termination of the Lease, or, if Lessor is present, no later than one week following the termination or expiration of the Lease.

9.2. Lessee may, with the written approval from the Executive Director of Early Childhood Education for Lessor, install in the assigned room a telephone and, shall remove the same from the Premises at the termination or expiration of this Lease. This phone line will be a separate line and number is to be used solely by and in the name of the Early Head Start Program.

10. LESSOR'S FURNITURE AND EQUIPMENT

Lessor may at its option remove any of Lessor's furniture and equipment from the Premises. Lessee shall exercise reasonable care for property of the Lessor left on the Premises during the period of Lessee's occupancy.

11. ALTERATIONS

Lessee shall not make any alterations of the Premises without first obtaining the written consent of the Lessor. Any alterations shall become at once a part of the Premises and property of Lessor except as otherwise provided herein. Any alterations shall be made at no expense to Lessor.

12. MAINTENANCE REPAIRS AND CUSTODIAL SERVICES

12.1. Lessor agrees to provide custodial services to the Building, Common Areas, and Premises consisting of daily trash removal, sweeping and bathroom cleaning and once weekly wet mop, vacuum and dust, Lessee shall be responsible for general care and cosmetic maintenance of the Premises during the time of Lessee's use. Lessee shall be responsible for reasonably necessary repairs and/or replacement of the fixtures and equipment caused by its sole use of the facilities, except for ordinary wear and tear. Lessee shall not be responsible for repairs or maintenance of pipes, utility lines, ducts, conduits, flues, refrigerant lines, drains, sprinkler mains

and valves, access panels, wires and structural elements leading through the Premises or any of the Common Areas.

12.2. Lessor agrees that it shall keep the exterior of the Premises free of graffiti for the term of the Lease and any and all extensions thereto.

13. EXPIRATION OF LEASE

Lessee agrees at the expiration of the term, as may be extended pursuant to Section 3.2 of this Lease, or the earlier termination of this Lease to quit and surrender the Premises, fixtures and equipment in as good state and condition as at the Commencement Date of this Lease, reasonable wear and tear excepted.

14. UTILITIES

Lessor shall pay all utilities, garbage removal, Common Area maintenance costs, Building operating costs, property tax, insurance, together with any taxes, penalties, maintenance costs and surcharges pertaining to this Lease.

15. RENT

Lessee will pay \$1.00 per month for the Premises for a total of \$12 annually.

16. CALENDAR

Lessee will provide Lessor with a program calendar. A one-year calendar of the dates the program will be conducted and the dates the program will be closed is attached hereto as **Exhibit C** and incorporated herein by this reference. Lessee agrees to conduct the program every day that the Oakland Public Schools are in session (240 days), subject to the need to close due to one or more Orders or direction from Lessor consistent with Section 5.1 of this Lease, and will by means of a new calendar delivered to Lessor a minimum of 30 days before the start of the annual calendar period, notify Lessor of all dates when the program will be in session. Lessee will notify Lessor a minimum of 30 days in advance of any change in the calendar, except in the case of emergencies. In the case of an emergency closure of the program, Lessee will provide Lessor as much notice of such closure as is reasonably necessary. For purposes of this Section, emergency shall be defined as it is defined in Education Code section 46392.

17. TIME OF ESSENCE

Time is hereby declared to be of the essence of this Lease.

18. SUCCESSORS AND ASSIGNS

This Lease is and shall be binding on the successors and assigns of the respective parties hereto.

19. EARLY TERMINATION

Except as provided in Section 3 of this Lease, either party may terminate this Lease upon 60 days written notice to the other. Lessee shall have no further responsibilities for rental payments to Lessor upon such termination. If Lessor terminates this Lease prior to the

expiration of the Initial Term, the Upfront Costs shall be returned to Lessee, prorated based on the Initial Term.

20. INDEMNIFICATION

- 20.1. Lessee shall indemnify, defend and hold harmless Lessor, its employees, directors and agents, from and against any and all claims arising out of Lessee's sole use of the Premises or resulting from the sole negligent acts or omissions of Lessee, occurring in, on, or about the Premises and the Building, except to the extent it is determined that such claim arises out of or results from the negligent acts or omissions of Lessor or its employees, directors and agents.
- 20.2. Lessor shall indemnify, defend and hold harmless Lessee, its employees, contractors, council members, board members, commission members, attorneys, directors and agents, from and against any and all claims arising out of Lessor's lease of the Premises or resulting from the sole negligent acts or omissions of Lessor, occurring in, on, or about the Premises and the Building, except to the extent it is determined that such claim arises out of or results from the negligent acts or omissions of Lessee or its employees, directors and agents.

21. DEFAULT

- 21.1. Lessee Default. Lessee shall be in default under this Lease if Lessee fails to perform any other obligation of this Lease within thirty (30) days after written notice to Lessee (except that if the failure to perform cannot reasonably be cured within thirty (30) days, Lessee shall not be in default of this Lease if Lessee commences to cure within thirty (30) days after Lessor's written notice and diligently pursues the cure to completion). The notice periods under this Section are in lieu of and not in addition to any notice required under Code of Civil Procedure sections 1161 and 1162.
- 21.2. Lessor's Remedies. Landlord shall have the following remedies if Lessor commits a default. These remedies are Lessor's sole and exclusive remedies in the event of a Lessee default: (a) Lessor can continue this Lease in effect and enforce all its rights and remedies under this Lease, for so long as Lessor does not terminate Lessee's right to possession, as provided in Civil Code section 1951.4. No act by Lessor shall terminate this Lease unless Lessor notifies Lessee in writing that Lessor elects to terminate this Lease; or (b) Landlord can terminate this Lease after the applicable cure period by giving written notice of termination to Lessee. In the event of any such termination of this Lease, Lessor may then or at any time thereafter, re-enter the Premises and remove therefrom all persons and property and again repossess and enjoy the Premises.
- 21.3. Lessor's Default. Lessor shall be in default under this Lease if Lessor fails to perform any obligation of this Lease within ten (10) days after written notice from Lessee to cure a default. However, if the non-monetary default cannot be cured within ten (10) days, Lessor shall have such additional time as reasonably necessary to complete its performance so long as Lessor commences a cure within ten (10) days and diligently pursues the cure to completion.

22. **NO PARTNERSHIP**

Lessee and Lessor are not partners and nothing herein contained shall be construed to create a partnership or joint venture in any sense.

23. **HOLDING OVER**

If Lessee, with Lessor's written consent, remains in possession of the Premises after the expiration of the term, such holding over by Lessee shall be a month-to-month tenancy only, terminable on thirty (30) days' notice at any time by either party. The rent during such holdover tenancy shall be the rent provided in Section 14 of this Lease and all other terms and conditions of this Lease shall apply to the holdover tenancy except those pertaining to any options to extend or expand, if any.

24. **AMERICANS WITH DISABILITIES ACT**

Except as to be provided by Lessor by the Site Preparation Work, Lessee shall make the Safe Parking Program, related services, and facilities on the Premises accessible to people with disabilities in compliance with the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. or any disabled access laws under City's building code, as a result of Lessee's specific use of the Premises.

25. **NON-ASSIGNMENT**

Lessee shall not sublet or assign its rights or privileges under this Lease or any interest therein and shall not attempt to confer any of its privileges under this Lease to any third party.

25.1. Lessee shall not suffer any other person, corporation, association, or entity to occupy or use Lessor's facilities or grounds or any portion thereof, without prior written consent to Lessor, and any such consent shall not be deemed to be consent to any subsequent grant of privilege.

25.2. Any unauthorized grant of use by Lessee shall be void and shall, at Lessor's option, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as an interest of Lessee by operation of law or otherwise, without written consent of Lessor.

26. **WAIVER**

The waiver by Lessor of any breach of term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent acceptance of money consideration there under by Lessor shall not be deemed to be a waiver of any prior-occurring breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay particular money consideration so accepted.

27. **NOTICE**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or by first-class mail as follows:

Lessor: Oakland Unified School District
Early Childhood Education
1025 4th Avenue Oakland, CA 94606
Attn: Seira Fuentes
seira.fuentes@ousd.org

Lessee: City of Oakland
Head Start Program
150 Frank Ogawa Plaza, Ste. 5352
Oakland, CA 94612
ATTN: Thea Hernandez
thernandez2@oaklandca.gov

28. 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.

29. ENTIRE AGREEMENT

This Lease expresses the entire agreement between the parties and may not be amended except by a writing signed by both parties.

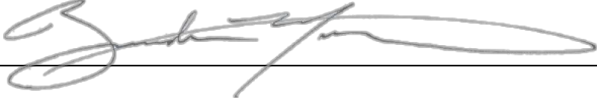
[Signatures on Next Page]

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

City of Oakland, Head Start Program (Lessee)

Name: Brendan Moriarty

Position: Real Property Asset Manager

Signature: 

Date: 9/28/2020

Approved as to form and legality:



City Attorney

Oakland Unified School District (Lessor)

Name: Jody London

Position: President, Board of Education

Signature: 

Date: 10/29/2020

Name: Kyla Johnson Trammell

Position: Secretary, Board of Education

Signature: 

Date: 10/29/2020

Approved as to form on September 30, 2020

Josh Daniels, OUSD General Counsel



Exhibit A

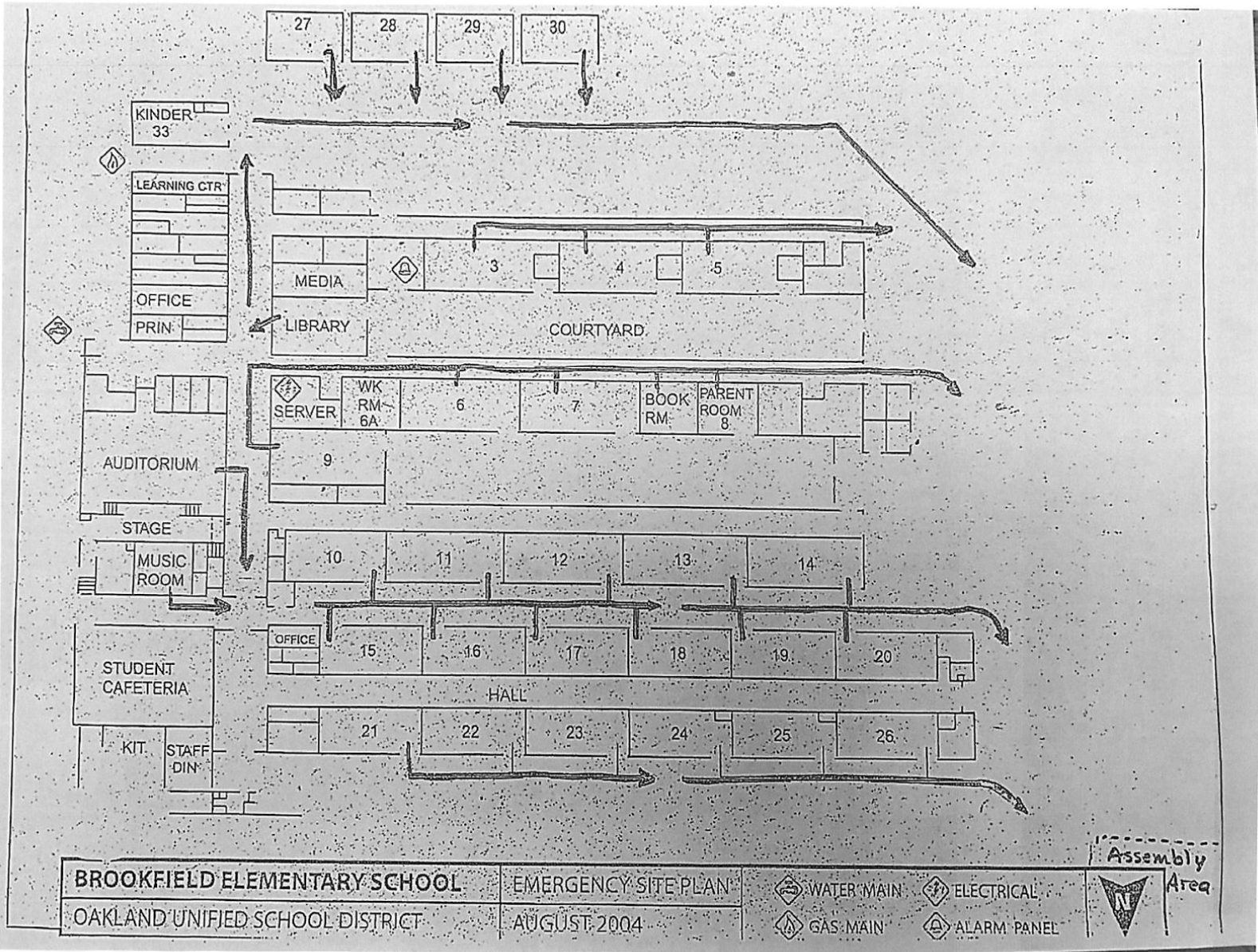


Exhibit C



2020-21 School Calendar

July

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August

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16	17	18	19	20	21	22
23/30	24/31	25	26	27	28	29

September

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27	28	29	30			

October

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18	19	20	21	22	23	24
25	26	27	28	29	30	31

November

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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December

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27	28	29	30	31		

January

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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24/31	25	26	27	28	29	30

February

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14	15	16	17	18	19	20
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28						

March

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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April

S	M	T	W	T	F	S
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May

S	M	T	W	T	F	S
						1
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23/30	24/31	25	26	27	28	29

June

S	M	T	W	T	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

- Jul 3 Independence Day Holiday
- Aug 5 Professional Development Day
- Aug 6 Collaboration Day / Work Day
- Aug 7 Teacher Work Day
- Aug 10 First Day of School
- Sep 7 Labor Day
- Sep 25 Professional Development Day
- Oct 12 In Lieu of Lincoln's Birthday (AKA Indigenous People's Day)
- Oct 30 End of Report Period (Elementary)
- Nov 11 Veteran's Day
- Nov 23-27 Thanksgiving Break
- Dec 21-31 Winter Break
- Jan 1 Winter Break

- Jan 18 Martin Luther King, Jr. Day
- Feb 15 Presidents' Day
- Feb 19 Professional Development Day
- Mar 5 End of Report Period (Elementary)
- Mar 29 In Lieu of Cesar Chavez Day
- Apr 5-9 Spring Break
- May 10 Wellness Day
- May 27 Last Day of Instruction
End of Report Period (Elementary)
- May 28 Teacher Work Day
- May 31 Memorial Day
- TBD Summer Learning Teacher Work Day
- TBD Summer Learning Begins

- **First/Last Day of School**
- **Schools, District Offices & Child Development Centers Closed**
- **Schools Closed** (District Offices & Child Development Centers Open)
- **Schools & Child Development Centers Closed** (District Offices Open)
- **No School for Students**
- **Marking Periods/ Report Card Periods**
Individual student progress reports are sent to families within two weeks of these dates. For information about Secondary Marking Period Dates, please visit www.ousd.org/districtcalendar
- **Summer Learning**

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1000 Broadway, Ste. 300, Oakland, CA 94607

Approved by the Board on June 24, 2020; revised September 10, 2020.