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OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

ORDINANCE No. 13474 C.M.S.

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LICENSE AGREEMENT WITH PETER PAN NURSERY SCHOOL, INC. TO OPERATE A COOPERATIVE NURSERY SCHOOL AT THE MAXWELL HOUSE AND THE ADJACENT PLAY AREA AT MAXWELL PARK FOR A FIVE-YEAR TERM WITH A LICENSE FEE OF \$1,123.20 PER MONTH; AND AMEND THE LICENSE AGREEMENT FOR TWO CONSECUTIVE FIVE-YEAR TERMS WITHOUT RETURNING TO COUNCIL

WHEREAS, the City of Oakland is the fee simple owner and Oakland Parks and Recreation (OPR) is the custodial agency of the real property commonly known as Maxwell House and the adjacent play area at Maxwell Park, located at 4618 Allendale Avenue, Oakland, California; and

WHEREAS, Peter Pan Nursery School, Inc. (hereinafter referred to as "Peter Pan") was established in 1947 as a parent cooperative nursery school; and

WHEREAS, Peter Pan has operated a cooperative nursery school at Maxwell House for more than 30 years; and

WHEREAS, Peter Pan is classified under the Internal Revenue Code, Section 501(c)(3) as a tax exempt, public benefit corporation; and

WHEREAS, Peter Pan desires to continue use of Maxwell House and the adjacent play area at Maxwell Park for the purposes of operating a cooperative nursery school; and

WHEREAS, under the proposed license agreement, Peter Pan will occupy Maxwell House five days a week, September through July from 8:30 a.m. to 4:30 p.m.; and

WHEREAS, under the proposed license agreement, Peter Pan is authorized to use Maxwell House for two weekday evenings each month and two times a month on the weekends for meetings, at no cost; and

WHEREAS, under the proposed license agreement, Peter Pan is authorized to use Maxwell House and adjacent park two weekend days, Saturday and Sunday, every weekend, for stewardship and cleaning of the school and park area at no cost; and

WHEREAS, City Administrator shall have the authorization to amend to extend the Agreement for two consecutive five-year terms on the same conditions as described in the Agreement; and

WHEREAS, Peter Pan shall provide cleaning services to the building and adjacent park; and electricity, gas, telephone and internet services to the building; and

WHEREAS, Peter Pan shall not make any improvements or adjustments at the property without written approval by the City Administrator; and

WHEREAS, Peter Pan agrees to pay the City a monthly fee of One Thousand One Hundred Twenty-Three Dollars and Twenty Cents (\$1,123.20) for each month of use as set forth in the Agreement, payable on the first of each month; with annual increases adjusted each year based on the relative percentage change in the Consumer Price Index (CPI) not to exceed 8% per year and not less than 4% per year; and

WHEREAS, Peter Pan shall comply with the City's Special Event Access for People with Disabilities as stated in the Declaration of ADA Compliance for Facility Use Agreements and Other Special Events Agreements; and

WHEREAS, Oakland Municipal Code ("OMC") Section 2.42.100 provides that leases (including licenses) of City property require approval by ordinance; and

WHEREAS, OMC Section 2.42.110 provides that the value of in-kind services in lieu of cash rent (license fees) provided by lessees (licensees) to the City or the community at large, including property security and maintenance, and social and cultural benefits to the community, may be considered by the Council in making a finding that the lease (license) of property for less than its fair market rental (license) value is in the best interests of the City; and

WHEREAS, Peter Pan is providing valuable in-kind stewardship services that include over 1,500 hours a year of daily cleaning services of Maxwell House, i.e., playrooms, restrooms, kitchen, basement area, and surrounding outside spaces; cleaning the lower and upper play area, garden/front entrance and walk areas and clearing glass and debris at Maxwell Park; and social and cultural benefits to the community at large by serving and maintaining neighborhood relationships through regular communications with Allendale and Fleming neighborhood associations; maintain a daily presence increasing property security, engage students from Merritt College, Mills College and volunteers from local Oakland high schools and collaborate with Children's Hospital of Oakland and Alameda County Food Bank; and

WHEREAS, OPR recommends that the City Council make a finding and determination that the lease of the property for less than fair market value is in the best interest of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Oakland City Council authorizes the City Administrator to execute a license agreement with Peter Pan Nursery School Inc. to operate a cooperative nursery school for a five-year term as described in this resolution, and amend the license agreement for two additional five-year terms without returning to Council.

SECTION 2. The City Administrator, or his or her designee, is hereby authorized to approve any subsequent amendments, modifications, or extensions of said agreement, without returning to Council, except those increasing the term of the agreement beyond the two five-year terms.

SECTION 3. Pursuant to OMC section 2.42.110 and based on the value of the in-kind services provided by Peter Pan as discussed above and in the City Administrator's report accompanying this Ordinance, the City Council hereby finds that the license of the Maxwell House and adjacent

SECTION 3. Pursuant to OMC section 2.42.110 and based on the value of the in-kind services provided by Peter Pan as discussed above and in the City Administrator's report accompanying this Ordinance, the City Council hereby finds that the license of the Maxwell House and adjacent play area at Maxwell Park for less than its fair market value under the terms of this Ordinance is in the best interest of the City.

SECTION 4. The proposed license agreement shall be approved as to form and legality by the Office of the City Attorney and placed on file in the Office of the City Clerk.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 06 2018

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

Introduction Date

JAN 16 2018

ATTEST: LaTonda Simmons
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation 2/20/2018

NOTICE AND DIGEST

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LICENSE AGREEMENT WITH PETER PAN NURSERY SCHOOL, INC. TO OPERATE A COOPERATIVE NURSERY SCHOOL AT MAXWELL HOUSE AND THE ADJACENT PLAY AREA AT MAXWELL PARK FOR A FIVE-YEAR TERM WITH A LICENSE FEE OF \$1,123.20 PER MONTH; AND AMEND THE LICENSE AGREEMENT FOR TWO FIVE-YEAR TERMS WITHOUT RETURNING TO COUNCIL

This Ordinance would authorize a license agreement with Peter Pan Nursery School, Inc. to use Maxwell House and the adjacent play area at Maxwell House Park and operate a cooperative nursery school for a five-year term with a license fee of \$1,123.20; and amend the license agreement for two five-year terms, adjusted each year based on the relative percentage change in the Consumer Price Index (CPI) not to exceed 8% per year and not less than 4% per year.