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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Carmen L. Martinez
Library Director

SUBJECT: PIEDMONT AVE LIBRARY LEASE

DATE: June 14, 2012

City Administrator
Approval

Date

6/14/12

COUNCIL DISTRICT: #1

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:

- Authorizing the City Administrator to enter into a five-year Joint-Use Lease with Oakland Unified School District (OUSD), effective February 1, 2012 or commencing upon delivery of modular building to the City;
- Authorizing the City Administrator to enter into the Lease with no escalator clause, and with custodial services, plumbing, electrical and heating system maintenance provided by OUSD; all utilities shall be paid by the City
- Authorizing the City to move the Library from its current location at 160 41st Street to a modular facility on the site of the Piedmont Ave Elementary School at 4314 Piedmont Ave;
- Appropriating \$2,500 per month from Measure Q funds for lease payments for Fiscal Year 2012-2013; and
- Appropriating funding not to exceed \$200,000 from OPL Fund 7540, Project No. 000000 in order to effect the move into the modular facility.

EXECUTIVE SUMMARY

Based on a community meeting of May 29, 2012, this report has been updated in order to incorporate public concerns related to two areas that surfaced and which City Council Member Jane Brunner indicated would be addressed:

- Accessibility to the Echo Avenue Library site from Piedmont Avenue and ADA accessibility from street level to the Library; and
- Traffic and transportation impacts on Echo Avenue.

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Based on preliminary architectural designs and coordination with the City's ADA Coordinator, the new Library site will be fully accessible from street level (*Please see Attachment D for Scope Plans*). Also, in meetings with the Piedmont Avenue Elementary School PTA and community, initial concerns were raised about traffic during drop-off and pick-up periods. The Library's traffic patterns differ from the school since student drop-off occurs between 8:30 and 9:00 a.m. and the Library opens after 10:00 a.m. Pick-up times are spread-out, and there was less concern about library traffic adding to school traffic during the afternoon. A more-complete summary of the two issues and their resolution is addressed in the *Public Outreach/Interest* section of this report.

Additionally, city staff (Library, Public Works, Traffic Engineering) has reviewed the 2009 Piedmont Avenue Elementary School Traffic Safety Plan (*Please see Attachment E*) and, with the City's ADA Coordinator, are continuing to meet in order to determine whether there are additional mitigation actions that can be taken to assist in traffic safety and access concerns. The City has been working with Council Member Brunner's office and the school community regarding the traffic safety issues. As part of that process, the City has agreed to several measures recommended in the Traffic Safety Plan:

1. Relocation of the disabled parking zone on Echo Ave. to Piedmont Ave. at John Street
2. Delineation of a ladder crosswalk on Piedmont Ave. at John Street
3. Delineation of a ladder crosswalk at Piedmont Ave. and Echo Ave.
4. Installation of an in-street pedestrian sign on Piedmont Ave. at Echo Ave.

Based on the above, analysis of the various options, input from the many community meetings, and sustained efforts that will continue by the Library and Traffic Engineering with the school and community concerning student and pedestrian safety, staff recommends City Council adoption of the resolution. The resolution authorizes the City Administrator to enter into a five-year Joint-Use Lease Agreement with the Oakland Unified School District for rental of a modular building on the property of the Piedmont Avenue Elementary School at 4314 Piedmont Ave. The rental cost is \$2,500 per month; \$30,000 per year; \$150,000 over the five year lease agreement. The Lease Agreement provides for:

- An effective date of February 1, 2012 or upon delivery of the facility to the City;
- A modular building of approximately 1,600 sq ft (current building is 1,700 sq ft);
- A Library that has public restrooms and air conditioning (current building has no public restrooms or AC);
- All utilities costs are to be paid by the City (same as current lease).
- *Please see Attachment C- Joint- Use Lease Agreement*

In addition to the annual rental costs of \$30,000 associated with the Lease Agreement, which is available in the FY 2011-13 Adopted Budget in Measure Q Fund (2241), Library Financial Services Organization (61121), and utility costs which the City will continue to fund as it has at the current site, there are additional one-time costs associated with the move from the current site (160 41st Street) to the new site at the Piedmont Ave Elementary School (4314 Piedmont

Avenue). Those costs include moving costs, tenant improvements and capital costs total approximately \$180,000 to \$200,000 and will be funded through the OPL Fund 7540, Project No. 000000.

The recommended option provides for continuous library service in the Piedmont Avenue neighborhood, a priority for this location which has the fourth highest circulation among Oakland's 16 branches. The lease with OUSD is a "medium-term" solution that allows the Library and the community to focus their efforts on securing a facility that will meet the community's needs for the long-term. Rental of the modular facility represents the lowest cost feasible option.

OUTCOME

The results/outcomes of the requested City Council action will be as follows:

- Direct staff to plan and implement necessary improvements associated with the new site;
- Direct staff to provide 30-day notice to the current landlord;
- Direct staff to make all necessary preparations for a move of all needed items from the current location to the new OUSD location;
- Direct staff to effect all necessary actions in order to ensure continued library service to the community in the Piedmont Avenue corridor.

BACKGROUND

The Oakland Public Library's Piedmont Avenue Branch has been located at its current location, 160 41st Street, since 1932. Through September 2009, it had been leased from Chi Group-Citibank at the rate of \$1.00 per month. During this period the property has received little to no remodeling and consequently, the property suffers from no public restrooms, inadequate space for patrons and staff, poor ventilation, seismic hazards, safety issues related to traffic flow, and inadequate to no ADA improvements. During the last three years, the Library has also been shut several days during summer months due to extreme heat build-up in the facility.

In September 2009, the City/Library was notified by the new owners that its rent for the facility would increase effective November 1, 2010. The City's Real Estate Division conducted several months of negotiation with the new owner at which time a new lease was negotiated and forwarded to City Council for approval in April 2010. Staff recommended the new lease to allow the City to continue to provide library services in the neighborhood and to give the City/Agency time to explore the possibility of buying a property or relocating the library to a new location. The new lease, effective November 1, 2010 increased the rent from \$1.00 per

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month to \$4,250 per month. The lease also allowed a one-year extension with escalator. The rent is paid from Measure Q (2241) funds.

The City/OPL, after analysis of the options, did not renew the one-year lease extension, and on November 1, 2011, the Piedmont Avenue Library is on a month-to-month \$4,900 rental agreement with a 30-day vacate notice.

ANALYSIS

Since late 2009, Library staff has met with City Council staff, City Attorney staff, Friends of Piedmont Avenue Library, CEDA and PWA staff and community members to assist in determining the future direction of the Library within the Piedmont Avenue community/corridor.

The Friends of Piedmont Avenue Library also conducted a survey of the community in March-April 2010 to assist in informing community meetings that were scheduled April 2010 – February 2011.

Below is a chart which illustrates the timeline regarding the Piedmont Avenue Library process and the meetings and discussions conducted and provides additional comments on the outcome.

ACTION	DATES	Additional Comment
City notified of action regarding new site acquisition	March 2009	CM Brunner office, City Administrator and OPL informed of this action and two buyers' interest
Piedmont Avenue Library purchased by new owner	September 2009	Citibank, N.A. sells site: bank facility & library facility to Goodhue Property Investments
Discussions with new owner regarding lease	September 2009 – April 2010	Several months of negotiation with Real Estate and Library re terms and costs
Staff, Community, Developer, Friends Meetings	October 2009 – February, 2011	<ul style="list-style-type: none"> • Meetings with Real Estate, City Attorney, CM Brunner staff • Meetings with Friends, CM Brunner, CM Brunner staff • Meetings with CEDA Housing staff, PWA staff, Building Developer, Friends • Meeting with PANIL • Meeting with Friends • Three Community Meetings • Meetings with OUSD, Schools, PTA • Meetings with Advisory Group re Library
Lease Agreement goes to City Council	April 2010; November 2010	Lease Agreement approved by City Council. initial rent is \$4,250/month; One year term Nov 1, 2010 – October 31, 2011 with one year renewal option. Current rent is \$4,900/month. Measure Q will pay for lease.
Library, OUSD, PWA Meetings	February 2011 - Current	Meetings and Discussion re move of the Piedmont Avenue Library to a modular building on the site of the Piedmont Avenue Elementary School. OUSD and the City of Oakland agree to a Joint-Use Lease Agreement
Joint-Use Lease Agreement goes to OUSD Board & City Council	June 2012*	The Joint-Use OUSD/City Oakland Lease Agreement, once approved by both agencies, allows the City to make improvements at the site and move the Library
Tenant Improvements, ADA improvements, etc.	June – Sept 2012*	Upon approval of the OUSD Board and City Council, the City will begin the necessary improvements (electrical, cabling, ADA access, security alarm, etc.)
Preparations for closure and move of the Piedmont Ave Library for 2 weeks	Sept-October 2012*	Piedmont Ave Branch Library opens at new location with service to the public and to the Piedmont Ave Elementary School

* Approximate Timeframe

POLICY ALTERNATIVES

The Oakland Public Library is sensitive to the need for a branch in this neighborhood. The Piedmont Avenue Library supports Piedmont Avenue Elementary School and the Child Development Center attached to it, St. Leo's Catholic School, Pacific Boys' Choir Academy, and two preschools: Duck's Nest and Snow White. As well, the Library supports students who live in the neighborhood and attend Westlake Middle School and Oakland Tech High School. Within the Piedmont Avenue area, the Library also supports a number of senior facilities including: Monarch House, Piedmont Gardens, plus three satellite complexes (Linda, Panama Court, and 41st Street).

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For almost two years, the Oakland Public Library has discussed several options with the community. Short- and long-term options have included:

- Stay in the current site;
- Rent another less expensive property on or near Piedmont Avenue;
- Move into a modular facility;
- Relocate the Library into a multi-use development;
- Close the Library;
- Move into the Broadway/MacArthur Redevelopment area;
- Build a new Library;
- Buy a building for renovation along Piedmont Avenue.

All of the libraries in the City of Oakland are city-owned facilities except for Piedmont Avenue, Cesar Chavez and Eastmont Branch Libraries. Part of the conversation with the community discussed owned and rental options and those are reflected above. Additionally, as a result of the many community meetings, Oakland Public Library staff limited its options to those supported by community member participants and those possible within a two-year timeframe.

Consequently, for a number of reasons, including financial, the option to move into a modular facility on the property of the Piedmont Avenue Elementary School, supported by OUSD, became the preferred option. ***Please see Attachment A for alternatives and recommendation.***

A longer-term option that has been discussed with the community is the development of a self-taxing district or Mello-Roos district, similar to that formed for the construction of the Rockridge Library. This option will require further planning with the community and merchant groups and may come back to City Council within the five-year lease period.

PUBLIC OUTREACH/INTEREST

Over 15 meetings have been held with the public or public interest groups in order to discuss the issues related to the Piedmont Avenue Library and the various options that have been investigated. ***Please see Attachment B for Oakland Public Library Piedmont Avenue Library Planning Process Timeline.***

At several of the community meetings held during 2010, a Power Point presentation was presented by staff to outline a profile of the Piedmont Avenue Library, who it serves, a summary of the survey completed by the Friends of Piedmont Avenue Library (Friends of PAL), and the several options. At the completion of the presentation, a complete discussion with the participants occurred which has informed the recommendation to move to the OUSD modular. As well, flyers and an 18"x24" poster were prominently available and displayed as part of the communication plan with the community. ***(Please see Attachment F)***. A link to the PPT is below:

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http://panil.org/hot_topics/PiedmontAvenueLibraryCommunityMeetingApril2010.html

At the latest community meeting held on May 29, 2012, staff had been requested to address a number of issues:

- Cost of moving versus cost of remaining for 5 years;
- Status of negotiations with the current landlord;
- Potential availability of funds in FY 2012-13 for current site;
- Terms of the lease with OUSD;
- Long term vision for a Library within the Piedmont Avenue neighborhood;
- What site alternatives were considered for relocation;
- The project schedule for relocation, including public design input; and
- Comparison of other branch library rent payments.

(Please see link to PPT Presentation: <http://panil.org/pdf/PiedmontAveLibPresentation5-29-12.pdf>)

All of the above issues were addressed in the staff presentation that evening. Additionally, several other comments were submitted prior to the meeting and are presented in their original form below.

1. *The process that led to shutting down the Piedmont Avenue Library branch at its current site, which was built to house a library and has been the branch home for more than 80 years, and the decision to relocate to public school grounds which are already constrained.*
2. *The financial tradeoffs associated with paying additional rent at the current location compared to the costs of moving, storage, site design, security, permits, approvals, as well as rent to OUSD at the school site.*
3. *Space conflicts between library patrons and Piedmont Avenue Neighborhood School (PANS) students and staff.*
4. *Potential impacts to the PANS recreation facilities (by both PANS students and the public who use the facilities during non-school hours).*
5. *The proposed site may attract loitering and other unwanted activities to the schoolyard during school hours. Will there be additional security specifically for the library?*
6. *Plans for a permanent site and ongoing funding source for the Piedmont Avenue Library.*
7. *ADA access to the temporary site.*
8. *That the PANS "temporary" site will become a permanent site as library patrons get used to the PANS site, and the effort to find a more suitable location will fall by the wayside. Will there be an option to renew the lease with OUSD?*

Six of these eight issues are addressed in the Power Point presentations. No. 3 is addressed in the Lease whereby it calls for a fence to be installed that will restrict access to the school from the Library and entry. No. 5 has been expressed in previous meetings and with the school community, and Library staff is reviewing this for implementation.

Lastly, two other major areas of concern were presented at the May 29 meeting and Council Member Brunner committed to having them addressed as part of the report:

- Accessibility to the Echo Avenue Library site from Piedmont Avenue and ADA accessibility from street level to the Library; and
- Traffic and transportation impacts on Echo Avenue.

Attached to this report (*Attachment D - Scope Plan*) is an initial design for ADA access from street level to the new Library. The City is in very preliminary stages of planning the exterior and interior areas and has considered a number of alternatives for ADA access. Additionally, walkthroughs of the site with the City's ADA Coordinator have occurred in order to ensure the City achieves all required accessibility objectives. The ADA Coordinator will also review any final design plans that result from the process. ADA and handicapped parking, as well as Library drop off/pick up curb designations will also be addressed.

Accessibility to the proposed library site on Echo Avenue from Piedmont Avenue and the grade changes that occur was an issue that came forward during the May 29 presentation. Staff acknowledges that the Echo Avenue site is some 500 feet from the level terrain of the Piedmont Avenue corridor. It is totally understandable that our older adults and persons with disabilities could find the street and sidewalk inclines difficult. In order to assist in ensuring that access for our seniors and disabled individuals is addressed, the Library has been supported in its efforts by Piedmont Gardens that their shuttle will establish drop off schedules at the new Library. Monarch House has also been contacted to determine their willingness to have a Library schedule. As well, the Library will locate a bookdrop on Piedmont Avenue for patron convenience. Additionally, the Library will continue to research other methods of delivering materials to patrons as part of Extended Services (up to 6 weeks check out).

In meetings with the Piedmont Avenue Elementary School PTA and community, initial concerns were raised about traffic during drop-off and pick-up periods. There have been long-standing concerns regarding traffic during designated periods of the day and week. As a result, in 2009 the school and community proposed several recommendations as outlined in *Attachment E*. During the meetings with the community, it was concluded that the Library's traffic patterns differ from the school since student drop-off occurs between 8:30 and 9:00 a.m. and the Library always opens after 10:00 a.m.; and the Library is closed at least 20.0% of the school week on Mondays due to its Tue-Fri schedule. Pick-up times are spread-out, and there was less concern about library traffic adding to school traffic during the afternoon.

Nonetheless, city staff (Library, Public Works, Traffic Engineering) has reviewed the 2009 Piedmont Avenue Elementary School Traffic Safety Plan (*Please see Attachment E*) which was completed by Alta Planning & Design for the school, and with the City's ADA Coordinator, are continuing to meet in order to determine whether there are additional mitigation actions that can be taken to assist in traffic safety and access concerns. Safety of students and pedestrians is paramount, and although in many ways the new Library site is much more pedestrian-friendly than the current Library site on 41st Avenue, the Library is committed to working with the school community to address any additional concerns that may arise.

As mentioned previously, the City has agreed to adopt several of the recommendations of the Traffic Safety Plan which primarily addresses safety on Piedmont Avenue:

1. Relocation of the disabled parking zone on Echo Ave. to Piedmont Ave. at John Street
2. Delineation of a ladder crosswalk on Piedmont Ave. at John Street
3. Delineation of a ladder crosswalk at Piedmont Ave. and Echo Ave.
4. Installation of an in-street pedestrian sign on Piedmont Ave. at Echo Ave.

The school community also continues to review the safety plan recommendations and is committed, through volunteers or funding to, enlist a "safety patrol" to help manage the flow of traffic during drop-off periods. Additionally, they are looking at purchase of temporary in-street pedestrian signs to be used during drop-off and pick-up periods. The Library can assist with those purchases and also use the signs on Echo Avenue, when necessary.

An unrelated suggestion made at the May 29 meeting, and staff indicated it would follow up on it: whether eminent domain is an option. In September 2009 at the time that staff (CM Brunner staff, Real Estate, City Attorney, and Library) was discussing the sale of the property from CitiBank to Goodhue Property Investments, eminent domain was discussed as an option. At the time, it was concluded that the requirements (including compensation to the property owner) and length of time for the process was not feasible.

COORDINATION

Staff from the Office of the City Attorney (OCA), Housing, Real Estate, Public Works, Oakland Unified School District, and the Office of Council Member Jane Brunner has been integral parts of the discussion regarding the several options. As well, development of a new lease was assisted through the OCA, Real Estate and OUSD Counsel. Library staff has been greatly assisted by the Friends of PAL and Council Member Jane Brunner and staff in putting together the community participation and planning for a solution.

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COST SUMMARY/IMPLICATIONS

The resolution appropriates \$2,500 per month from Measure Q (2241) funds for lease payments for Fiscal Year 2012-13. Continuing Measure Q funding will be addressed in the City's budget process. Source of funding is Measure Q Fund (2241), Library Financial Services Organization (61211).

Annual Rent	Relocation Costs	Description of Relocation Costs	Recurring Annual Utility Costs	Landlord Improvements or Provisions	Total Five Years inc. Relocation Costs	Total Ten Years inc. Relocation Costs
\$30,000	\$180,000 - \$200,000	ADA access; taxes; utilities; security fence Moving, Furniture, etc. included in Relocation Costs	\$5,300	Inc. Reinforce floor structure, pest abatement, repairs to structural elements (plumbing, electrical, heating), Restrooms, A/C, Custodial	\$356,500	\$533,000

The resolution also appropriates funding not-to-exceed \$200,000 from OPL Fund 7540, Project No. 000000 in order to effect the move into the modular facility.

SUSTAINABLE OPPORTUNITIES

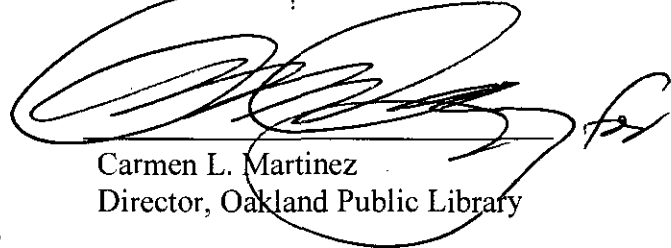
Economic: Libraries are destination points, drawing visitors from throughout the City and beyond. In many communities, it has been documented that branch libraries act as economic development anchors.

Environmental: As proposed in this recommendation, the Library will re-use a modular facility which has been used by OUSD as a classroom and re-purpose it as a school/public Library.

Social Equity: The Library is a great equalizer, with resources for all, and welcomes all members of the community. It reflects the rich diversity of Oakland with programs and materials for a wide variety of languages, cultures, lifestyles, and family types.

For questions regarding this report, please contact Gerry Garzón, Associate Director, Oakland Public Library, 510-238-6720.

/ Respectfully submitted,



Carmen L. Martinez
Director, Oakland Public Library

Prepared by:
Gerry Garzón, Associate Director
Oakland Public Library

Attachment A – *Piedmont Avenue Library Estimated Relocation Options*

Attachment B – *Piedmont Avenue Library Planning Process Timeline*

Attachment C – *Joint-Use Lease Agreement between the City of Oakland and the Oakland Unified School District*

Attachment D – *Scope Plan for ADA Accessibility*

Attachment E – *Piedmont Avenue Elementary School Traffic Safety Plan*

Attachment F – *Copy of Flyer and Poster from October 2011 re Library Move*

**PIEDMONT AVENUE LIBRARY
ESTIMATED
RELOCATION OPTIONS**

Piedmont Ave Library	Monthly	Annual Rent	Five Years	Relocation Costs	Add'l Costs Description	Estimated Costs	Recurring Annual Costs /3	Landlord Improvements or Provisions	Total Five Years Inc. Add'l Costs	Total Ten Years Inc. Add'l Costs
Lease at Current Library Site	\$4,900	\$58,800	\$294,000	\$0	Repairs; Maintenance; plumbing; taxes; insurance; utilities; custodial; pest abatement	Inc. in Recurring are emergency annual capital maintenance costs (\$5K) since no landlord responsibility	\$20,400	None. City responsible for all maintenance except foundation and roof.	\$396,000	\$792,000
Lease at OUSD Piedmont Ave Elementary (Recommended Option)	\$2,500	\$30,000	\$150,000	\$180,000	ADA access; taxes; utilities; security fence	ADA access, fencing (\$35K), Moving, Furniture, etc. included in Relocation Costs	\$5,300	Inc. Reinforce floor structure, pest abatement, repairs to structural elements (plumbing, electrical, heating), ADA accessible Restrooms, A/C, Custodial	\$356,000	\$533,000
Lease Modular on City-Owned Parking Lot /1	\$1,500	\$18,000	\$90,000	\$197,000	Permits; stairs; power; utility hookups; repairs; maintenance; insurance; custodial; pest abatement	/2 All Add'l, Moving, Furniture, etc. Costs Included in Relocation Costs	\$13,600	N/A	\$300,600	\$513,000
Lease Modular w/ Parking Revenue Loss			\$422,608						\$533,408	\$1,178,616
Parking Revenue - 14 spaces (see Assumptions)	\$5,547	\$66,562	\$332,808						\$332,808	\$665,616
Potential Pkg Lost use @70%										
/1 This only for lease of the modular										
/2 Inc \$17K Delivery & Install of Modular										
/3 Recurring costs include: PWA Facilities Support, Utilities (inc. higher electrical for A/C in modular), Custodial, Supplies, Overhead										
ASSUMPTIONS										
Parking										
Daily 8 am-6 pm; 14 spaces used 70%	196									
(\$2/hr (4spaces x 7 hrs) (Max is 10 hrs)										
**340 days: No Sun/13 Holidays										
340 days/12 months=28.3 days/mo										
Assumes no Parking Rate Increases										
Lease										
Assumes no annual lease escalations; no escalation between 5/10 year lease										

**OAKLAND PUBLIC LIBRARY
PIEDMONT AVENUE LIBRARY PLANNING PROCESS TIMELINE**

DATE	PURPOSE	LOCATION	PARTICIPANTS	OUTCOME
11/12/09	Meeting	Library	Friends of Piedmont Avenue Library (PAL)	Status Update & Next Steps Community Mtg
01/28/10	General Meeting w/ Community	Piedmont Gardens	Friends, Community	Status Update
04/01/10	Friends Survey		Community Members	Survey went thru 06/12/10. Used in PPT Presentation http://panil.org/hot_topics/PiedmontAvenueLibraryCommunityMeetingApril2010.html
05/12/10	PANIL Meeting, PPT Presentation	Piedmont Gardens	PANIL, Community	Status, Options, Discussion
05/20/10	Friends of PAL Mtg, PPT Presentat dn	Piedmont Gardens	Friends, Community	Status, Options, Discussion
07/08/10	Friends Meeting	Library	Friends of PAL	Follow-Up
08/12/10	Advisory Group Mtg	Library	Piedmont Ave Library Advisory Group	Next Steps
08/26/10	Meeting to review housing/library pkg lot options w/ staff	Frank Ogawa Plaza	Meeting of City Staff (Housing, CEDA, Real Estate, CM Brunner staff) Friends, BMG Developer	1st Meeting, Next Meeting Scheduled
08/31/10	Meeting to continue review of pkg lot options w/ staff	Frank Ogawa Plaza	Meeting of City Staff (Housing, CEDA, Real Estate, CM Brunner staff) Friends, BMG Developer	2nd Meeting to review financial proforma
09/15/10	Community Meeting	Piedmont Gardens	Community Members	Status Update
09/16/10	Meeting to continue review of pkg lot options w/ staff	Frank Ogawa Plaza	Meeting of City Staff (Housing, CEDA, Real Estate, CM Brunner staff) Friends, BMG Developer	Last Meeting which determined housing (senior, affordable) not an option on parking lot
11/18/10	Advisory Group Mtg	Library	Piedmont Ave Library Advisory Group	Next Steps
01/12/11				
02/07/11	Piedmont Ave Elementary School PTA	Piedmont Ave Elementary	Principal Ahmad, Parents	Status, Options, Discussion
02/23/11	Piedmont Gardens	Piedmont Gardens	Residents	Status, Options, Discussion
02/24/11	PAMA Meeting	Piedmont Gardens	Merchants, Community	Status, Options, Discussion
03/07/11	Meeting	Plymouth United Church of Christ	Members, Community	Status, Options, Discussion
03/08/11	Archway School PTA	Archway School	Principal, Parents	Status, Options, Discussion
09/12/11	Piedmont Ave Elementary School PTA	Piedmont Ave Elementary	Principal Ahmad, Parents	Status, Options, Discussion
09/22/11	Friends of PAL Mtg	Library	Friends of PAL	Next Steps
09/23/11	Mtg w/ OUSD Project Mgt, Piedmont Ave Elementary PTA	Piedmont Ave Elementary	OUSD Project Management, Facilities, PWA, PTA	Status, Issues
10/14/11	Walk-Thru of Modular	Piedmont Ave Elementary	OUSD Project Management, Facilities, PWA	Determine Options
02/21/11	Walk-Thru of Modular	Piedmont Ave Elementary	OUSD Project Management, PWA, OPL Staff	Discussion
03/10/12	Birthday Celebration	Piedmont Ave Library	Community Members	Continued News of Move
04/18/12	Initial Mtg w/ Contractor & Architect	Contractor Offices	OPL Staff, PWA, Contractor, Architect	Initial Meeting to discuss project
04/20/12	Walk-Thru of Modular	Piedmont Ave Elementary	OUSD Project Management, PWA, OPL Staff, Contractor Architect	Initial Meeting to discuss layout, design, construction

Note: Potential Property Purchases/Move reviewed include Park Day School, Moss Mansion in Mosswook Pk, Merritt Bldg (3770 Piedmont Ave), Blockbuster Bldg (3668 Piedmont Ave), Kaiser, Piedmont Garden Expansion

**JOINT-USE LEASE AGREEMENT BETWEEN CITY OF OAKLAND,
OAKLAND PUBLIC LIBRARY AND
OAKLAND UNIFIED SCHOOL DISTRICT
FOR USE OF EXISTING MODULAR CLASSROOM SPACE
FOR PUBLIC LIBRARY AT
PIEDMONT ELEMENTARY SCHOOL, OAKLAND CA**

THIS JOINT USE LEASE AGREEMENT ("Lease" or "Agreement") is made this ____ day of _____, 2011, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and the CITY OF OAKLAND, a California municipal corporation ("City"), referred to collectively as the "Parties," pursuant to City Resolution No. _____ C.M.S. passed on _____, 2011.

RECITALS

WHEREAS, City requires space to house a public library ("Program" or "Activities"), as the City's Activities are further defined and depicted on **Exhibit "A"**, attached hereto and made a part of this Agreement; and

WHEREAS, District has space appropriate for City's Activities in a modular classroom building ("Modular Building") at Piedmont Elementary School, 4314 Piedmont Avenue, Oakland, California ("School Site"), as further depicted on **Exhibit "B"**; and

WHEREAS, District desires to allow City to use the Modular Building on the designated School Site for providing services for City's Activities and as further detailed in this Agreement; and

WHEREAS, District, pursuant to section 17527(a) of the Education Code, is authorized "to enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals, including during normal school hours of the school is in session"; and

WHEREAS, District intends to utilize all remaining portions of the School Site as an operating school facility during the term of this Agreement and City shall only have use of the space as designated in **Exhibit "B"** attached hereto and made a part of this Agreement; and

WHEREAS, District, pursuant to section 17529 of the Education Code, has determined by approving this Agreement, that leasing the Modular Building to City will not (1) interfere with the educational programs or activities of any school or class conducted on the School Site, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Site;

WHEREAS, City agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon City's leasehold interest hereunder or upon the improvements, and that nothing contained in this Agreement shall be construed as an agreement by District to subject its fee interest to any lien;

ATTACHMENT C

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

AGREEMENT

1. Lease and Use of Property. District hereby leases to City and City hereby leases from District the Modular Building at the School Site by City to perform City's Activities. The Modular Building that constitutes the premises subject to this Agreement is described in **Exhibit "B"**. City shall have use of the Modular Building at all times to perform City's Activities only, subject to modification by mutual agreement of both Parties, and only to the extent City pays Rent for the Modular Building.

2. Condition of Modular Building.

2.1. The Modular Building is leased to City on an "AS IS" basis. District shall not be required to make or construct any alterations, additions or improvements to the Modular Building, except as follows:

2.1.1. Prior to the Commencement Date, District shall reinforce the structural membrane of the flooring system to insure there is sufficient floor joist support to handle the increased load resulting from City's Activities to the reasonable satisfaction of City's structural engineers, and any requirements imposed by the Division of State Architect.

2.1.2. Prior to the Commencement Date, District shall provide required utility connections and services to the Modular Building, to the extent not currently provided, including electrical, gas, water, sewer, telephone, cable television, internet access, and security and fire alarm, and shall insure that the heating, ventilation, and air conditioning ("HVAC") system is in proper working condition.

2.2. Except as provided in 2.1.1 and 2.1.2., above, by entry and taking possession of the Modular Building pursuant to this Agreement, City accepts the Modular Building in its "AS IS" condition.

2.3. City acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Modular Building to the conduct of City's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or City, and District and City expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

2.4. If required, City will bear all costs associated with providing ADA access to the Modular Building. City shall work in consultation with District to ensure compliance with ADA. will be determined by the City in consultation with OUSD and costs will be borne by the City.

3. Title to School Site/Classroom Buildings. The Parties acknowledge that title to the School Site is held by District.

4. Term.

4.1. The term of this Agreement shall be for FIVE (5) years. The commencement date shall be February 1, 2012, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on the fifth anniversary of the Commencement Date ("Term"). The City shall be given possession and use of the Modular Building on the Commencement Date. If District has not delivered possession of the Modular Building on the Commencement Date, City may, at City's option, by notice in writing to District within thirty (30) days thereafter, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If the Modular Building is for any reason not ready for occupancy by February 1, 2011, and City elects to continue this Lease, the Commencement Date shall be the date that the Modular Building is ready for occupancy and has been delivered to City, notwithstanding the above.

4.2. Renewal of Agreement

4.2.1. If the Parties wish to further renew this Agreement after the first five (5) years, this can only be done by a separate writing executed by both Parties that complies with all of the following provisions:

4.2.1.1. It specifically authorizes further tenancy by OPL and specifies the terms of that tenancy, and

4.2.1.2. It is approved by each Party's governing body prior to the end of the Term.

4.2.2. On the last day of the Term hereof, or on sooner termination of this Agreement, City shall surrender to District the Modular Building and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances other than any preexisting liens, claims or encumbrances or any liens, claims or encumbrances that are unrelated to the City's Activities or use of the Modular Building. This condition shall be similar to that existing as of the Commencement Date of this Agreement excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the School Site. City shall remove from the Modular Building all of City's personal property, trade fixtures, and any improvements made by City which City and District agreed would be removed by City. All property not so removed shall be deemed abandoned by City. If the Modular Building is not so surrendered at the termination of this Agreement, City shall indemnify District against loss or liability resulting from delay by City in so surrendering the Modular Building including, without limitation, any claims made by any succeeding lessees or losses to District due to lost opportunities to lease to succeeding lessees.

5. Security Deposit. N/A

6. Rent.

6.1. For and in consideration of the use of the Modular Building for the Term of this Agreement, City agrees to pay District the sum of TWO THOUSAND FIVE HUNDRED

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Dollars (\$2,500.00) per month ("Rent"). The Rent shall not increase during the Term of this Lease.

- 6.2. Rent for the first month shall be due upon the Commencement Date, subject to District's delivery of possession of the Modular Building to City on that date. Thereafter, rent shall be due on the first day of each month until the expiration or termination of this Agreement.
 - 6.3. City shall pay promptly to District, the monthly Rent on the fifteenth day of each month in advance during the term of the Agreement, without deduction, setoff, prior notice or demand.
 - 6.4. City acknowledges that late payment by City to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges: Accordingly, if District does not receive any installment of rent or any other sum due from City by 4:00 p.m. within ten (10) days after such amount is due, City shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by City. Acceptance of such late charge by District shall in no event constitute a waiver of City's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
 - 6.5. Taxes, costs, expenses, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, which prior to or during the Term of this Agreement, assessed, levied, or imposed upon or become due and payable which City is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of City's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of City or failure on City's part to comply with the terms of this Agreement, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by City, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
 - 6.6. Any amount due to District not paid when due shall bear interest at one and one-half percent (1.5%) per month commencing thirty (30) days after the due date, but not to exceed the maximum rate permitted by law. Payment of interest shall be in addition to any late charges owing pursuant to this Agreement and shall not excuse or cure any default by City under this Agreement.
- 7. Utilities.** In addition to the Rent, City shall pay to District monthly all actual utility costs incurred for the use of the Modular Building ("Utility Charges"), on a prorated basis based on the square footage of the Modular Building relative to the School Site. For purposes of this Agreement, the Utility Charges include: water, gas, electricity, telephone, data and communication lines and service, and sewage fees. City shall pay these Utility Charges to District on a reimbursement basis at the same time it pays the Rent. District shall send an invoice monthly to City for the Utility Charges at least 10 days prior to the

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date payment is due, along with supporting documentation verifying the amount and nature of the invoiced Utility Charges. Charges for other utility services shall be paid by City directly to the provider, including security and fire and intrusion alarm monitoring and garbage collection.

8. Maintenance and Repairs.

- 8.1. District shall maintain the Modular Building at its sole expense in a good condition consistent with the condition of the Modular Building existing at the time of delivery. District shall provide at its sole expense all custodial services and pest abatement, as further detailed in **Exhibit "C,"** attached hereto and incorporated herein by reference. City acknowledges and accepts that the Modular Building is leased in "AS IS" condition. District shall keep and maintain the structural elements of the building, as hereinafter defined, on the Modular Building in the condition existing at the time City takes possession of the Modular Building excepting normal wear and tear.
- 8.2. District makes no representations or warranties for the structure of the building as it exists. District agrees that if the structural elements of the building become damaged to a lesser condition than currently exists, and if such structural damage is due to no fault or negligence of City, then District shall repair the damage in such a manner as to bring it back to a condition which is similar to the condition which existed at the time City took possession of the Modular Building; however, District may terminate this Agreement if such repair cost exceeds One Hundred Fifty Thousand dollars (\$150,000) per incident. District agrees to abate City's Rent, if and to the extent that structural damage or repair, or maintenance work on the structural elements of the building, impairs City from carrying out its Activities. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand dollars (\$150,000), then City may elect to remain in possession of the Modular Building and pay the Rent (as abated), , or City may elect to terminate this Agreement.
- 8.3. As used in this Agreement, the term "structural elements of the building" is defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building"; excluding, however, those repairs and maintenance items to these systems that can be completed without wall or floor removal, in which case these repairs shall be the responsibility of City.
- 8.4. If District fails to commence work on any of the repairs required to be made by District under this Agreement within thirty (30) days after written notice of the necessity therefore, City, in addition to any other rights it may have hereunder, shall have the right, but not the obligation, to make said repairs on behalf of District and bill the District for the reasonable costs thereof, and District shall promptly reimburse City for the costs thereof; or the City may at its option offset such costs against Rent due and owing. If such repairs are necessitated by an emergency affecting public health and safety, then City may make such repairs upon reasonable notice.
- 8.5. District shall have no maintenance or repair obligations with respect to the Modular Building except as expressly provided in this Section. City hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the

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Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of said Civil Code.

8.6. If City wishes to have any improvements, alterations, work, or other services performed on the Modular Building that are not part of the maintenance or repair services indicated herein, City shall request that work via the attached Work Order form in **Exhibit "D,"** attached hereto and made a part of this Agreement.

8.6.1. The type of work that would be subject to this provision includes, for example, painting that is requested that is neither repainting nor painting to bring the facility to its original condition, new room dividers, installing or removing casework, whiteboards, or other fixtures, and similar City-requested improvements.

8.6.2. District shall prepare and provide to City an estimate for that work. If City accepts that estimate, the District shall perform that work as indicated in the estimate and City shall pay for that work as indicated in the estimate, which shall be due and owing with the next month's Rent, unless otherwise agreed to in writing by the Parties.

9. Title to and Removal of City's Improvements / Facilities.

9.1. City shall not construct or cause to be constructed on the Modular Building any improvements ("City's Improvements") without express prior written consent from District, which shall not be unreasonably withheld, conditioned or delayed.

9.2. City shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.

9.3. Any modifications to the Modular Building and surrounding School Site must be approved in writing in advance by District. City's contractor must be approved as well, unless the work is being performed by City employees. All contractors and subcontractors of City, if any, shall be duly licensed in the State of California. City shall be solely responsible for maintaining the City's Improvements installed thereon during the term of this Agreement, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

9.4. To the extent consistent with California law, approval from the Division of the State Architect for City's Improvements is exempted.

9.5. Title to removable furniture (including all shelving), equipment and/or other personal property placed by City onto the Modular Building, but not affixed thereto, shall be held solely by City. These items shall remain the personal property of City and shall not be treated as real property or become a part of the School Site unless District accepts or City abandons any of this personal property at the end of the Term.

9.6. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, City shall remove City's Improvements, at its sole expense. City shall repair any damage to the School Site and/or the Modular

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Building, caused by removal of City's Improvements and restore the School Site and the Modular Building to good condition, less ordinary wear and tear. In the event that City fails to timely remove City's Improvements, District, upon thirty (30) days written notice, may either (1) accept ownership of City's Improvements with no cost to District, or (2) remove City's Improvements at City's sole cost. In the event that District chooses to accept ownership of City's Improvements, City shall execute any necessary documents to effectuate the change in ownership of City's Improvements. In the event that District removes City's Improvements, City shall pay all invoices for the removal of City's Improvements within thirty (30) days of receipt of such invoices.

10. Supervision. City shall provide adequate and comprehensive supervision of the children attending its program when on the Modular Building. City shall follow and adhere to all District policies and procedures. In the case of a minor accident or injury, City will be responsible for administering first aid and supplies as necessary. City will report all incidents or injuries to the site administrator and may be required to complete an accident / incident report.

11. Use of the Modular Building.

11.1. City shall not use the Modular Building for any use other than that specified in this Section without the prior written consent of District. City agrees to maintain the Modular Building and to conduct its Activities in a manner that meets all federal, state and local regulations relating to the Modular Building and to the operation of the Activities, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Modular Building, the use of the Modular Building, and/or the Activities. The effectiveness of this Agreement shall be subject to the City obtaining any and all permits or approvals which may be required in order for City to operate the Activities on the Modular Building. City shall not use or permit the Modular Building to be used in whole or in part during the term of this Agreement for any purpose or use in violation of the laws or ordinances applicable thereto. City shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of City to comply with any applicable law, regulation, rule or ordinance. City shall not commit or suffer to be committed, any waste upon the Modular Building, or allow any sale by auction upon the Modular Building, or allow the Modular Building to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Modular Building. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Modular Building except in trash containers designated for that purpose. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Modular Building. City shall comply with District-wide policy prohibiting the use of tobacco products in the Modular Building at all times. City shall not use or permit the use of the Modular Building or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. City agrees to respond within a reasonable time to concerns expressed by neighbors or District relating to the operation of the Modular Building. So long as City pays all Rent and complies with all of the terms and conditions of this Lease, City shall peaceably and quietly have, hold and enjoy the Modular Building.

11.2. City represents that it is qualified to administer and operate the Activities. City shall be solely responsible for the administration and operation of the Activities, including the hiring of all employees. City shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with City's Activities in the Modular Building.

11.3. City's use of the Modular Building shall be exclusively limited to its Activities during the operation of the Program. City must remove any equipment at the end of Agreement term. District is in no manner responsible for damage or theft of City's play equipment. City must maintain and repair any damage to the Modular Building to at least as good a condition as the Modular Building existed as of the Commencement Date of this Agreement, less ordinary wear and tear.

12. Inspection of Modular Building. District agrees to provide City with a set of keys for the Modular Building. City shall permit District and/or its agents to enter the Modular Building at any reasonable time for the purpose of inspecting the Modular Building and/or exhibiting the Modular Building to prospective lessees, occupants, purchasers or mortgagees.

13. Termination for Cause.

13.1. Either Party may terminate this Agreement for cause. Cause may include:

13.1.1. Material violation of this Agreement by the other Party; or

13.1.2. Any act by a Party in violation of this Agreement exposing the other Party to liability to others for personal injury or property damage.

13.2. A Party exercising its rights under this Section shall give written notice to the other Party of the event of default giving rise to cause for termination. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the event of default, and shall specify the action required to cure the default, and a reasonable date, which shall not be less than 30 calendar days from the mailing of the notice, by which the defaulting Party must take or commence such action to cure. If the notice specifies only a commencement date for the cure, the defaulting Party must commence such cure within the specified time and must diligently pursue the cure to completion within a reasonable time thereafter.

13.3. If District terminates for cause, City's rights in the Modular Building shall terminate upon City's receipt of notice of termination from District following notice and opportunity to cure as set forth above and City's resultant failure to cure the default. Upon receipt of District's notice of termination, City shall surrender and vacate the Modular Building in the condition required under this Agreement, and District may re-enter and take possession of the Modular Building and all the remaining improvements or property and eject City or any of City's subtenants, assignees or other person or persons claiming any right under or through City or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release City from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against City.

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13.4. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or City.

13.5. Upon termination of this Agreement due to a default by City, City shall be responsible to restore the Modular Building to its condition prior to the commencement of this Agreement, reasonable wear and tear excepted.

14. Indemnification. To the fullest extent permitted by California law, City shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the City's negligence or willful misconduct in its operation, use or occupancy of the Modular Building, all improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District, City shall defend the same at City's sole expense. City shall keep the School Site clear of all liens, encumbrances and/or clouds on District's title to any portion of the School Site.

To the fullest extent permitted by California law, District shall defend, indemnify, and hold harmless City, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, District's negligence, willful misconduct, or breach or failure to comply with the terms and conditions of this Agreement; and in case any action or proceeding be brought against City, District shall defend the same at District's sole expense.

When the liability or claim is caused by the joint negligence or willful misconduct of both City and District, each Party's duty to defend, indemnify and hold harmless shall be in proportion to the Party's allocable share of the joint negligence or willful misconduct.

15. Insurance.

15.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. City shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

15.2. City acknowledges that the insurance to be maintained by District on the Modular Building will not insure any of City's property or improvements made by City.

15.3. City shall, at City's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and City against claims and liabilities arising out of the operation, condition, use, or occupancy of the Modular Building and all areas appurtenant thereto, including parking areas. City's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. City's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$2,000,000) general aggregate policy limit. In addition, City shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles

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and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date City shall deliver to the Risk Management Office of the District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

- 15.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
- 15.3.2. State the coverage is primary and any coverage by District is in excess thereto;
- 15.3.3. Contain a cross liability endorsement; and,
- 15.3.4. Include a separate endorsement naming District as an additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, City shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

- 15.4. During the term of this Agreement, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the leased Modular Building or any contents, each of the parties hereto, and all persons claiming under each of the parties, shall look first to any insurance in its favor before making any claim against the other party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance and each party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other party.
- 15.5. During the term of this Agreement, City shall comply with all provisions of law applicable to City with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and City's occupancy of the Property, City shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.
- 15.6. As an alternative to the insurance policies specified above, City may submit evidence of adequate self-insurance to District, whose approval of self insurance shall not be unreasonably withheld or conditioned.

16. Surrender of Agreement Not Merger. The voluntary or other surrender of this Agreement by City, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

17. Notices.

- 17.1. **Notices to District.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to District by City or any Lender described in this Lease shall be in writing and shall be deemed duly served and given when personally delivered to

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District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at Oakland Unified School District, 955 High Street, Oakland, CA 94607, Attn: Assistant Superintendent of Facilities Planning and Management, Buildings and Grounds and Custodial Management. District may change District's address for the purpose of this section by giving written notice of that change to City in the manner provided in Section 18.2.

17.2 Notices to City. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to City by District shall be in writing and shall be deemed duly served and given when personally delivered to City, any managing employee of City, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Oakland Public Library at 125 14th Street, Oakland, CA, 94612, Attn: Associate Director. City may change its address for the purpose of this section by giving written notice of that change to District in the manner provided in Section 18.1.

18. Subcontract, Assignment and Sublease. Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall either Party attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other Party. City shall not sublease any portion of the Modular Building without the prior written consent of District.

19. Independent Contractor Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

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

21. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

22. Compliance with All Laws.

22.1. City shall at City's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Modular Building, and shall faithfully observe in City's use of the Modular Building all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Modular Building), and all District policies, rules and regulations, including those indicated herein in **Exhibit "E,"** attached hereto and made a part of this Agreement. Specifically, City shall comply with the restriction on chemical usage indicated in **Exhibit "E."**

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22.2. The judgment of a court of competent jurisdiction, or City' admission in an action or a proceeding against City, whether District be a party to it or not, that City has violated any law or regulation or ordinance in City's use of the Modular Building shall be considered conclusive evidence of that fact as between District and City. If City fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at City's expense, for which City agrees to reimburse District on demand.

22.3. City shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Modular Building and any improvements by City or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). City shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

23. Cooperation with Other Occupants of the Property. It is understood and recognized by City that the School Site, of which the Modular Building is a part, will be used by other parties, including District, and City shall cooperate with the other parties in reaching amicable arrangements concerning such matters as policing of common areas, custodial services, and security measures.

24. Attorneys' Fees. If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing Party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing Party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

25. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

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

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27. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

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

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

30. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

ACCEPTED AND AGREED on the date first indicated above:

City of Oakland,
a municipal corporation

By: _____ Date _____
City Administrator

Approved as to form and legality:

By: _____ Date _____
Deputy City Attorney

Oakland Unified School District,
a California public school district of California

Jody London, President, Board of Education Date

Edgar Rakestraw, Jr., Secretary, Board of Education Date

APPROVED AS TO FORM:

Jacqueline Minor, OUSD General Counsel Date

**PROGRAMS & ACTIVITIES AGREEMENT BETWEEN THE OAKLAND UNIFIED
SCHOOL DISTRICT AND THE CITY OF OAKLAND REGARDING THE
THE PIEDMONT AVENUE BRANCH LIBRARY OF THE OAKLAND PUBLIC
LIBRARY**

In fulfillment of the Oakland Unified School District's (District) commitment to improve the quality of educational facilities for its students and in keeping with the goals stated in Bond Measure B, the District has agreed to allow the City of Oakland (City) to operate a public library on the site of the Piedmont Avenue Elementary School.

In meetings with the general and school communities of Piedmont Avenue, it has been agreed that a public library that operates on the school's site, and that may be used by both students and members of the public, enhances the services and facilities that might be offered by either agencies individually.

Consequently, the City and the District agree to the following joint cooperative activities:

SECTION 1 General

- (a) This Cooperative Activities Agreement is contingent upon approval by the governing bodies of each Party of the Joint-Use Lease Agreement between the City and the District and will become effective on the date when the last Party authorizes its designated representative to execute the Joint-Use Lease Agreement on behalf of that Party.
- (b) Standards for the operation of the library facility shall be generally consistent with the standards established for the operation of other Oakland Public Library facilities, including hours of operation, staff qualifications, materials selection guidelines and circulation policies, to the extent provided in this Agreement.
- (c) The primary purpose of the Piedmont Avenue Library shall be to equally serve the educational and recreational reading needs of the general public, students and faculty using the facility. The library modular facility shall be open for use to District students, faculty and administrators and members of the general public, in accordance with established policies and procedures of the Oakland Public Library and such additional policies and procedures as may be developed pursuant to authority granted in this Agreement.

SECTION 2 Definition of the Roles and Responsibilities of Each Party with Respect to Funding, Staffing, Supervision, Operation, and Management

- (a) A Library Coordination Committee (LCC) will be established to implement and evaluate the joint venture. The Committee will include two representatives from the Piedmont Avenue Elementary School (School) and two for the Piedmont Avenue Library (Library). The LCC will meet quarterly to review and implement the joint venture project and clarify guidelines for operations and services. Any issues that cannot be resolved by the LCC will be referred to the Library Director and the School Superintendent or their designee.

- (b) In addition to participating in the LCC, the City and District will have the following responsibilities:

The City shall provide:

- Library staff for the operation of the library during public service hours; and to supervise day-to-day operations of the library.
- A general collection for use by students, faculty, administrators and the general public.
- Furnishings, equipment and supplies for the library.
- All necessary software and related equipment to operate the functions of circulation and collection management.

The District shall provide:

- Staff for operation of the library during non-public hours.
- Staff to supervise students brought into the library during school hours.

The Library Director, as a representative of the City, and the School Superintendent or designee shall meet to finalize and initiate any actions necessary to insure that any necessary adjustments are made to this Agreement.

SECTION 3 Description of the Joint Services and How They Will Be Provided

The joint use services include all available library collections, services and programs to support the K-5 students at the Piedmont Avenue Elementary School with which the library shares a campus, as well as other local schools.

In order to better implement the joint services, the Library has been designed with a separate, non-public school entrance available for all students and faculty who will be using the library during school hours. After-school entry will be through the public entrance.

Classes from the school may be scheduled for visits to the library on a regular basis. Classes from other local schools (traditional and charter) may also be scheduled. Planning for class visits will be done on a quarterly basis by the LCC, with the calendar maintained by the Library staff.

School staff shall supervise students using the library during school hours. Students may use the library whenever it is open to the public.

SECTION 4 Staff Members Available for Services

City--Library

The library staff available to assist the general public and school for general operations includes a Branch Manager, Children's Librarian, Library Assistant and Aide.

To support the joint venture work with the school, additional staff will be assigned as needed.

District--School

For the joint venture services the District will provide:

Teachers or designated adults to supervise library use when the library is not open to the public and classes are brought in, and to supervise students using the library during school hours.

SECTION 5 Responsibility for the Operation, Maintenance and Management

The operation, management and supervision of day-to-day operations of the library will be the responsibility of the City, with advice from the LCC. The facility will be maintained per conditions outlined in the Joint-Use Lease Agreement.

During those school hours when the library is closed to the public, District staff will supervise any use by classes.

The parties shall develop a mutually agreeable security plan for the joint use facility prior to commencement of operation of the facility.

SECTION 6 Review and Modification Process for the Conditions of the Agreement

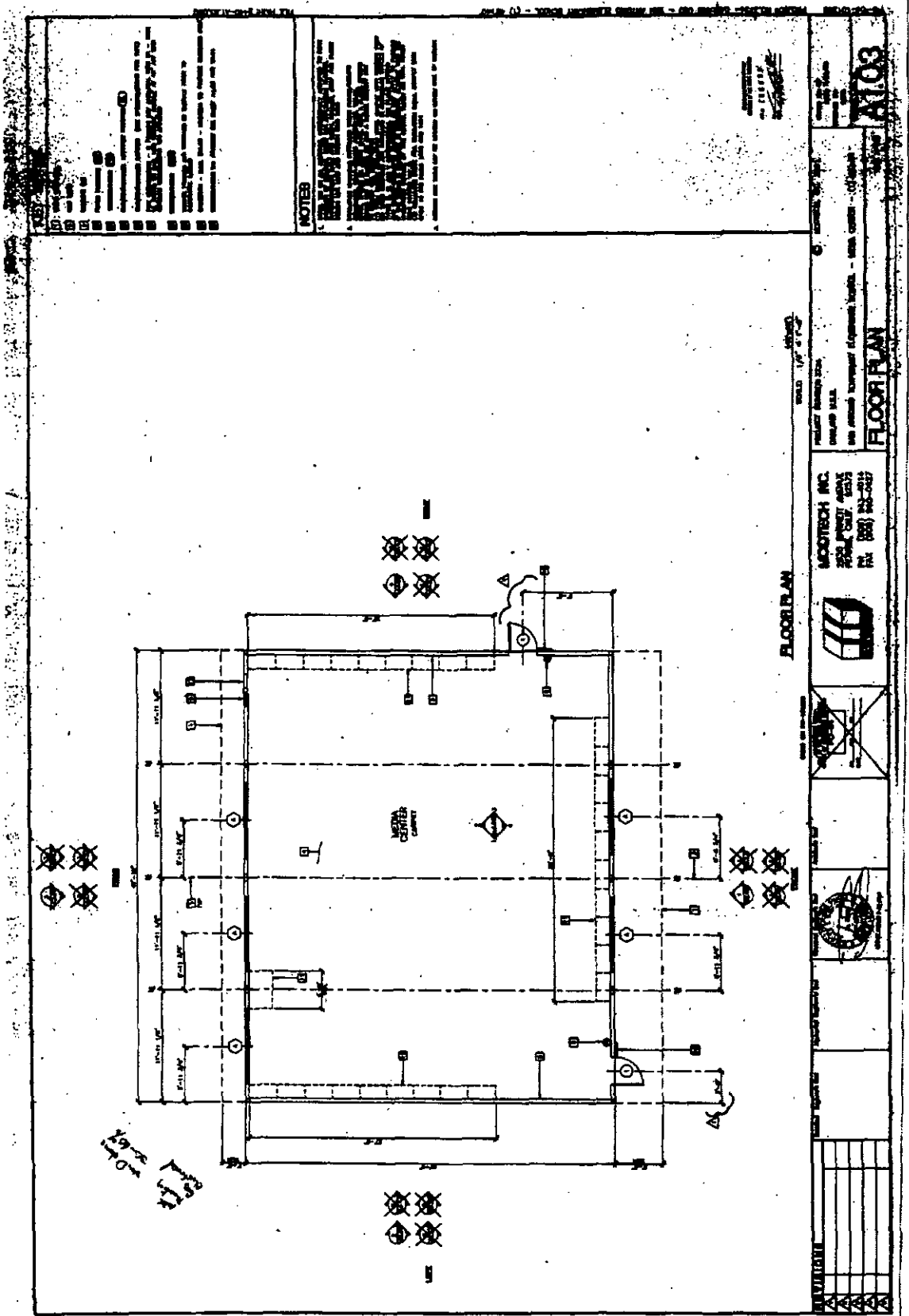
This Agreement will be reviewed quarterly by both Parties through the Library Coordination Committee for the first two years and semi-annually thereafter, with either party able to call for a review at any time. Proposed changes may be submitted to the Committee at any time in writing for consideration.

The agreement may be modified to provide services that meet the greater need of residents and students than the services described herein, provided that the services still meet the spirit and intent of the original cooperative. Changes to the conditions of the agreement will be made by written agreement signed by the Library Director and School Superintendent or their designee.

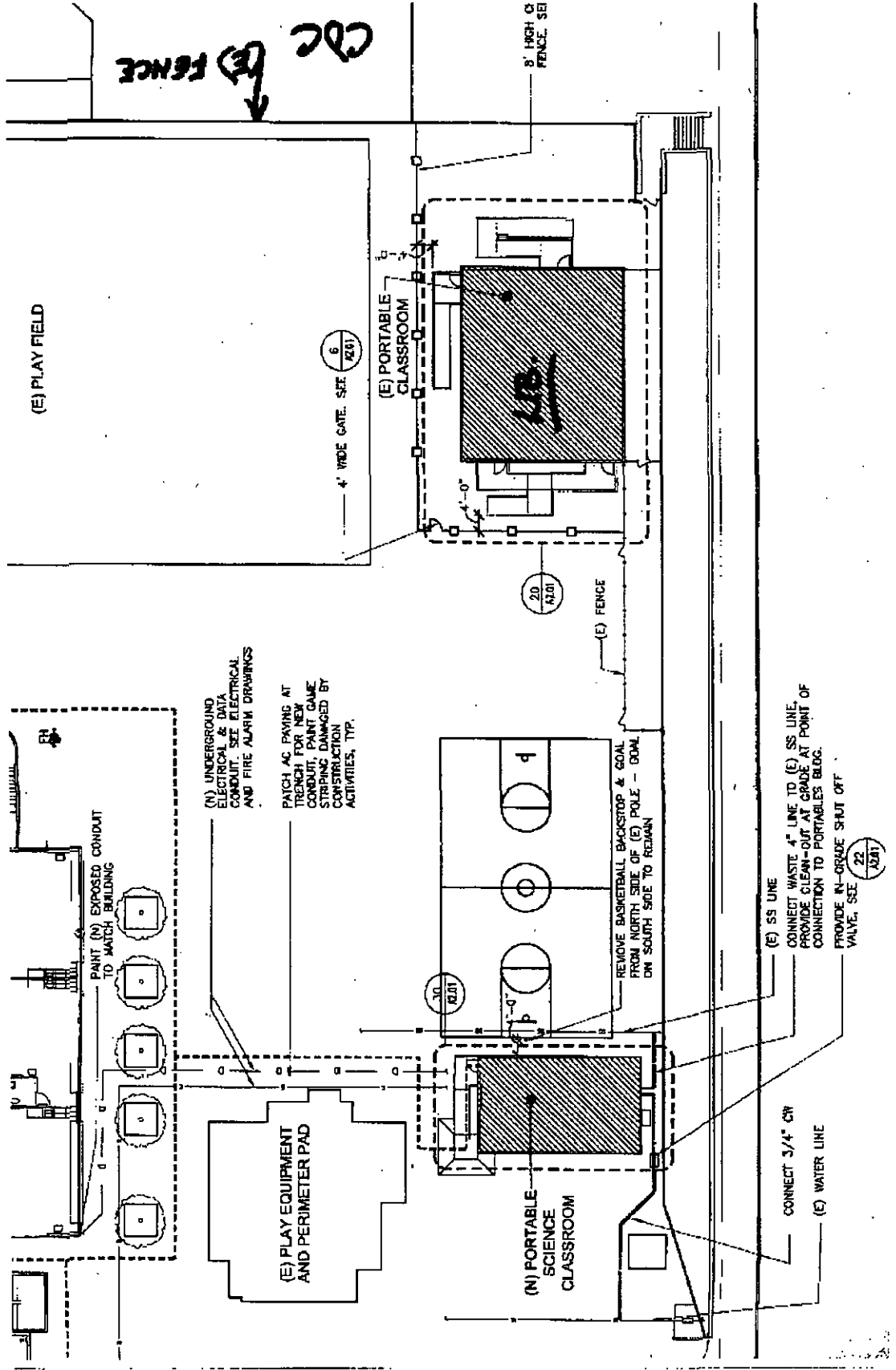
THIS EXHIBIT IS ATTACHED TO AND MADE A PART OF THE AGREEMENT OF THE JOINT-USE LEASE AGREEMENT BETWEEN THE CITY OF OAKLAND, OAKLAND PUBLIC LIBRARY AND THE OAKLAND UNIFIED SCHOOL DISTRICT FOR OPERATION OF A PUBLIC LIBRARY AT THE PIEDMONT AVENUE ELEMENTARY SCHOOL.

EXHIBIT D TO LIBRARY LEASE

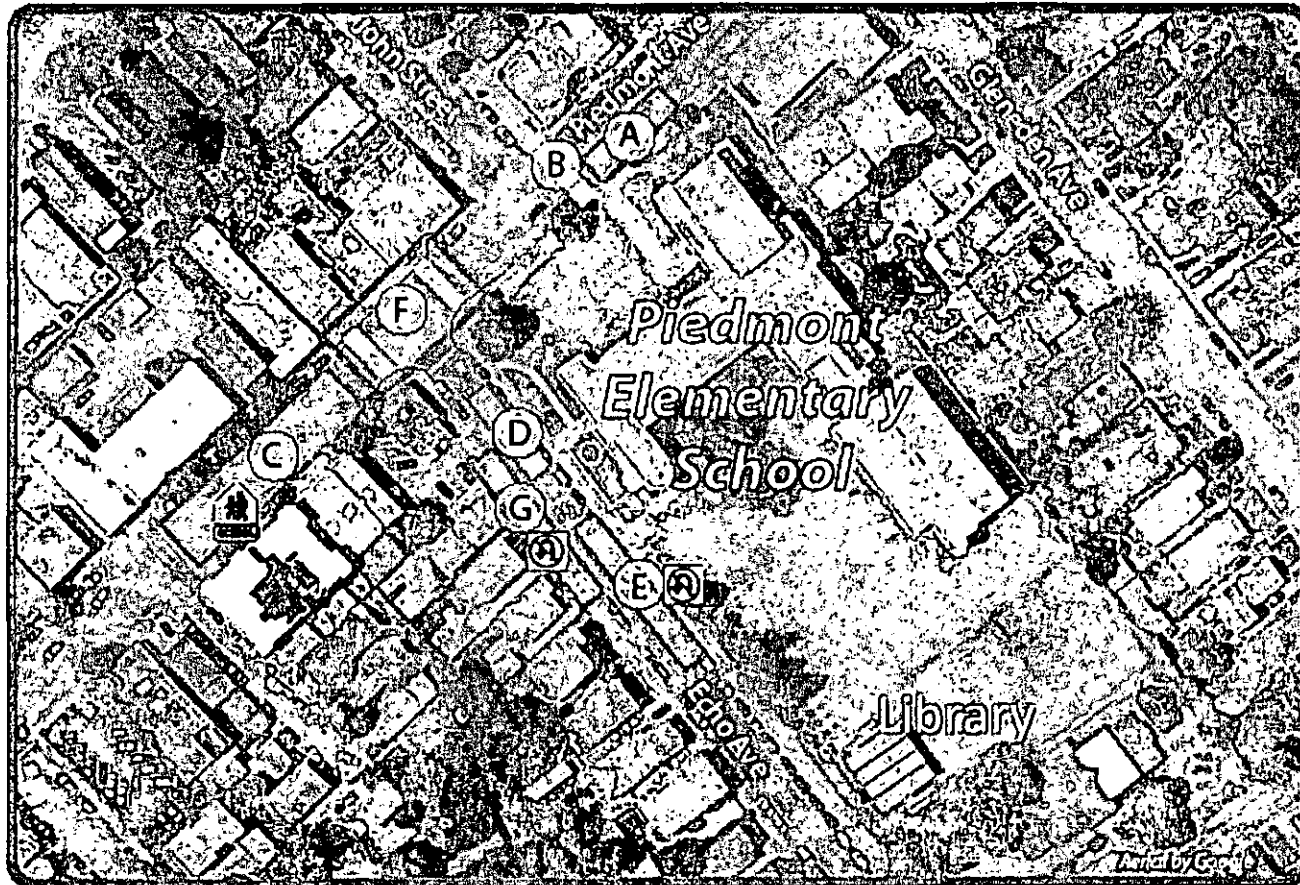
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ATTACHMENT D, contd.






ATTACHMENT E



- (A) - Replace one metered space with handicapped parking
 - (B) - Inst all marked crosswalk north of John Street or consider flashing beacons at crosswalk
 - (C) - School signs are obscured by tree branches and high installation. Trim branches, relocate signs, or lower the height of the signs
 - (D) - Develop a program to monitor the drop-off/pick-up area. Reorient signs for the drop-off area by Piedmont Avenue by rotating them to face westbound Make signs two sided
 - (E) - Consider extending the existing drop-off/pick-up zone by 100 feet. Restrict parking during pick-up hours- 2:30 to 4:30 pm
 - (F) - Inst all in-street pedestrian crossing signs, by widening centerline striping to approximately three feet at Echo Avenue
- Phase 1: Upgrade all existing marked crosswalks at Echo Avenue to ladder style
- Phase 2: Instal bulbouts on Piedmont Avenue, north of Echo Avenue, to shorten crossing distance from 52 to 28 feet and to increase visibility of pedestrians
- (G) - Install no U-turn signs
 - (H) - Eliminate existing handicapped parking on Echo (relocated to Piedmont Avenue as noted in item A)

KEY

-  Curb bulbout
-  Spot improvement
-  Street Crossing Improvement

General Comments:

- Review all signs, markings and stripings for conformance to MUTCD guidelines including fluorescent yellow-green signs
- Review all legends and curp paint for repainting

note: image not to scale

ALAMEDA SAFE ROUTES TO SCHOOL PARTNERSHIP
Piedmont Elementary School Oakland, CA



NOTICE TO PATRONS: Piedmont Ave. Branch is Moving Soon

The Piedmont Ave. Branch will soon relocate to a new location nearby. The Library and the Oakland Unified School District are working together to reach a relocation solution. However, we have no firm dates yet. There may be a brief transition period when the branch is not open at either location.

What we know:

- The Library's lease is up on October 31, 2011.
- The Library goes on a month-to-month rental after October 31, 2011.
- The landlord is required to provide 30-day notice to vacate the premises.
- We do not yet know the exact date when the library will vacate its current location.
- Expected New Location: Modular Facility of the Piedmont Avenue Elementary School, 4314 Piedmont Ave. (two blocks from the current location).
- Friends Book Sale: October 29. The Book Sale will occur whether or not the library is required to move.

What most happen:

- Finalize a five-year lease agreement with the Oakland Unified School District.
- Receive approval from Oakland Unified School District Board.
- Receive approval from Oakland City Council.

Thank you for your understanding during this time of transition.



10/7/11

over →

NOTICE TO PATRONS: Piedmont Ave. Branch is Moving Soon

This location is going to close soon, and the Piedmont Ave. Branch will reopen at a new location nearby. The Library and the Oakland Unified School District are working together to reach a relocation solution. However, we have no firm dates yet. There may be a brief transition period when the branch is not open at either location.

What we know:

- The Library's lease is up on October 31, 2011.
- The Library goes on a month-to-month rental after October 31, 2011.
- The landlord is required to provide 30-day notice to vacate the premises.
- Earliest possible date for closure: December 16.
- Expected New Location: Modular Facility at the Piedmont Avenue Elementary School, 4314 Piedmont Ave. (two blocks from the current location).
- Friends Book Sale: October 29. The Book Sale will occur whether or not the Library is required to move.

What must happen:

- Finalize a five-year lease agreement with the Oakland Unified School District.
- Receive approval from Oakland Unified School District Board.
- Receive approval from Oakland City Council.

Thank you for your understanding during this time of transition.



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAY 30 AM 10:46

Approved as to Form and Legality



Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

A RESOLUTION 1) AUTHORIZING A FIVE-YEAR LEASE WITH THE OAKLAND UNIFIED SCHOOL DISTRICT FOR THE USE OF A MODULAR BUILDING AT THE PIEDMONT AVENUE ELEMENTARY SCHOOL AT 4314 PIEDMONT AVENUE FOR THE PIEDMONT AVENUE LIBRARY; 2) AUTHORIZING THE CITY TO MOVE THE LIBRARY FROM ITS CURRENT LOCATION AT 160 41ST STREET TO THE SCHOOL; 3) APPROPRIATING \$2,500 PER MONTH FROM MEASURE Q FUND 2241 FOR LEASE PAYMENTS FOR FISCAL YEAR 2012-13; AND 4) APPROPRIATING FUNDS IN AN AMOUNT NOT-TO-EXCEED \$200,000 FOR THE MOVE

WHEREAS, the City of Oakland has occupied 160-41st Street for the Piedmont Avenue Branch Library since 1932; and

WHEREAS, the property was sold in 2009 and the rent was raised from \$1 per month to \$4,250 per month beginning November 1, 2010; and

WHEREAS, the current lease agreement terminated October 31, 2011; and

WHEREAS, the City did not renew the one-year lease extension, and consequently is on a month-to-month rental, which was raised on November 1, 2011 to \$4,900 per month; and

WHEREAS, the City cannot continue to lease this facility at the negotiated cost; and

WHEREAS, the City wishes to move to a convenient location and into a modular building on property belonging to the Oakland Unified School District at the Piedmont Avenue Elementary School at 4314 Piedmont Avenue; and

WHEREAS, the Oakland Unified School District will lease the facility for five years at a significant savings to the City at a rental rate of \$2,500 per month without an annual rent escalator; and

WHEREAS, the modular facility includes public restrooms, air conditioning and ADA accessibility not available at the previous location; and

WHEREAS, the continuation of the library at this new location will benefit not only OUSD students and area residents, but also others throughout the City; and

WHEREAS, the City desires to lease the property for a five-year year period; and

WHEREAS, funding for the lease payments is available for fiscal year ("FY") 2012-2013, in Measure Q (2241); and

WHEREAS, there are additional one-time costs of approximately \$200,000 associated with moving the library into the modular facility; and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been met; now, therefore, be it

RESOLVED: That the City Council hereby finds and determines that it would be in the best interests of the City to move the Piedmont Avenue Branch Library at 160-41st Street to a new location at the Piedmont Avenue Elementary School; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to negotiate and execute a lease with the Oakland Unified School District of a modular building at the Piedmont Avenue Elementary School at 4314 Piedmont Avenue for use as the Piedmont Avenue Branch Library for a five (5) year term; and be it

FURTHER RESOLVED: That lease payments for FY 2012-13 in the amount of \$2,500 per month are hereby appropriated from Measure Q Fund (2241) Org. (61121) Account (52212) Project (0000000) Program (NB37); and be it

FURTHER RESOLVED: That the cost for utilities and maintenance are currently paid and will continue to be paid from City Facilities Services Fund (4400) Org. (30634) Account (53112) and (53114) Project (0000000) Program (712M); and be it

FURTHER RESOLVED: That funds from OPL Fund 7540, Project (0000000) are hereby appropriated, in an amount not to exceed \$200,000, in order to effect the move into the modular facility; and be it

FURTHER RESOLVED: That the City Administrator or her designee is hereby authorized to negotiate, execute and amend the lease, not including extension without returning to the City Council, and to take any and all actions necessary and consistent with this Resolution; and be it

FURTHER RESOLVED: That the City Council has independently reviewed and considered this environmental determination, and the Council finds and determines, based on the information in the staff report accompanying this Resolution, that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15061(b)(3) (no possibility of significant environmental impact), and Section 15301 (existing facilities) of the CEQA guidelines; and be it

FURTHER RESOLVED: That the City Administrator or her designee, shall cause to be filed with the County of Alameda, a Notice of Exemption and an Environmental Declaration (California Fish and Game Code Section 711.4) for this action; and be it

FURTHER RESOLVED: That the lease and other documents shall be approved as to form and legality by the Office of the City Attorney and a copy shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, AND
PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California