

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2005 JUN 30 PM 2:53

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Office of Parks and Recreation  
DATE: July 12, 2005

**RE: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND OFFICE OF PARKS AND RECREATION AND SEQUOIA NURSERY SCHOOL FOR A THREE-YEAR TERM WITH TWO CONSECUTIVE THREE YEAR OPTIONS TO RENEW**

---

**SUMMARY**

City staff has prepared a resolution for the City Administrator to execute a license agreement between the City of Oakland, Office of Parks and Recreation (OPR) and Sequoia Nursery School for the continued use of the Sequoia Lodge at 2666 Mountain Boulevard, Oakland, California. The proposed license agreement has a three (3) year term commencing on August 1, 2005 and ending on June 30, 2008, with two (2) consecutive three-year options to renew the License by mutual consent of the parties. The license agreement has been developed to meet the current City contract requirements and has been approved by the Office of the City Attorney as to form and legality. The nursery school's Board of Directors and attorney have reviewed the agreement and after suggesting minor modifications, have agreed to its terms.

Staff recommends that City Council approve a resolution authorizing the City Administrator or her designee to execute a license agreement between the City of Oakland and Sequoia Nursery School for the continued use of Sequoia Lodge at 2666 Mountain Boulevard for a three-year term with two consecutive three-year options to renew.

**FISCAL IMPACT**

Sequoia Nursery School shall pay in advance a monthly rental fee of \$1,200.00, a \$400 increase from the previous ten-year lease agreement of \$800.00 per month, and a \$287.00 increase from the current month-to-month agreement of \$913.00 per month. The increase will generate an additional \$2,870.00 in revenue to the City's general fund, which is deposited to the City's General Fund (1010); Director's Unit (Org# 501110); Miscellaneous Concession (account #44519).

For the first year, the City of Oakland will continue to be responsible for the payment of Project Maintenance Costs. Project Maintenance Costs include costs of custodial services and utilities to include water, gas, and electric, relating to the use of the Property. After the first year and continuing until the license terminates, Sequoia Nursery School shall pay 50% of all increases in the Project Maintenance Costs over and above the Project Maintenance Costs of the first year. The City shall provide a statement of account of the increase in the Project Maintenance Costs to the Sequoia Nursery School within three months from the end of the fiscal year.

Item: \_\_\_\_\_  
Life Enrichment Committee  
July 12, 2005

Under the agreement, Sequoia Nursery School performs custodial services on three days and the City performs those services on the remaining two days. This will allow City of Oakland custodial staff to spend 4 fewer hours per week at the School. These additional hours can be then be spent at other City facilities.

## **BACKGROUND**

In 1947, Sequoia Nursery School was formed by a group of parents as a corporation to operate a non-profit, cooperative nursery school to provide maintenance and operation of a nursery school for the benefit of their children. Sequoia Nursery School has operated a non-profit cooperative morning nursery school at the Sequoia Lodge since 1947. Annually, Sequoia Nursery School has served up to 35 children between the ages of three years and four years of age with preschool educational activities. The nursery school occupies the lodge five days a week, Monday through Friday, from 8:30 a.m. to 12:30 p.m., for ten months (September through June) each year. They are granted the use of the lodge for no additional charge for two (2) weekday evening meetings per year and one (1) Saturday evening per year.

In 1976 and amended in 1984, the City had a license agreement authorizing the use of Sequoia Lodge for a cooperative nursery school program. In 1990, City Council prepared and negotiated a ten (10) year lease with Sequoia Nursery School for July 9, 1991 through June 30, 2001 with an additional three (3) year term agreed upon by mutual consent of the parties. The ordinance was introduced and approved at the February 11, 1992 Council meeting.

Sequoia Lodge is used on occasions in the afternoon, evening and weekends, as one of the Office of Parks and Recreation enterprise facilities. The public may rent the facility for special events such as wedding receptions, birthday parties, meetings and other related activities.

## **KEY ISSUES AND IMPACTS**

Key provisions of the proposed License Agreement (copy attached) include the following:

- The license fee accommodates both the City and Sequoia Nursery School through incremental rent increases and reasonable cost-sharing for utilities and maintenance. The license fee will be adjusted annually based on the Consumer Price Index (CPI) but will not exceed 8% or be less than 4%, and the project maintenance cost increases are as described above.
- Sequoia Nursery School agrees to pay 50% of the cost to replace the hardwood floor at Sequoia Lodge, and the cost of any improvements or alterations to the property required by law due to the School's use of the facility.
- The License Agreement provides for two consecutive options for three-year extensions provided sufficient notice is given and other terms and conditions are met to the satisfaction of the City.

- Sequoia Nursery School will provide annual reports, including financial statements and audits in conformance with the Council's approved Table of Contract Clauses Related to Financial Responsibilities, as well as annual enrollment and operations statements.
- Sequoia Nursery School agrees to the City's requirements for insurance, records retention, indemnification, and non-discrimination.
- Either party may terminate the license at any time with sixty days written notice.

### **SUSTAINABLE OPPORTUNITIES**

Economic: The continued operation of Sequoia 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**

The Sequoia Lodge is ADA accessible and compliant. Approval of this resolution will have no direct impact on disabled and senior citizen access. For the duration of the license agreement, Sequoia 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 the City Council approve a resolution authorizing the City Administrator or her designee to execute a license agreement between the City of Oakland and the Sequoia Nursery School for the continued use of the Sequoia Lodge at 2666 Mountain Boulevard for a three-year term with two three-year consecutive options to renew.

**ACTION REQUESTED OF THE CITY COUNCIL**

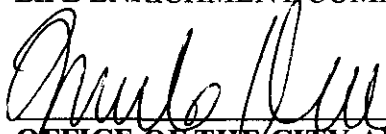
The Office of Parks and Recreation requests that the City Council authorize the City Administrator or her designee to execute a license agreement between the City of Oakland and Sequoia Nursery School for continued use of the Sequoia Lodge at 2666 Mountain Blvd. for a three-year term with two three-year consecutive options to renew.

Respectfully submitted,

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

Prepared by:  
Gail McMillon, Office Manager  
Central Reservations Unit

APPROVED AND FORWARDED TO THE  
LIFE ENRICHMENT COMMITTEE:

  
**OFFICE OF THE CITY ADMINISTRATOR**

**LICENSE AGREEMENT  
BETWEEN THE CITY OF OAKLAND  
AND SEQUOIA NURSERY SCHOOL**

This License Agreement ("License") is made as of this \_\_\_ day of \_\_\_\_\_, 2005 by and between the City of Oakland, Office of Parks and Recreation ("OPR") jointly and severally called "Licensor", located at 250 Frank H. Ogawa Plaza, Oakland, CA 94612, and Sequoia Nursery School, a California non-profit corporation, called "Licensee", located at 2666 Mountain Blvd. Oakland, CA.

**RECITALS**

**WHEREAS**, the City of Oakland is the fee simple owner and OPR is the custodial agency of the real property shown on Exhibit "A" attached hereto and incorporated herein, commonly known as Sequoia Lodge located at 2666 Mountain Blvd, Oakland, California 94611 called the "Property."

**WHEREAS**, Licensee desires to continue use of the Property for the purpose of operating a cooperative nursery school known as Sequoia Nursery School hereafter called the "School."

**WHEREAS**, Licensee is classified under the Internal Revenue Code, Section 501(c)(3) as a tax exempt, public benefit corporation as described in IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

**WHEREAS**, Licensor is willing to grant Licensee a revocable nonexclusive license for the uses described herein 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 Licensed Period subject to the terms and conditions of this Agreement, and excepting there from Licensor's reservation of right set forth in Paragraph 7 of this Agreement.

2. **License Period.** The License Period shall be for three (3) years commencing on \_\_\_\_\_, 2005 and ending on \_\_\_\_\_, 2008, 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 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. **License Fee Paid During Initial License Period.** Licensee agrees to pay Licensor in advance and without any right of offset or deduction in lawful money of the United States, a monthly fee of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00), for each month of use of the Initial License Period, as set forth in Paragraph 7.1 of this Agreement, payable on the first of each month, commencing \_\_\_\_\_, 2005 and monthly thereafter on the same day of each and every month for the License Period and Extended License Period. Said Licensee monthly license fee obligation shall cease upon the termination of the License, should Licensee or Licensor terminate the License pursuant to paragraph 20 of this Agreement.

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

5. **License Fee Paid During the Extended License Period.** For each year after the initial License Period commencing \_\_\_\_\_ 2005 and ending on \_\_\_\_\_, 2006 and for each and every year thereafter, the 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 if Licensee exercises its option to extend the License for that 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 License Fee (until the next annual adjustment) of the then ending License Period shall be calculated by multiplying the License Fee by a fraction consisting of the Ending Index as the numerator and the Beginning Index as the denominator. This means that the 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 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 License Fee or other charges due under this License will cause Licensor 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 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 Licensor, Licensee shall be required to pay a late payment charge of seventy-five dollars (\$75) which shall be immediately paid to Licensor with all other payments due under this License. Licensor and Licensee confirm that such a late payment charge represents a fair and reasonable estimate of the costs that Licensor 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 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 the maximum rate of interest permitted by law until paid at the rate of 5% per annum.

7 **Use.** Licensee shall have no other use of the Property except for the restricted use as a cooperative nursery school limited to the following:

7.1 Five (5) week days including Monday through Friday, from 8:30 AM to 12:30 PM during the ten (10) month period including September, October, November, December, January, February, March, April, May, and June of each year during the License Period excepting two (2) months, July and August, of each year.

7.2. Two (2) weekday evening meetings per year, at no additional charge to Licensor, between the time period of 4:00 PM and 11:00 PM subject to the availability of the Property as determined by Licensor.

7.3 One (1) Saturday evening banquet/fundraiser per year, at no additional charge to Licensor, between the time period of 12:00 PM and 11:00 PM subject to the availability of the Property as determined by Licensor.

Prior to the end of Licensee's use of the Property for days and times described above in Paragraphs 7.1, 7.2 and 7.3, Licensee shall remove and store in its customary storage areas on the Property all school supplies and equipment on each Friday by 12:30 p.m., and on days that Licensor has authorized the Property for use by others for afternoon or evening use and has notified Licensee of such scheduled events. Licensee shall keep the Property clean and in a safe condition during the use of the Property

Except for Licensee's permitted use of the Property on the days and times described in Paragraphs 7.1, 7.2 and 7.3, Licensor reserves the exclusive right to use the Property for all other days and times not granted to Licensee. Licensor reserves the right to use the Property for any purpose including, but not limited to, renting the Property for meetings, private weddings, receptions, birthday parties and other related events. Licensee may reserve other days and times not granted in Paragraphs 7.1, 7.2, and 7.3 and will be charged the current rate as approved in the City of Oakland Master Fee Schedule.

8. **Improvements.** 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, the cost incurred by Licensor to complete such improvements or alterations including 10% interest per year shall be evenly amortized over the useful life of such improvements or alterations and such monthly amortized cost shall be included in the Project Management Cost.

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

8.3 **Replacement of Hardwood Floors.** Licensor shall replace the existing hardwood floor at the estimated cost of \$12,500 as shown on Exhibit B, which is attached hereto and made a part hereof. The work shall commence within 6 months from the date of the License and shall be completed within 6 months from the commencement date of the work. When the work is completed, Licensee agrees to reimburse Licensor for 50% of the estimated cost (\$6,250), to replace the hardwood floors. From the date of receiving written notice, Licensee shall then have 90 days, paid in three (3) equal monthly installments of \$2,083.33 to reimburse Licensor for Licensee's 50% share of Licensor's cost. Failure to reimburse Licensor at the end of the 90-day period shall constitute a default under this License.

9. **Project Maintenance Costs.** For the first year between September, 2005 and June, 2006 ("Base Year") of the License Period, Licensor shall be responsible without limitations for custodial services and utilities to include water, gas, and electric relating to the Property.

Licensee shall be required to provide custodial services for their use of the property at no cost to Licensor for the term of the License Agreement. The estimated Project Maintenance Cost for the Base Year is attached hereto as Exhibit C.

Within three (3) months from the end of the fiscal year, Licensor shall deliver to Licensee a statement of account of the increase in the Project Maintenance Costs for the ensuing fiscal year over that paid in the prior year.

After the Base Year 2005-2006 and continuing for the remaining term of the License Agreement, Licensee shall pay for 50% of all increases of the Project Maintenance Costs over and above the



Project Maintenance Costs of the Base Year. Based on the estimated increase, Licensee shall pay 50% of the estimated increase in the Project Maintenance Costs in 10 equal monthly installments. If Licensee has paid in excess of 50% of the Project Maintenance Costs, the amount of the excess shall be credited to the next installment of the Project Maintenance Costs due to Licensor. If Licensee has paid less than its 50% share, Licensee shall pay the underpayment to Licensor within 10 days from the date of receiving Licensor's written demand.

10. **Telephone/Cable Television.** Licensee shall be responsible for its telephone and cable television hook-up, services and related charges.

11. **Hazardous & Toxic Materials.** The 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.

Licensee acknowledges Licensor's disclosure and has reviewed the issues relating to the past history of hazardous and toxic materials contamination and remediation actions undertaken by Licensor. Licensor agrees to be solely responsible and liable for any prior hazardous and toxic materials conditions, which may have occurred prior to Licensee's use of the Property.

12. **Insurance.** Licensee shall provide the insurance listed below, not less than \$2,000,000 and revised annually in Schedule Q, attached hereto and incorporated herein by reference.

(a) Comprehensive or Commercial Form General Liability Insurance (contractual liability and fire legal liability included), with minimum limits as follows:

1. Each Occurrence:  
Two Million Dollars (\$2,000,000)
2. Products/Completed Operations Aggregate:  
Two Million Dollars (\$2,000,000)
3. General Aggregate:  
Two Million Dollars (\$2,000,000)

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.** During the duration of this agreement, Licensee shall at all times and at no cost to Licensor comply with all applicable laws and regulations relating to this License. Licensee shall not unlawfully discriminate or permit any discrimination against any person or group of persons, including but not limited to members of the public, employees, or applicants for employment 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 expressly agrees to waive and releases any and all relocation rights, and understands and acknowledges that this License creates no rights in Licensee to receive any relocation benefits or any advisory assistance when this License terminates.

16. **Possessory Interest Taxes.** Licensee understands and acknowledges that its interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Licensee by the City or the County of Alameda pursuant to Section 107 of the Revenue and Taxation Code, Section 33673 of the Health and Safety Code, or any other provision of state or local law. The Licensee shall be required to pay any such taxes or assessments directly to the City or the County or file on its own for any exemptions to which it is entitled.

17. **Right of Entry.** Licensor may enter the Property at any reasonable time to inspect the Property after providing advance 24-hour notice to Licensee and to install, construct, repair or maintain any public utility, including but not limited to drainage, sewage, and water facilities. 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 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 day this License Period commenced, except for normal wear and tear.

19. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, or assign 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 any part of the property. Any attempt of sublease shall constitute a default under this License.

20. **Termination.** Notwithstanding any other provisions of this Agreement including but not limited to, Paragraph 3, either party may terminate this License at any time upon providing

the other party 60 days prior written notice.

21. **Notices.** Any notice, demand, or communication under or in connection with this License which either party desires or is required to give the other party shall be delivered personally or sent by prepaid, first class mail addressed to the respective parties as follows:

To: Office of Parks and Recreation  
250 Frank H. Ogawa Plaza,  
Third Floor  
Oakland, CA 94612  
Attention: Director of OPR

To: Sequoia Nursery School  
2666 Mountain Blvd.  
Oakland, CA 94611

Licensor 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. Notice shall be deemed communicated from and after the time of mailing, if mailed as provided in this paragraph.

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 Licensor.

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

23.1 Licensor 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 Licensor payment is made until Licensor 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 Licensor 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, Licensor may terminate this License provided that Licensor 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.** At the end of each year of the License Period and for 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. Where applicable, such statements shall conform to the Single Audit Act, Circular OMB A-133. This audit provision shall conform to the Table of Contract Clauses Related to Financial Responsibilities.

25.2 Certificate of Insurance.

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 Sequoia 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 records are throughout that period to be retained at the site of local administration or a storage nearby with availability to city parties in interest.

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 the subject matter hereof 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.

**Sequoia Nursery School**

**City of Oakland**

**(Licensee)**

**(Licensor)**

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

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

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

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

**Office of Parks and Recreation**

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

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

**Approved:** \_\_\_\_\_

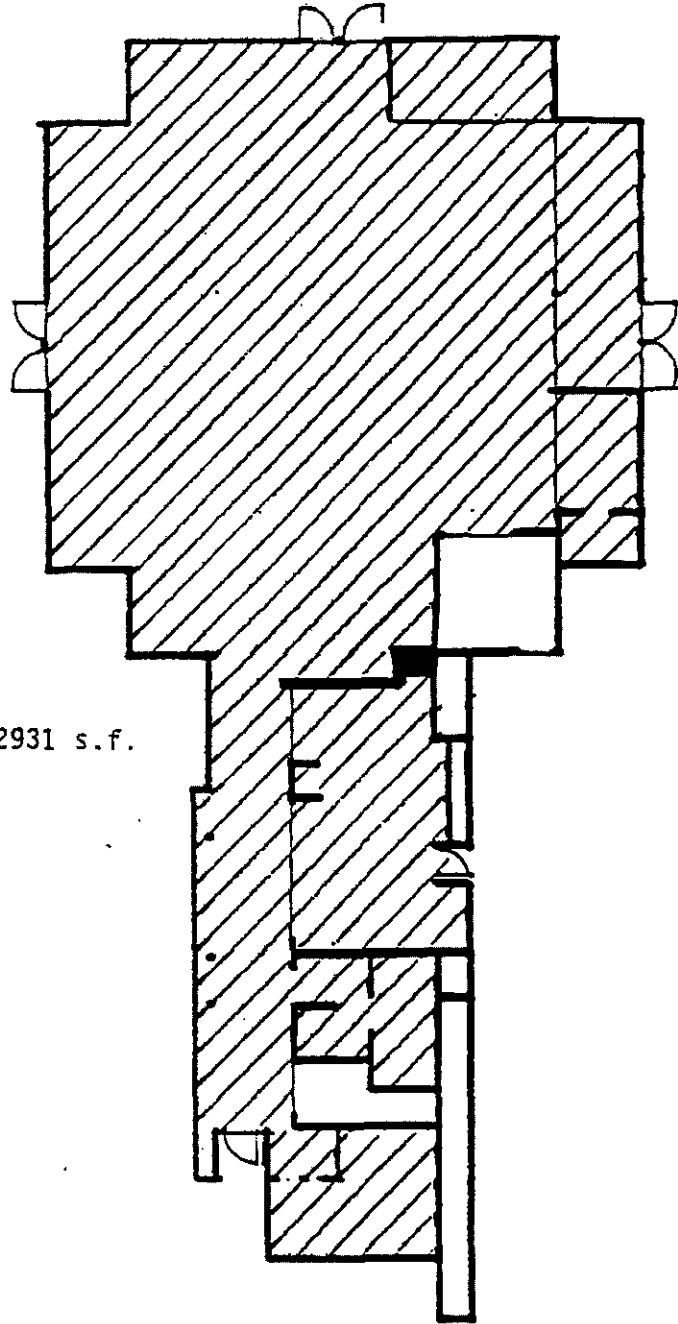
**Office of the City Attorney**

**Table of Exhibits**

<b>Exhibit</b>	<b>Description</b>
A	Property Description
B	Estimated Replacement of Hardwood Floors
C	Estimated Property Maintenance Cost
D	Schedule Q Certificates of Insurance (or copy of the policies)

EXHIBIT A

SEQUOIA LODGE



Main Floor: 2931 s.f.

PREMISES: Approximately 2,931 square feet of Rentable Area  
2666 Mountain Boulevard, Oakland, California.  
(Crosshatched Area)

**EXHIBIT B**  
**To**  
**License Agreement**

Estimated Cost of Replacement of Hardwood Floors

<b>Items</b>	<b>Estimated Cost</b>	<b>Scope</b>
Replacement of Hardwood Floors	\$12,500	50% of estimated cost payable in three equal monthly installments of \$2083.33, within 90 days notice from the City

Notes:

1. Pursuant to Paragraph 8.3 of the License, Licensee agrees to pay for 50% of the estimated cost payable in three monthly installments.



**EXHIBIT C**  
**To**  
**License Agreement**

Estimated Project Maintenance Cost

<b>Items</b>	<b>Year 1 (10 month period) Estimated Cost</b>	<b>Year 2 (10 month period) Estimated Cost</b>	<b>Scope</b>
Custodial Services	\$4,400	\$4,640	2 hours per day (2 days per week)
Gas, Electric, & Water	\$2,960	\$3,100	Excludes July and August

Notes:

1. Year 1 (10 month period): \_\_\_\_\_, 2005 through \_\_\_\_\_, 2006, excluding July and August of 2005.
2. Year 2 (10 month period): \_\_\_\_\_, 2006 through \_\_\_\_\_, 2007, excluding July and August of 2006.
3. Pursuant to Paragraph 9 of the License, Licensee agrees to pay for 50% of the annual increases of the Project Maintenance Cost commencing Year 2 of the License Period and any Extended License Period.

**EXHIBIT D**  
**To**  
**License Agreement**

**Schedule Q**  
**Certificates of Insurance**  
**(or copy of the policies)**

To be provided by Licensee upon signing of the agreement.

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ FILED C. M. S.

OFFICE OF THE CITY CLERK  
OAKLAND

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

2005 JUN 29 PM 2:53



**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND OFFICE OF PARKS AND RECREATION AND SEQUOIA NURSERY SCHOOL FOR A THREE-YEAR TERM WITH TWO CONSECUTIVE THREE YEAR OPTIONS TO RENEW**

**WHEREAS**, Sequoia Nursery School has operated a non-profit cooperative morning nursery school at the Sequoia Lodge since 1947; and

**WHEREAS**, the City of Oakland is the fee simple owner and OPR is the custodial agency of the real property commonly known as Sequoia Lodge, located at 2666 Mountain Blvd, Oakland, California; and

**WHEREAS**, Sequoia Nursery School desires to continue use of Sequoia Lodge for the purpose of operating a cooperative nursery school known as Sequoia Nursery School; and

**WHEREAS**, Sequoia Nursery School occupies the lodge five days a week, September through June each year; and

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

**WHEREAS**, 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 specific conditions are satisfied; and

**WHEREAS**, under the terms of the License Agreement, Sequoia Nursery School will be responsible for paying 50% of all increases of the Project Maintenance Costs over and above the Project Maintenance Costs of the Base Year, and

**WHEREAS**, the agreement also stipulates that the Sequoia Nursery School provide its own additional custodial service, its telephone and cable television hook-up, services and related charges; and

**WHEREAS**, Sequoia Nursery School agrees to pay the City a monthly fee of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00), for each month of use of the Initial License Period, as set forth in the Agreement, payable on the first of each month, commencing August 1, 2005 and monthly thereafter on the same day of each and every month for the License Period and Extended License Period, and;

**WHEREAS**, said Licensee monthly license fee obligation shall cease upon the termination of the License, should Licensee or The City terminated the License pursuant to paragraph 20 of this Agreement; and

**WHEREAS**, Sequoia Nursery School shall replace the existing hardwood floor at the estimated cost of \$12,500, the work shall commence within six months from the date of the License and shall be completed within six (6) months from the commencement date of the work, and;

**WHEREAS**, Sequoia Nursery School agrees to reimburse the City for 50% of the estimated cost to replace the hardwood floors. From the date of receiving written notice, Licensee shall then have 90 days, paid in three (3) equal monthly installments to reimburse the City for Licensee's 50% share of the City's cost; and

**WHEREAS**, Sequoia Nursery School 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 day this License Period commenced, except for normal wear and tear; now, therefore be it

**RESOLVED:** that the City Council approve a resolution authorizing the City Administrator or her designee to execute a license agreement between the City of Oakland and the Sequoia Nursery School for the continued use of the Sequoia Lodge at 2666 Mountain Boulevard for a three-year term with two three-year consecutive 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, \_\_\_\_\_, 2005

**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