

**CITY OF OAKLAND  
COUNCIL AGENDA REPORT**

OFFICE OF THE CITY CLERK  
2006 FEB 16 PM 3:05

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Office of Parks and Recreation  
DATE: February 28, 2006

RE: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO  
NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE  
CITY OF OAKLAND AND PETER PAN COOPERATIVE NURSERY  
SCHOOL FOR NONEXCLUSIVE USE OF MAXWELL HOUSE AND THE  
ADJOINING PLAY AREA, LOCATED AT 4618 ALLENDALE AVENUE,  
OAKLAND FOR \$1,000 PER MONTH FOR A THREE YEAR TERM WITH  
TWO CONSECUTIVE THREE YEAR OPTIONS TO RENEW

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**SUMMARY**

Staff has prepared a resolution authorizing the City Administrator to negotiate and execute a license agreement between the City of Oakland ("City") and Peter Pan Cooperative Nursery School ("School") for the continued use of Maxwell House and the adjacent playground area, located at 4618 Allendale Avenue, Oakland, California. The proposed license agreement has a three-year term commencing on April 1, 2006 and ending March 31, 2009, with three consecutive two-year options to renew the license by mutual consent of the parties, provided that the City's terms and conditions are satisfied.

Peter Pan Cooperative Nursery School is a California 501(c)(3) non-profit corporation dedicated to providing high quality preschool education for Oakland families, most of which reside in the Maxwell Park area of Oakland. The School currently occupies Maxwell House and the adjacent playground area, located at 4618 Allendale Avenue which is owned by and in the custodial care of the City of Oakland. The School proposes securing a license agreement with the City authorizing the limited use of the Maxwell House building and the adjacent play area for activities related to its mission to provide high quality preschool education, subject to the terms and conditions of the proposed license agreement. Approval of this resolution will authorize a license agreement with the School for limited use of Maxwell House and the adjacent play area.

**FISCAL IMPACT**

Peter Pan Cooperative Nursery School has operated at Maxwell House for more than 22 years. Under a previous license agreement, the School has been paying a license fee of three hundred and forty-five dollars (\$345) per month and did not pay for any of the utilities provided to the space. Under the proposed license agreement, the School would pay a monthly license fee of one thousand dollars (\$1000) to the City on the 1st day of each and every month of the license period and any Extended License Period. Payment of

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the specified fee would be reported as revenue to the City's General Fund (1010); OPR Director's Unit (501110); Miscellaneous Concession Account (44519).

Calculation of Services and Rental Values

The proposed license agreement leverages an existing City resource for additional services to the Oakland community with no increased cost to the City's budget. Under the terms of the proposed license agreement the School will be responsible for providing janitorial services, PG&E, and phone services to Maxwell House and litter pickup and general cleaning in the surrounding park at no cost to the City.

Fair Market Value for rent of the space is estimated to be \$1575.00 monthly or \$18,900.00 annually. Services provided to Oakland citizens by Peter Pan Cooperative Nursery School from their Maxwell House location are valued at \$27,444.00 annually. The custodial and park cleanup value is based on an estimate of the cost to the City if the City had to provide those services. After comparison of the fair market rent and calculations of the in-kind services and benefits, the value of the programs as provided to the citizens of the City exceeds the fair market rental value of the Property.

<b>Service / Real Estate</b>	<b>Annual Value of School Provided Services</b>	<b>Annual Value of City Provided Facility Use</b>
Fair Market Rent Value	-	\$18,900
Rent/license	\$12,000	-
Water and Garbage	-	2,200
Custodial Services and Park Litter Cleanup (inkind)	\$15,444	-
<b>Total Estimated Value</b>	<b>\$27,444</b>	<b>\$21,100</b>

**BACKGROUND**

Peter Pan Cooperative Nursery School was originally started by a group of Mills College students in 1947 and has been located at Maxwell House since 1983. As a cooperative nursery school, families are directly involved in supporting the School's operations by participating in a number of activities. Their involvement serves to keep costs down and increases access to the School's services to middle and low income families.

Peter Pan Cooperative Nursery School currently serves, on average, thirty-five children a day in its nursery school and after care programs. Tuition at the School ranges between \$195 and \$210 per month per child depending on the number of school days in a given month. In addition to its children's programs, the School also provides parent education classes, training opportunities to students of child development from Merritt College and Mills College, and engages volunteers from Holy Names High School, Fred Finch Youth Center, and other local community organizations. The School also works with Alameda

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County Social Services and Children's Hospital of Oakland to organize an annual food drive to provide food to needy families during the holidays. The School participates in the Maxwell Park Neighborhood Family Association and is an active presence in the community.

As a cooperative nursery school, parents are required to contribute to the running of the School. They provide volunteer hours to clean and maintain the facility and surrounding park, they serve on committees, and they assist the School staff with some of the day-to-day operations of the programs.

In 2000 and 2001 Peter Pan Cooperative Nursery School raised over \$50,000 and its volunteers and parents contributed hundreds of volunteer hours to build a new play structure in Maxwell Park. The structure is used by the School during its operating hours and open to neighborhood park users after school hours.

Peter Pan Cooperative Nursery School, Inc. is a California 501(c)(3) nonprofit corporation that has operated a nursery school at Maxwell House since 1981. At that time a license agreement was negotiated with the City. In 1990, City Council approved staff's recommendation to develop a ten (10) year lease agreement for Peter Pan Nursery School's continued use of the Maxwell House and the adjacent playground area, which was approved. Since the expiration of that agreement in 2001, the School has been operating at the site without a formal, updated agreement.

### **KEY ISSUES AND IMPACTS**

By granting a license to Peter Pan Cooperative Nursery School, the Oakland community receives benefit in the form of preschool care, parent education, and community involvement. The School also provides custodial care to the building and surrounding park. Peter Pan Cooperative Nursery School offers services that promote the education of Oakland residents through its teaching program, the responsible stewardship of City property through volunteer activities, and civic engagement through its participants' community activities.

The proposed license agreement allows the School use of the Maxwell House building and the adjacent play area for activities related to its mission to provide high quality preschool education during the prescribed hours.

The proposed license agreement also allows the School to use Maxwell House for its governing committee meetings, volunteer work parties, and staff workgroup meetings.

After comparison of the fair market rent and calculations of the in-kind services and benefits, the value of the programs as provided to the citizens of the City is equal to or exceeds the fair market rental value of the property. The City will calculate the Fair Market Rent upon execution of any option period within the proposed license agreement. The Fair Market Rent for that option period will be compared to the value of the In Kind Services provided to calculate the license fee for that option period. Fair Market Rent Value for the space occupied by the School is currently valued at \$1575.00 per month.

Under the terms of the license agreement, Peter Pan Cooperative Nursery School will provide custodial service to Maxwell House and the surrounding park at no cost to the City.

The School agrees to the City's requirements for insurance, indemnification, records retention, and non-discrimination. The School agrees to provide liability insurance as described within the license agreement, and cannot make any improvements or alterations to the Property without first obtaining the written consent from the City.

The School further agrees, under the proposed license agreement, to submit its accounting records annually in keeping with the City Auditor's Table of Contract Clauses Related to Financial Responsibilities. Such records shall include an operating budget for the current year as well as certified statements confirming the number of participants and number of activities undertaken.

The license agreement provides for two consecutive options for a three-year extension provided sufficient notice is given and other terms and conditions are met to the satisfaction of the City.

Either party may terminate the license at any time with 90 days written notice.

### **SUSTAINABLE OPPORTUNITIES**

Economic: The continued operation of Peter Pan Cooperative Nursery School will generate employment opportunities to Oakland residents and provide an affordable, safe space for children and parents participating in the school.

Environmental: There are no environmental opportunities at this time.

Social Equity: The nursery school services are convenient and available to all parents with pre-kindergarten aged children of Oakland.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

Peter Pan Cooperative Nursery School shall at all times comply with the Americans with Disabilities Act (ADA), Older Americans Act and other non-discrimination laws and regulations.


### **RECOMMENDATION AND RATIONALE**

Staff recommends that City Council approve a resolution authorizing the City Administrator or her designee to negotiate and execute a license agreement between the City of Oakland and Peter Pan Cooperative Nursery School for the continued use of Maxwell House and the adjacent playground area, located at 4618 Allendale Avenue in Oakland, California for a three-year term with two consecutive three-year options to renew.

**ACTION REQUESTED OF THE CITY COUNCIL**

The Office of Parks and Recreation requests that City Council authorize the City Administrator or her designee to negotiate and execute a license agreement between the City of Oakland and Peter Pan Cooperative Nursery School for the continued use of Maxwell House and the adjacent playground area, located at 4618 Allendale Avenue in Oakland, California for a three-year term with two consecutive three-year options to renew.

Respectfully submitted,

  
**Audree V. Jones-Taylor**  
Director, Office of Parks and Recreation

Prepared by:  
Kip Walsh, Assistant to the Director  
Office of Parks and Recreation

APPROVED AND FORWARDED TO THE  
LIFE ENRICHMENT COMMITTEE:

  
OFFICE OF THE CITY ADMINISTRATOR

**LICENSE AGEEMENT (\*DRAFT\*)  
BETWEEN THE CITY OF OAKLAND  
AND PETER PAN COOPERATIVE NURSERY SCHOOL**

This License Agreement ("License") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2006 by and between the City of Oakland ("City"), Office of Parks and Recreation ("OPR") jointly and severally called "Licensor", located at 250 Frank H. Ogawa Plaza, Oakland, CA 94612, and Peter Pan Cooperative Nursery School, a California 501(c)(3) public benefit corporation, called "Licensee", located at 4618 Allendale Avenue, Oakland, CA.

**RECITALS**

**WHEREAS**, the City is the fee simple owner and OPR is the custodial agency of the real property shown on Property Map attached hereto and incorporated herein as Exhibit A, commonly known as Maxwell House and the adjacent playground area, located at 4618 Allendale Avenue, Oakland, CA ( "Property").

**WHEREAS**, Licensee desires to continue the use of the Property for the purpose of operating a cooperative nursery school known as Peter Pan Co-Op Nursery School ( "School").

**WHEREAS**, Licensee is a tax exempt public benefit corporation defined in the Internal Revenue Code.

**WHEREAS**, Licensor is willing to grant to Licensee a revocable nonexclusive license for the use of the Property subject to the terms and conditions of this License.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **Grant of Revocable License.** Licensor grants to Licensee a revocable nonexclusive license to use the Property for the term of this License (including the Initial Licensed Period plus any Extended License Period) subject to the terms and conditions of this Agreement and excepting there from Licensor's reservation of rights set forth in Paragraph 7 of this Agreement.

2. **Initial License Period.** The Initial License Period shall be for three (3) years commencing on \_\_\_\_\_, 2006 and ending on \_\_\_\_\_, 2009, unless terminated sooner by either party in accordance with this License.

3. **Extended License Period.** Licensee shall have two (2) consecutive options to extend the License for an Extended License Period of three (3) years per Extended License Period on the same terms and conditions described in this License provided that the following conditions are satisfied:

3.1 Licensee shall not be in default under any provision of this License,

3.2 Licensee shall provide Licensor with advance irrevocable written notice at least sixty (60) days prior to the termination of the Initial License Period or any Extended License Period.

If Licensee fails to exercise the first option to extend the License Period, the second option to extend shall have no force and effect, and Licensee shall have no other subsequent options to extend the License Period.

4. **Monthly License Fee.** Except for the month of August for each and every year of the term of this License, Licensee agrees to pay Licensors in advance and without any right of offset or deduction in lawful money of the United States, a Monthly License Fee of one thousand dollars (\$1,000), payable on the first day of each month, commencing \_\_\_\_\_, 2006 and thereafter on the same day of each and every month for the term of the License. If Licensee or Licensors exercises its option to terminate the License pursuant to paragraph 20 of this Agreement, the Monthly License Fee applicable for the last month of the License shall be prorated.

All Monthly License Fees shall be payable to the City of Oakland and remitted to the Office of Parks and Recreation, Attention: **Fiscal Manager, Office of Parks and Recreation, 250 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor, Suite 3330, Oakland, CA 94612.**

5. **Annual Adjustments to Monthly License Fee.** For each year after the Initial License Period commencing \_\_\_\_\_, 2006 and ending on \_\_\_\_\_, 2007 and for each and every year thereafter, the Monthly License Fee shall be adjusted annually based on the relative percentage change in the Consumer Price Index (CPI) of all Urban Consumers, All Items, San Francisco-Oakland Metropolitan Area (Index) published by the United States Department of Labor Statistics from the previous year. The Index in effect on the date of the beginning of the Initial License Period ("Beginning Index") and the Index published immediately before the adjustment date ("Ending Index") shall be used to calculate the annual adjustment. If the Ending Index has increased over the Beginning Index, the Monthly License Fee (until the next annual adjustment) of the then ending annual period shall be calculated by multiplying the Monthly License Fee by a fraction consisting of the Ending Index as the numerator and the Beginning Index as the denominator. This means that the Monthly License Fee (subject to the annual adjustment) shall be multiplied by the fraction consisting of the then Ending Index (which shall be the numerator) divided by the Beginning Index (which shall be the denominator). If the Index is changed, the Index shall be converted in accordance with any conversion factor published by the United States Department of Labor Statistics. If the Index is discontinued, the government's replacing index shall be used in order to obtain substantially the same result that would have been obtained if the Index had not been discontinued. Irrespective of the actual annual change between Beginning Index and Ending Index, the annual adjustment to the Monthly License Fee shall not exceed 8% per annum and shall not be less than 4% per annum.

6. **Late Payment Charge And Interest.** Licensee acknowledges that the late payment of any Monthly License Fee or other charges due under this License will cause Licensors to incur costs not contemplated which costs are difficult to ascertain. Such costs include without limitation administrative and processing expenses and the loss of interest on the past due Monthly License Fee or other charges. If any payment due under this License is not paid within ten (10) days from the receipt of written notice from Licensors, Licensee shall be required to pay a late payment charge of seventy-five dollars (\$75) which shall be immediately paid to Licensors with all other payments due under this License. Licensors and Licensee confirm that such a late payment charge represents a fair and reasonable estimate of the costs that Licensors will incur resulting from Licensee's late payment. Acceptance of any late payment charge or any part

thereof shall not constitute a waiver of Licensor's right to enforce any right under this License or any other legal remedy available to Licensor. If any Monthly License Fee remains delinquent for a period in excess of 10 calendar days, in addition to the \$75 late payment charge, Licensee shall pay to Licensor interest on any License Fee or other charges that are not paid from the 10-day period at 6% per annum or the maximum rate of interest permitted by law, whichever is higher, until paid.

7. **Use.** Licensee shall have no other use of the Property except for the restricted use of operating and maintaining a cooperative nursery school. Licensee shall have a minimum of fifteen (15) registered children in its program each year and shall maintain a child registration system consistent with its license to operate a cooperative nursery school, but the use of Property shall at all times be subject to the approval of the Director of the Office of Parks and Recreation, and further subject to compliance of all limitations of the Charter of the City of Oakland. Subject to the City's right to reserve the use of the Property, Licensor grants to Licensee the use of the Property in accordance with the following schedule:

7.1 Every day (seven days per week) from 8:30 AM to 3:30 PM, during the entire year.

7.2. One weekday evening each week, at no additional charge to Licensee, between the time period of 3:30 PM and 10:00 PM subject to the availability of the Property as determined by Licensor and Licensee shall provide Licensor with a schedule of evening activities at least two weeks in advance of the dates of such activities.

Except for Licensee's permitted use of the Property on the days and times described in Paragraphs 7.1, and 7.2, Licensor reserves the right to use the Property for all other days and times not granted to Licensee. Licensor agrees to provide two (2) weeks' notice to Licensee of any intended use of the Property by Licensor except in case of emergency. Licensee may reserve other days and times not granted in Paragraphs 7.1 and 7.2 and pay additional fees as governed by the current City of Oakland Master Fee Schedule.

Notwithstanding anything to the contrary, the City reserves the right to use Maxwell House and the adjacent playground area to the exclusion of the Licensee on those occasions when the City requires such use and upon the giving of reasonable notice to Licensee.

8. **Improvements and/or Alterations.** Licensee shall not make any improvements or alterations to the Property without first obtaining the written consent from Licensor. If Licensee makes any improvements or alterations to the Property, Licensor shall have the option to require Licensee to remove any such improvements or alterations made by Licensee prior to the end of this License at no cost to Licensor. If any improvements or alterations are not removed, such improvements or alterations shall become part of the Property and Licensee shall not have any claim or interest in such improvements or alterations.

8.1 **Improvements required by law.** Licensee shall, at no cost to Licensor, make all improvements or alterations to the Property required by law due to Licensee's use of the Property or Licensee's application for any governmental permit. If Licensor shall be required by any governmental agency to make any improvements or alterations to the Property, Licensee agrees to pay the cost incurred by Licensor to



complete such improvements or alterations. After receiving notice from Licensor, Licensee shall make monthly payments to Licensor equal to the amount required to evenly amortize such cost (including 10% per annum interest) over the useful life of such improvements or alterations beginning with the next Monthly License Fee due to Licensor.

- 8.2 **Liens.** Licensee shall keep the Property free and clear of any liens and shall pay when due all bills arising out of any work performed, materials, furnished, or obligations incurred by Licensee, its agents, employees, or contractors relating to the Property.

9. **Maintenance and Repair.** Licensor at its sole cost and expense shall maintain in good order and repair the interior, the exterior, and the roof of the building and all other portions of the Property, including without limitation, structural supports, parking areas, driveway, pavement, windows, doors, plate glass, fences, signs, sidewalks, utility lines, electrical, heating and air conditioning units. Licensee agrees to notify the Licensor of any observed or known condition requiring maintenance or repairs by Licensor. Licensee is not responsible for the replacement of the heating system, sewer lines or any other utilities, equipment, furniture or fixtures on the Property. If repairs are required because of the sole negligence or willful misconduct by Licensee or its employees or agents, Licensor shall promptly be reimbursed by Licensee in connection therewith.

9.1 Licensee shall be required to provide custodial services to the property at no cost to Licensor for the term of the License Agreement. Licensee shall also provide daily care of the surrounding park in the form of litter removal and general cleaning such as sweeping walkways.

10. **Utilities.** Licensee shall be responsible for all charges of utilities that are separately metered and supplied to the Property, including without limitation, electrical, gas, telephone and cable television.

11. **Hazardous & Toxic Materials.** Licensee shall not use, create, store or allow any hazardous and toxic materials on the Property except for those materials and supplies that are considered safe and that are normally and customarily used for housekeeping, maintenance or cleaning. Licensee shall not cause or allow the deposit or disposal of any hazardous and toxic materials on the Property.

12. **Insurance.** Licensee shall purchase and maintain for the term of the License a comprehensive or commercial form general liability insurance with minimum coverage subject to the annual adjustments required under Schedule Q, attached hereto as Exhibit B and incorporated herein as follows:

- a. **Each Occurrence:** Two Million Dollars (\$2,000,000)
- b. **Products/Completed Operations Aggregate:** Two Million Dollars (\$2,000,000)
- c. **General Aggregate:** Two Million Dollars (\$2,000,000)

A copy of the certificate of insurance evidencing that such insurance coverage and in form acceptable to Licensee shall be attached as part of Exhibit C of this License. Such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the Licensor. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be delivered to Licensor. If such coverage is canceled or reduced, Licensee shall, within fifteen (15) days after receipt of written notice from Licensor, deliver to Licensor, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies in accordance with Schedule Q.

13. **Indemnification.** Licensee shall unconditionally indemnify, save, protect, defend and hold harmless the City, its Council members, officers, employees, agents, and contractors from and against any and all loss, injury, liability, expense, claims, costs, suits and damages, including attorney's fees and court costs, relating in any way to the use of the Property by Licensee, (including without any limitations, its employees, contractors, agents, and invitees), or resulting from conditions caused by Licensee's use of the Property. Licensee shall be solely responsible for all charges or claims from Licensee's employees and contractors with respect to any improvements or alterations to the Property. Licensee shall keep the Property free and clear of any claims for mechanics lien and Licensor shall not be responsible for any debts incurred by Licensee.

14. **Compliance with Laws/Nondiscrimination.** For the term of this License, at no cost to Licensor, Licensee shall at all times comply with all applicable laws and regulations from municipal, county, state, federal, and other applicable governmental authorities relating to this License and the Property.

Licensee shall not unlawfully discriminate or permit any discrimination against any person or any groups of persons, including but not limited to members of the public, employees, or applicants for employment, or child applicants for admission into the nursery school because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, gender, sexual preference or Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related complex (ARC) or disability.

15. **Relocation.** Licensee understands and agrees: (1) that Licensee shall not be eligible for any relocation benefits (including any advisory services) when this License terminates, (2) that this License shall not create any rights or interests in Licensee to receive any relocation benefits and (3) that Licensee shall not make any claims against Licensor for any relocation benefits. As a material inducement for Licensor to enter into this License, Licensee waives all rights to any relocation benefits under any applicable law or regulation and releases Licensor from any obligation to provide any relocation benefits.

16. **Possessory Interest Taxes.** If Licensee's interest under this License is subject to any possessory interest tax or other property tax, Licensee shall be responsible for the payment of such taxes or assessments.

17. **Right of Entry.** After providing advance 24-hour notice to Licensee, Licensor may enter the Property to inspect the Property and to maintain, repair, install, or construct any additional improvements to the Property. In the event of any emergency, Licensor shall not be required to provide any advance 24-hour notice. To the extent that Licensor exercises its right to enter the Property, Licensee shall not be entitled to any abatement in the payment of the Monthly License Fee to Licensor.

18. **Condition of Property.** Licensee accepts the Property "as is", without any warranty expressed or implied. When the License terminates, at Licensee's own cost, Licensee shall clean and restore the Property to the condition that existed on the first day this License, except for normal wear and tear.

19. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, assign or sublet this License or any rights under the License. Any attempted transfer, pledge, or assignment of this License shall be null and void resulting in a default under this License. In addition, Licensee shall not sublease or sublicense any part of the property. Any attempt to sublease or sublicense shall constitute a default under this License.

20. **Termination.** Notwithstanding any other provisions in this License, either party may terminate this License at any time upon providing the other party 60 days prior written notice.

21. **Notices.** Any notice required or desired from any party under this License shall be in writing and shall be personally served or may be given by depositing such notice in the United State mail, registered or certified, postage prepaid, addressed to the other party as follows:

To: Office of Parks and Recreation  
250 Frank H. Ogawa Plaza,  
Third Floor  
Oakland, CA 94612  
Attention: Director of OPR  
To: Peter Pan Co-Op Nursery School  
4618 Allendale Avenue  
Oakland, CA 94619

Any notice given by registered mail shall be deemed to given on the third business day of its deposit in the United States mail. Any notice given by certified mail shall be deemed given on the date receipt was acknowledged to the postal authorities. Any notice by mail other than registered or certified mail shall be deemed given only received by the other party, then on the date of receipt. Licensors and Licensee may, during this License, change their respective addresses for the purpose of receiving notices hereunder by so notifying the other party in writing of such change of address.

22. **Default.** The occurrence of any of the following events shall constitute a default under this License:

22.1 Failure to pay the License Fee or any other sums of money due under this License when such failure to comply continues for ten (10) days after Licensee shall have received such notice from Licensors.

22.2 Failure to perform any other provision of this License if the failure to perform is not cured after ten (10) days after Licensee shall have received such notice from Licensors. If the default cannot be reasonably cured within thirty (30) days, Licensee shall not be in default if Licensee commences to cure the default within such thirty (30) day period and exercises due diligence and best efforts to cure the default.

22.3 Licensee shall have abandoned the Property.

23. **Licensors Remedies.** In the event of any default by Licensee, Licensors shall have the following remedies in addition to all other rights and remedies provided by law or otherwise provided in this License which Licensors may enforce cumulatively or in the alternative:

23.1 Licensors shall have the option to keep this License in force and effect and to enforce by an action at law or in equity the right to: (1) recover the License Fee and other sums of money becoming due under this License, (2) make payments required by Licensee or perform Licensee's obligations and be reimbursed by Licensee for such cost with interest at the then maximum rate of interest permitted by law from the time when Licensors payment is made until Licensors is reimbursed, and (3) remedies of injunctive relief and specific performance to prevent Licensee from violating the terms of this License and to compel Licensee to perform its obligations under this License.

23.2 Licensors shall have the option to terminate this License by providing written notice to Licensee to be effective on the date set forth in such termination notice. Any such termination shall not relieve Licensee from its obligation to make any payments due under this License.

23.3 In the event that Licensee abandons the Property, Licensors may terminate this License provided that Licensors shall first provide written notice to Licensee with expressed notice of such termination.

24. **Damage or Destruction.** If all or part of the Property is destroyed or damaged from any cause which frustrates, causes the use of Property to be unfit for the purpose or use described in this License or creates an unsafe or hazardous condition, either party shall have the option to terminate this License upon 30 days written notice to the other party. Licensor shall not have any obligation to Licensee under any circumstances to repair any damage to the Property or to rebuild any structure on the Property.

25. **Annual Reporting.** Within forty-five (45) days after the end of each year of this License and any Extended License Period, Licensee shall deliver to Licensor current statements of the following:

25.1 End of year financial statements prepared in accordance with Generally Accepted Accounting Principles by a Certified Public Accountant acceptable to the City Auditor. This audit provision shall conform to the City of Oakland City Auditor's Table of Contract Clauses Related to Financial Responsibilities.

25.2 Certificate of Insurance (in compliance with Schedule Q)

25.3 Certified Articles of Incorporation.

25.4 Certified Annual Reports including but not limited to an income and expense statement, a source and application of fund statement, balance sheet showing an all assets and liabilities and other related reports prepared by a Certified Public Accountant retained by Licensee at no cost to Licensor.

25.5 Statement confirming the number of students enrolled or scheduled to participate in that school year; the fee charged per student, an operating statement showing income and expense for the prior year, a balance sheet showing all assets and liabilities, a budget for the current year, and the names and telephone numbers of the current President and Directors of the Peter Pan Cooperative Nursery School.

26. **Record Retention.** Records are to be retained to the later of four years after the termination or two years after the closure of any disputed matter. Such shall be retained on the Property or at the site of local administration with convenient access to Licensor.

27. **Condemnation.** If all or part of the Property is taken under the power of eminent domain, or sold under the threat of condemnation, either party shall have the option to terminate the License upon 30 days written notice to the other party.

28. **Entire Agreement.** This License contains the entire agreement of the parties relating to this transaction and may not be amended except in writing signed by both parties. Any prior lease or agreement between the parties shall have no force and effect on this License.

29. **Legal Effect.** This License shall not be construed as a partnership between Licensor and

Licensee and it is not intended to create a third party beneficiary contract.

30. **Time**. Time is of the essence as to each and every part of this License.

In witness hereof, the parties have executed this License on the dates set forth below.

**Peter Pan Cooperative Nursery School**

**City of Oakland**

**(Licensee)**

**(Licensor)**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Office of Parks and Recreation**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approved as to form and legality:**

\_\_\_\_\_

**Office of the City Attorney**

**Table of Exhibits**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
<b>A</b>	<b>Property Map</b>
<b>B</b>	<b>Schedule Q</b>
<b>C</b>	<b>Certificate of Insurance or copies of Insurance Policies</b>

**EXHIBIT A**



**EXHIBIT B****Schedule Q****INSURANCE REQUIREMENTS****PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS****a. General Liability, Automobile, Worker's Compensation and Professional Liability**

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability and if necessary, Products and Completed Operations or Owners and Contractor Protective Liability. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

- A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).

- B. Limits of liability shall include the following:

Bodily Injury - \$1,000,000

Property Damage - \$1,000,000

Or, Combined Single Limit (C.S.L) for Bodily Injury and Property Damage - \$2,000,000

- C. If the policy is a "claim made" type policy, the following should be included as endorsements:

- 1) The retroactive date shall be the effective date of this Agreement or a prior date.
- 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.

- ii. Automobile Liability insurance, including all owned, non-owned and hired automobiles used by the Contractor or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.
- iii. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
- iv. Professional Liability/errors and omissions insurance in the amount of \$ n/a.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Additional Insured: Contractor shall name the City of Oakland, its Councilmembers, directors, officers, agents and employees as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 (or equivalent) and/or CA 20 48 - Designated Insured Form (for business auto insurance). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT; and
- ii. Cancellation Notice: 30-day prior written notice of cancellation, termination or material change in coverage; and
- iii. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- iv. Insurer shall carry a Best Rating of B+ or greater.

***EXEMPTION NOTE: Until further notice, the City will accept the State Compensation Insurance Fund (SCIF) as an acceptable insurer for the purposes of Workers' Compensation coverage.***

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**EXHIBIT C**

**Certificate of Insurance**

**(to be provided at signing)**

*D. Office of the City Clerk*

Oakland City Attorney's Office

2006 FEB 15 PM 9:05

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND PETER PAN COOPERATIVE NURSERY SCHOOL FOR NONEXCLUSIVE USE OF MAXWELL HOUSE AND THE ADJOINING PLAY AREA, LOCATED AT 4618 ALLENDALE AVENUE, OAKLAND FOR \$1,000 PER MONTH FOR A THREE YEAR TERM WITH TWO CONSECUTIVE THREE YEAR OPTIONS TO RENEW**

**WHEREAS**, Peter Pan Cooperative Nursery School has operated a cooperative nursery school at Maxwell House for more than 22 years; and

**WHEREAS**, Peter Pan Cooperative Nursery School is a California 501(c)(3) non-profit corporation dedicated to providing high quality preschool education for Oakland families; and

**WHEREAS**, the City of Oakland is the fee simple owner and the Office of Parks and Recreation is the custodial agency of the real property commonly known as Maxwell House and the adjoining play area, located at 4618 Allendale Avenue, Oakland, California; and

**WHEREAS**, Peter Pan Cooperative Nursery School desires to continue use of Maxwell House and the adjoining play area for the purpose of operating a cooperative nursery school; and

**WHEREAS**, the City is willing to grant to Peter Pan Cooperative Nursery School a revocable nonexclusive license for the use of Maxwell House and the adjoining play area subject to the terms and conditions of a License Agreement; and

**WHEREAS**, Peter Pan Cooperative Nursery School agrees to provide janitorial and custodial care to the building and adjacent park and electricity, gas, and telephone services to the property; and

**WHEREAS**, Peter Pan Cooperative Nursery School agrees to pay a monthly license fee of one thousand dollars (\$1,000), to Licensor on the first day of each and every month of the license period during the initial license period with annual increases based on the Consumer Price Index and other factors specified in the License Agreement; and

**WHEREAS**, Peter Pan Cooperative Nursery School agrees to provide adequate liability insurance as stipulated in the license agreement; and

**WHEREAS**, the license will leverage existing City resources for additional services to the community with no increased costs to the City's budget; and

**WHEREAS**, the license agreement shall be for a three-year term with two consecutive three-year options to renew; now, therefore be it

**RESOLVED:** that the City Council hereby authorizes the City Administrator or her designee to negotiate and execute a license agreement and any amendments between the City of Oakland and Peter Pan Cooperative Nursery School for the continued use of Maxwell House and the adjoining play area, located at 4618 Allendale Avenue in Oakland, California for \$1,000 per month for a three-year term with two consecutive three-year options to renew; and be it

**FUTHER RESOLVED:** That the Office of the City Attorney has approved this resolution as to form and legality and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, , 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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