

FACILITIES USE AGREEMENT WITH TRAINING AND RESEARCH FOUNDATION FOR CORBIN CENTER AND EL SALVADOR CENTER

THIS FACILITIES USE AGREEMENT ("Agreement") is dated August 17, 2021 and is entered into between the CITY OF SANTA ANA, a charter city and municipal corporation ("City") and Training and Research Foundation ("TRF"), a California non-profit corporation. City and TRF also collectively referred to herein as "the Parties."

RECITALS

- A. The City is the owner of Corbin Center located at 2215 West McFadden Avenue and El Salvador Center located at 1825 West Civic Center Drive, both in the City of Santa Ana;
- B. TRF is a non-profit California corporation founded in 1966 that serves low-income preschool children and their families by providing comprehensive child development and school readiness services including education, health, nutrition, and mental health services;
- C. TRF operates childcare centers in Inglewood, Hawthorne, Lennox, and West Los Angeles;
- D. Most recently, TRF expanded its operations into Riverside and Orange County;
- E. TRF has identified a critical need in areas of Orange County that are unfunded and unserved and desires to operate a licensed childcare center at Corbin Center and El Salvador Center to provide services to low and mid-income preschool children and families in Santa Ana; and
- F. City acknowledges the community need for programs such as those offered by TRF that prepare preschool children to succeed in school and life and offer a comprehensive approach to meeting the developmental needs of preschool children.

NOW THEREFORE, in consideration of mutual covenants herein contained, the Parties do hereby promise and agree as follows:

- 1. The City hereby grants to TRF the limited right to use designated portions of Corbin Center and El Salvador Center to provide licensed childcare pursuant to the terms of this Agreement.
 - A. City grants TRF the right to provide licensed childcare services at Corbin Center in the area specified in Exhibit A and attached hereto and incorporated by reference.

- B. City grants TRF the right to provide licensed childcare services at El Salvador Center in the area specified in Exhibit B and attached hereto and incorporated by reference.
 - C. The areas governed by this Agreement and set forth in Exhibit A and Exhibit B, shall be collectively referred to as “the Facilities.”
2. Term. The term of this Agreement shall begin on the date set forth above and end on August 31, 2026 unless terminated pursuant to Sections 14 or 16 of this Agreement. This Agreement shall have two, one-year extensions exercisable at the City’s sole discretion and with TRF’s approval in a writing and signed by the City Manager and City Attorney.
3. Consideration. TRF will pay to City monthly its proportional share of the utilities for use of the Facilities as outlined further in Section 8 of this Agreement and a fee of \$2,000 per month for use of the Facilities. All payments shall be made by the 1st day of each month in the form of a cashier’s check or ACH electronic transfer made payable to “City of Santa Ana.”
4. Improvements to the Facilities.
- A. TRF will be allowed by City to make certain improvements to Facilities as mutually agreed upon in writing between the Parties and approved by the appropriate or applicable government entity. The attached Exhibits A and B include renderings of the proposed improvements to the Facilities. Notwithstanding, minor modifications may be made as directed or required by governing authorities with jurisdiction over necessary approvals.
 - B. All improvements shall be paid for by TRF. City will not pay any costs associated with any improvements pursuant to this Agreement.
 - C. City shall have final approval of all design, engineering, construction, specifications and improvements.
 - D. TRF agrees to take whatever steps may be necessary to submit plans and applications required to make improvements to the Facilities including but not limited to:
 - i. Conducting a walk thru of the Facilities with an architecture and design firm;
 - ii. Having a feasibility study prepared to determine the needed changes and submitting a design and rendering to the City for

- review and approval prior to submission to any other licensing or government entity;
 - iii. Submission of plans and applications as needed to City Planning and Building Department;
 - iv. Request for construction bids;
 - v. Complete construction; and
 - vi. Finalize all permits necessary to use Facilities for TRF's intended use as authorized pursuant to this Agreement, including but not limited to, obtaining a certificate of occupancy or related documents as necessary.
- E. The Parties acknowledge that TRF has secured grant funding to support its use of the Facilities to provide licensed childcare and that TRF's grant funding requires approval by other government entities of expenses above a certain threshold and paid with grant funds.
- F. After improvements are completed, TRF will not make any additional improvements or alterations to the Facilities without the prior written consent of the City Manager. Any additions, repairs, replacements, or improvements made by TRF shall not be removed by TRF without the written approval of the City Manager. The Facilities, including any area utilized by TRF, shall remain the property of the City. City reserves the right upon expiration or termination of this Agreement to require TRF to return Facilities to their original condition.
5. Operational Rules and Regulations. TRF shall comply with all operational rules and regulations promulgated by the Executive Director of Parks, Recreation and Community Services, City Manager or City Council regarding the operation of City's Corbin Center and El Salvador Center, including but not limited to hours of operation.
6. Maintenance. TRF shall at all times maintain Facilities in good condition and repair, and in a clean and safe condition reasonably satisfactory to the City Manager.
7. Damage to Facilities. TRF shall be liable for any damages to the Facilities caused by any act of negligence of TRF, its partners, agents, servants, contractors, representatives, guests, employees, invites or customers. City may at its option, repair such damage, and TRF agrees to reimburse City for the total cost of repair.
8. Utilities. TRF shall pay when due all charges for water, gas, electricity, telephone, internet, video (cable or satellite), trash and other public utility charges furnished to TRF. For some or all utilities where a separate meter or bill is not

feasible, TRF will be assessed a proportional share of all utility charges noted above, on a monthly basis, as determined in writing by the Parties.

9. Compliance with Laws and Licensing. TRF shall comply with all applicable federal, state and local laws. TRF shall at all times during the term of this Agreement have and maintain in force any and all licenses, permits or approvals required by law for the conduct of TRF's activities under this Agreement. This includes all state licensing for daycare or childcare activities.
10. Indemnification.
 - A. TRF shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and volunteers from and against any claims, liabilities, damages, losses, costs, expenses incurred or suffered by City on account of any personal injuries or property damage resulting from the use of Facilities pursuant to this Agreement or any activity or negligent omission of TRF or its employees, agents, volunteers or contractors. In the event that City is named as a codefendant, TRF shall notify City of such fact and shall represent City in such legal action unless City undertakes to represent itself in such legal action. TRF further agrees to indemnify, hold harmless, and pay all costs of defense of the City, including fees and cost for special counsel to be selected by the City, regarding any action challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms, or effects of this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceedings.
 - B. TRF agrees to indemnify the City from and against any contamination of the Facilities with hazardous materials by TRF occurring after the commencement of this Agreement. TRF further agrees to defend and hold harmless the City from and against all actions, agreements, attorney's fees, causes of action, claims, contracts, costs, covenants, damages, debts, demands, expenses, judgments, lawsuits, liabilities, liens, losses, obligations, and orders which arise during or after the term of this Agreement related to the existence of hazardous materials at the Facilities or in the groundwater under the Facilities except for: (1) the cost of any remediation of Hazardous Materials deposited in the soil by City or its employees, agents or contractors; and (2) any third party personal injury actions which allege exposure to such undiscovered Hazardous Materials as a result of use of the Facilities. "Hazardous Materials" as used herein shall be interpreted broadly to mean any hazardous or toxic substance, material or waste that now is or hereafter becomes regulated by any local

government authority, the State of California, or the United States Government.

11. Insurance. TRF shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use allowed hereunder and the results of that use by TRF, its agents, representatives, employees and subcontractors pursuant to the scope and coverage noted below:

- A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if TRF has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- C. Workers’ Compensation: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. Sexual Abuse or Molestation (SAM) Liability: If the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, TRF shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$5,000,000 per occurrence or claim.
- E. Other Provisions Applicable to Insurance Requirements:
 - i. If the TRF maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
 - ii. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - iii. Additional Insured Status- the City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of TRF including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form

of an endorsement to TRF's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

- iv. Primary Coverage- For any claims related to this contract, TRF's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the TRF's insurance and shall not contribute with it.
- v. Notice of Cancellation- Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- vi. Waiver of Subrogation- TRF hereby grants to City a waiver of any right to subrogation, which any insurer of TRF may acquire against the City by virtue of the payment of any loss under such insurance. TRF agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- vii. Self-Insured Retentions- Self-insured retentions must be declared to and approved by the City. The City may require TRF to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- viii. Acceptability of Insurers- Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- ix. Claims Made Policies- If any of the required policies provide claims-made coverage:
 - 1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, TRF must

- purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
- x. Verification of Coverage- TRF shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive TRF’s obligation to provide them.
 - xi. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
 - xii. Special Risks or Circumstances- The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
12. Assignment. TRF shall not assign all or any portion of this Agreement, nor shall TRF, without the written consent of the City Council, enter into any agreement allowing the operation by another person of the use of the Facilities granted by this Agreement.
13. Relationship of the Parties. Nothing in this Agreement shall effect or create a partnership between the Parties. Any persons retained by TRF shall at all times be its employees or independent contractors and not employees or independent contractors of the City. TRF shall have no power to incur debt, obligation or liability on behalf of the City. The City shall not have control over the conduct of TRF, except as set forth in this Agreement. TRF shall not, at any time, or in any manner, represent that it or any of its officers, agents, employees, contractors or volunteers are in any manner employees or contractors of the City.
14. Termination for Cause. Should TRF be dissolved or if a petition in bankruptcy or insolvency be filed by or against TRF, whether voluntarily or involuntarily, or if use of Facilities is abandoned for a period of forty-five (45) days; or if the uses conducted so as to constitute a public nuisance, or if any of the provisions of this Agreement are breached and the breach if not corrected within ten (10) days after written notice from the City to TRF, then the City may immediately terminate this Agreement by written notice to TRF and recover and resume possession of Facilities.
15. Remedies for Termination for Cause. In the event of TRF’s breach, default, abandonment or insolvency, City may:

- A. Terminate the Agreement and recover from TRF any amount necessary to compensate City for all detriment proximately caused by TRF's failure to perform its obligations under this Agreement.
 - B. Should TRF default in the performance of any of the terms, conditions, or obligations contained in this Agreement, City may, in addition to the remedies available pursuant to the law and this Agreement, re-enter and regain possession of the Facilities in the manner provided by the laws of the State of California.
16. Termination without cause. The Parties each may terminate this Agreement with ninety (90) days' notice in writing to the other Party.
17. Fingerprinting, Background Checks and Identification Badges. TRF shall provide proof to City that all TRF officials, employees and any volunteers are fingerprinted and background checked prior to conducting any work at Facilities. TRF employees and volunteers shall prominently display badges or identification cards, in a form mutually agreed upon by the Parties, at all times while at Facilities. TRF badges or identification cards shall state that official, employee or volunteer works for or is affiliated with TRF. Badges or identification cards shall not display City name or logo.
18. Taxes. The Parties agree that if the Facilities are assessed any taxes or similar fees or charges due to the activities of TRF or TRF's permitted users, then TRF shall bear the entire cost of said taxes, assessment, fees or charges.
19. Liens. TRF will not permit any mechanics' liens or materialmen's' liens or any other type of lien to stand against the Facilities by any use, occupancy or improvement by TRF or any agent, employee, or contractor of TRF.
20. Nondiscrimination: TRF shall not discriminate in the course of its activities in or about the Facilities on the basis of race, color, disability, religion, sex, marital status, sexual orientation, gender identity, age, national origin, ancestry, military or veteran's status, disability, or any other basis prohibited by law. TRF affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.
21. Jurisdiction and Venue: This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both Parties further agree that Orange County,

California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

22. Surrender of Premises. Upon termination or expiration of this Agreement, TRF shall immediately surrender and deliver the premises to the City in good condition and repair, together with all improvements and alternations made by TRF, and any and all furniture, furnishings, equipment, and other personal property then located on the premises.
23. Attorney's fees and costs. The prevailing Party shall pay all costs and reasonable attorney's fees that the other Party incurs in enforcing any of the rights or remedies provided for pursuant to this Agreement.
24. Exclusivity and Amendment. This Agreement represents the complete and exclusive statement between the City and TRF regarding the subject matter herein, and supersedes any and all other agreements, oral or written, between the Parties regarding the use of the Facilities. In the event of conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and an authorized representative of TRF. The Parties acknowledge that no representatives, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.
25. Assignment. TRF may not assign, transfer, delegate or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. TRF shall not allow any other person or entity to use the Facilities without the prior written consent of City.
26. Force Majeure. Should the performance of an act required by this Agreement to be performed by either the City or TRF be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive government laws or regulations, or any other cause except financial inability not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of the delay, and performance of the act during the period of delay will be excused, provided, however, that nothing contained in this section shall excuse the prompt payment of compensation by TRF as required by this Agreement or the performance of any act rendered difficult solely because of the financial condition of the party, City or TRF, required to perform the act.

27. Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.
28. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had never been contained herein.
29. Conflict of Interest. TRF covenants that it presently has no interests and shall have no interests direct or indirect, which would conflict in any manner with the use authorized pursuant to this Agreement.
30. Non-Recording. Unless required by law, neither Party shall record this Agreement.
31. No Waiver. Any waiver, consent or approval by either Party of any breach, default or event of default of any provision, condition or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach, default or event of default shall be deemed a waiver of any later breach, default or event of default of the same or any other provision of this Agreement. Any failure or delay on the part of either Party in exercising any power, right or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.
32. Notice. Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and directed to the addresses below or such addresses as either party may later specify in writing. Notice is deemed effective on the date it is given if hand-delivered or received by facsimile that day. Notice given by U.S. mail shall be deemed to have been given three (3) business days after it is deposited in the U.S. mail, postage prepaid and addressed as follows:

To City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988

With copies to: Executive Director of Parks, Recreation and Community
Services
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, California 92702

To TRF: Renee Jacobs, Agent for Service
Training and Research Foundation
1442 East Lincoln Avenue, Suite 371
Orange, California 92865

33. Authority: Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective Parties to each of the terms of this Agreement.

34. Counterparts and Electronic Signature. The Parties agree that this Agreement may be signed in counter parts and compiled to make one original Agreement. The Parties further agree that this Agreement may be signed electronically by any means that reasonably ensures authenticity.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures this ____ day of _____, 2021.

CITY

ATTEST:

Kristine Ridge
City Manager

Daisy Gomez
Clerk of Council

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

TRAINING & RESEARCH FOUNDATION
Renee Jacobs
Executive Director/CEO

By: John M. Frank for
Laura A. Rossini
Chief Assistant City Attorney

Renee Jacobs
Renee Jacobs

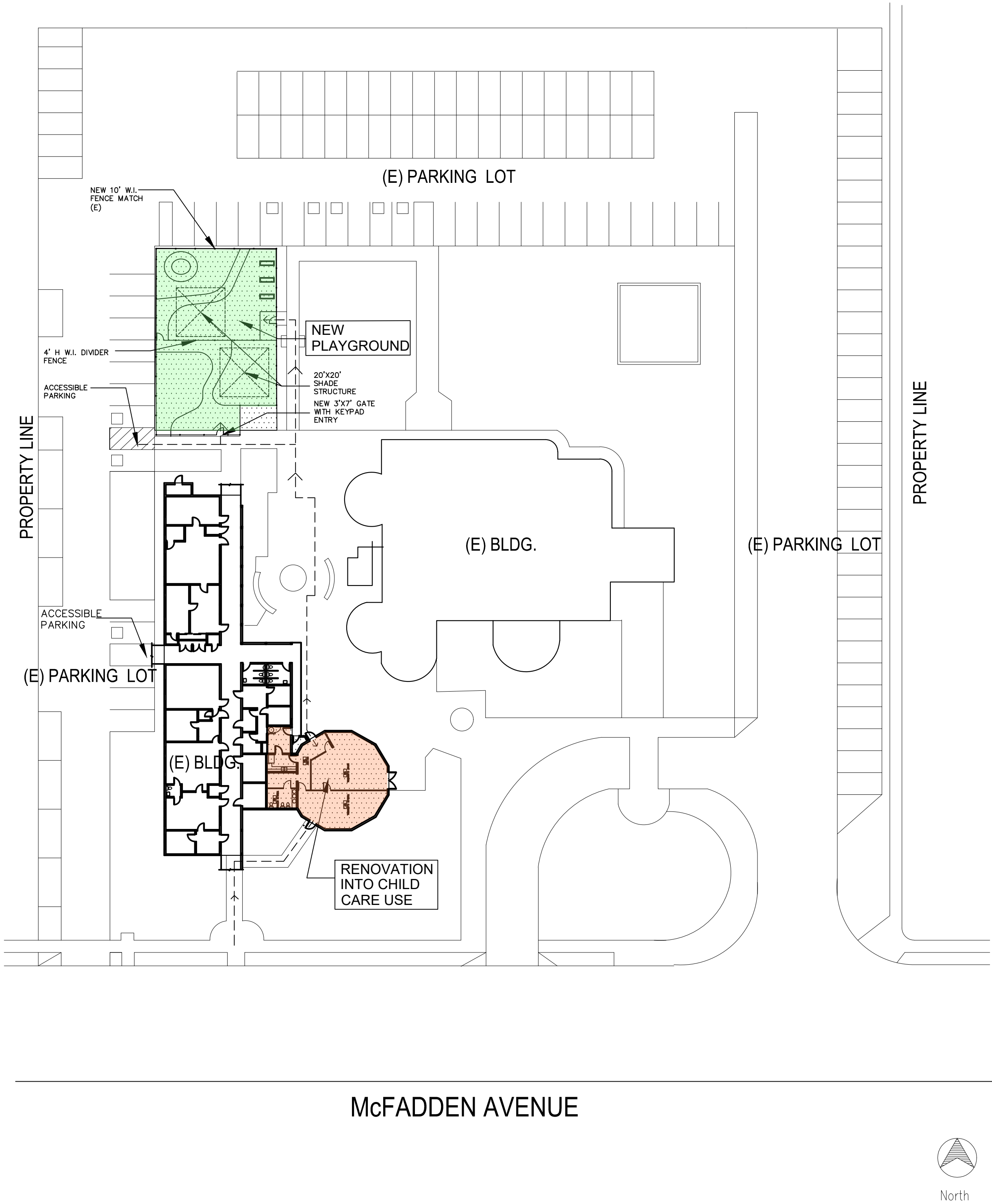
8-10-21
Date

RECOMMENDED FOR APPROVAL:

Lisa Rudloff
Executive Director of Parks
Recreation and Community Services Agency

Date

Exhibit A



LEGEND

-----> ACCESSIBLE PATH OF TRAVEL: 48" MIN. WIDTH WALKWAY, 5% MAX. SLOPE IN HTE DIRECTION OF TRAVEL, 2% MAX. CROSS-SLOPE.

[Patterned Box] NEW SCOPE OF WORK

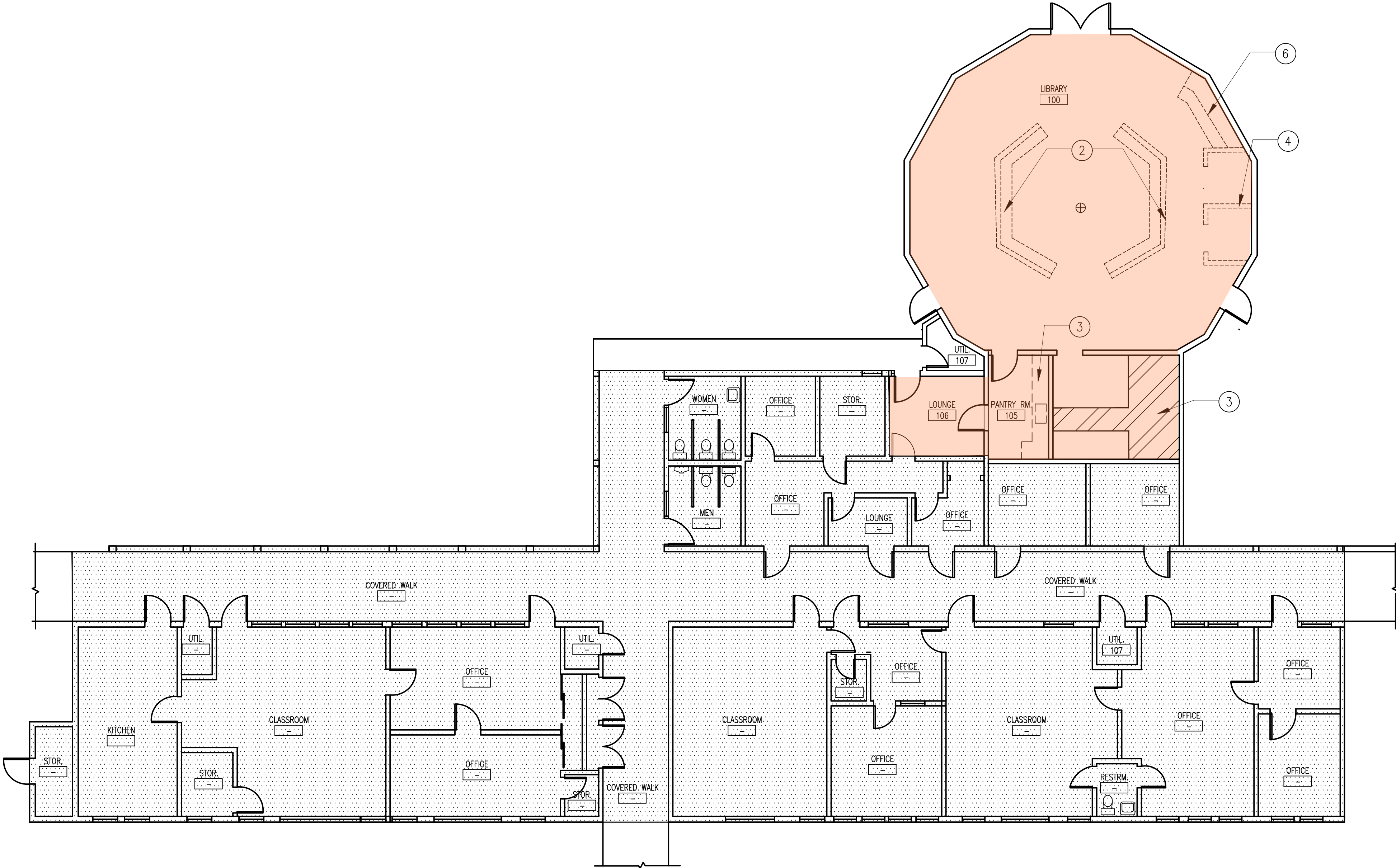


RENOVATION PROJECT
2215 WEST McFADDEN AVENUE , SANTA ANA, CA



SITE PLAN
A-1

Exhibit A



- KEY NOTES**
- ① DEMO (E) SINK WITH CASEWORK
 - ② REMOVE 4' HIGH PARTITIONS AND BUILT IN CASEWORK
 - ③ DEMO PORTION OF SLAB FOR NEW PLUMBING
 - ④ REMOVE 4' HIGH PARTITIONS
 - ⑤ REMOVE KITCHEN CASEWORK AND SINK
 - ⑥ REMOVE READING STEPS

- LEGEND**
- NOT IN SCOPE OF WORK
 - SCOPE OF WORK
 - DEMO (E) WALL

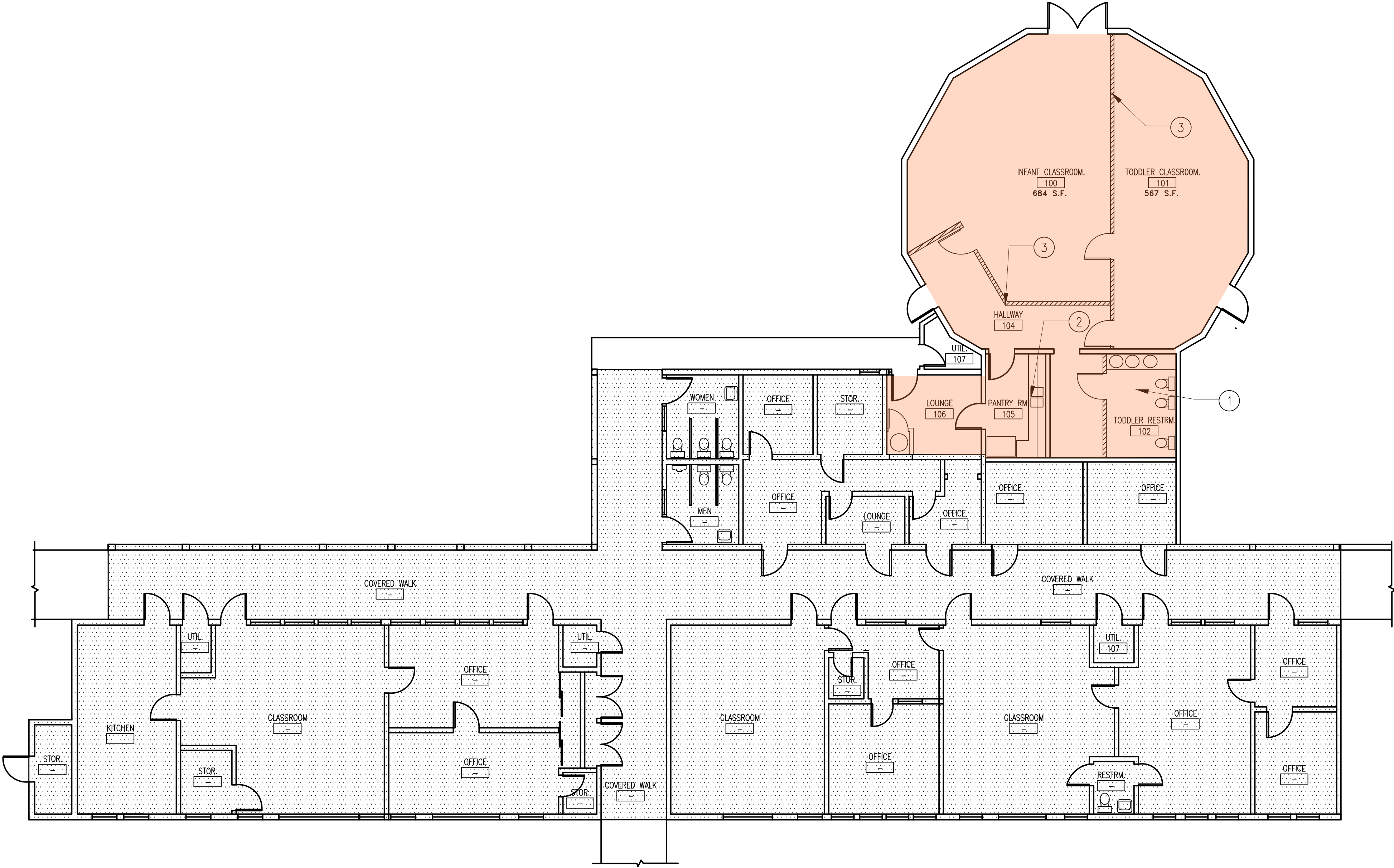


RENOVATION PROJECT
2215 WEST McFADDEN AVENUE , SANTA ANA, CA



DEMOLITION FLOOR PLAN
A-2.00

Exhibit A



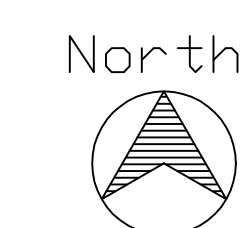
KEY NOTES

- ① NEW TODDLER RESTROOM
- ② NEW SINK WITH CASEWORK
- ③ NEW STUD WALL

LEGEND

- NOT IN SCOPE OF WORK
- NEW STUD WALL





→---→- ACCESSIBLE PATH OF TRAVEL: 48" MIN. WIDTH
WALKWAY, 5% MAX. SLOPE IN HTE DIRECTION
OF TRAVEL, 2% MAX. CROSS-SLOPE.

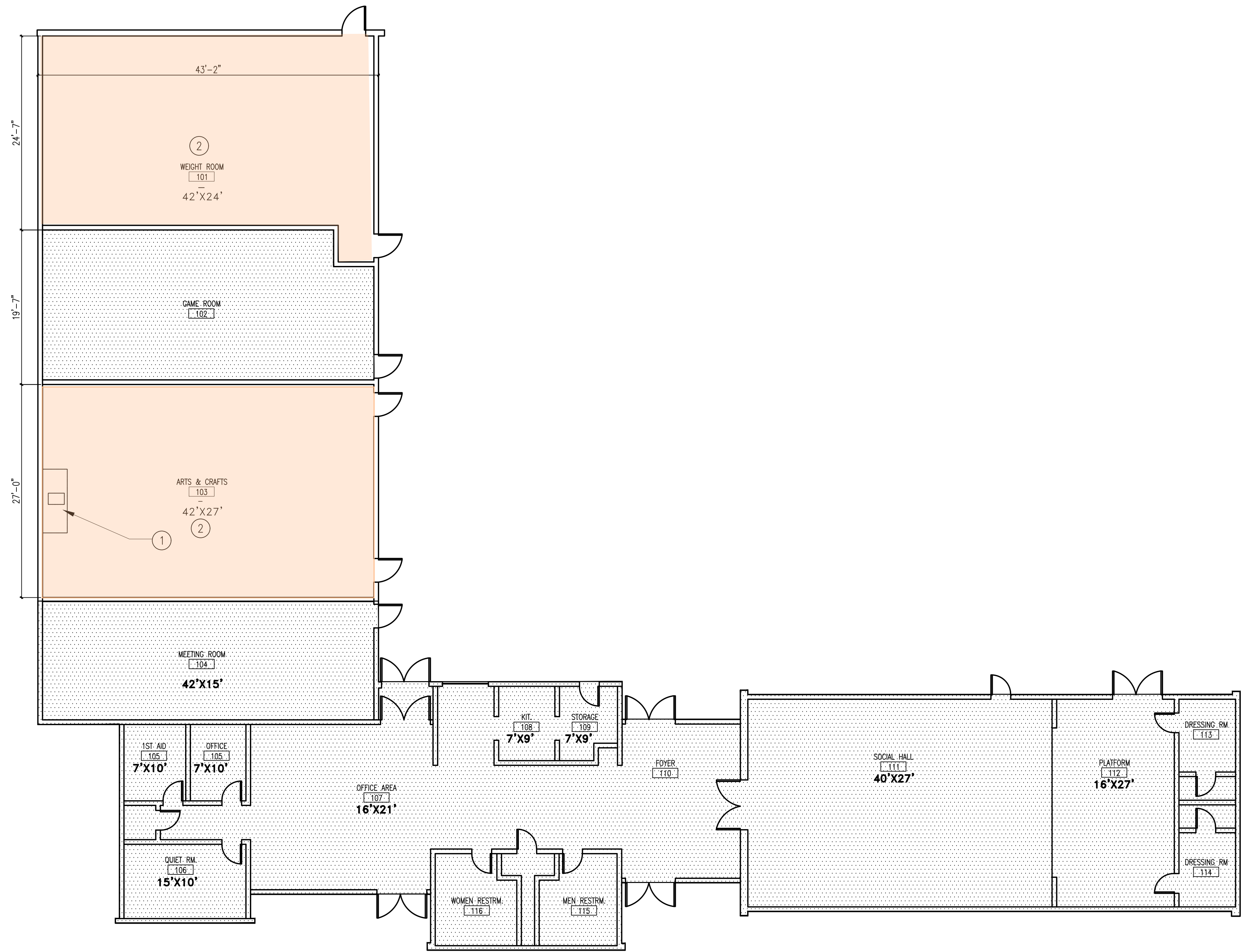
MLA

1825 W CIVIC DRIVE , SANTA ANA, CA



A-1

Exhibit B



KEY NOTES

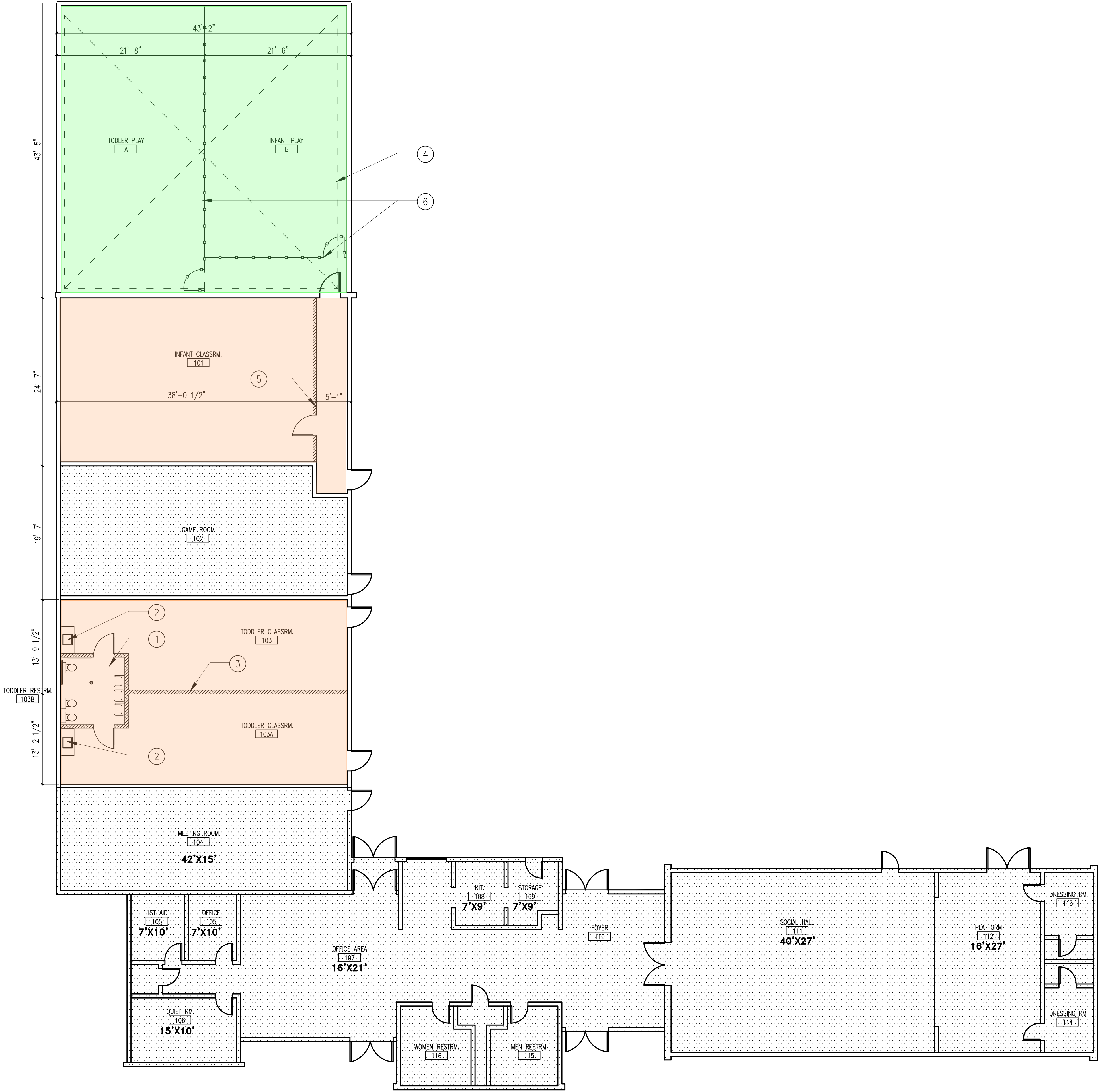
- ① DEMO (E) SINK WITH CASEWORK
- ② REMOVE (E) FLOORING

LEGEND

- NOT IN SCOPE OF WORK
- SCOPE OF WORK



Exhibit B



KEY NOTES

- ① NEW TODDLER RESTROOM
- ② NEW SINK WITH CASEWORK
- ③ NEW STUD WALL
- ④ SHADE CANOPY
- ⑤ NEW 4'-0" HEIGHT PARTITION AND HALF DOOR
- ⑥ 6'-0" HEIGHT W.I. FENCE WITH GATE

LEGEND

- NOT IN SCOPE OF WORK
- NEW STUD WALL

