

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
2005 JUN -2 10:19

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Office of Parks and Recreation
DATE: June 14, 2005

RE: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND FRIENDS OF PERALTA HACIENDA HISTORICAL PARK FOR LIMITED USE OF THE PERALTA HOUSE, THE ADJACENT GARDEN AREA, AND STORAGE BUILDING FOR \$1 PER YEAR, FOR A FIVE-YEAR TERM, JULY 1, 2005 TO JUNE 30, 2010, WITH TWO CONSECUTIVE FIVE-YEAR OPTIONS TO RENEW

SUMMARY

The Antonio Maria Peralta House (“Peralta House”) is on the National Register of Historic Places, and Peralta House and parts of Peralta Hacienda Park have been designated as an Oakland landmark, an Alameda County Landmark, and a State Historic Landmark. The park is a site on the National Park Service Anza National Trail. Friends of Peralta Hacienda Historical Park is a grass-roots community group that works to preserve, restore, interpret, raise funds for, and maintain the Peralta House and surrounding property for the benefit of the Oakland community.

Peralta House and an adjacent garden area, located at 2465 34th Avenue, and the adjacent storage building, located at 2496 Coolidge Avenue, are owned by and in the custodial care of the City of Oakland (“City”). Friends of Peralta Hacienda Historical Park (“Friends of Peralta Hacienda”), a California 501(c)(3) non-profit corporation dedicated to historical preservation and educational outreach, proposes securing a license with the City authorizing the limited use of the Peralta House, the adjacent garden area, and storage building as a cultural museum and for related activities subject to the terms and conditions of the proposed License Agreement.

The initial term of the License Agreement will be for five years coupled with two consecutive options to renew. Since each option is for a 5-year period, the term of the license if extended would total 15 years provided that Friends of Peralta Hacienda satisfies the provisions of the license. Either the City or Friends of Peralta Hacienda will be entitled for any reason to terminate the license upon 90 days advance written notice to the other party. Approval of this resolution will authorize a license agreement with the Friends of Peralta Hacienda Historical Park for limited use of the house, garden area and storage building.

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FISCAL IMPACT

Services and annual payment provided by Friends of Peralta Hacienda to the City of Oakland and its residents each year have an estimated value of **\$63,471**. If the City were to operate Peralta House, projected facility rental revenue each year would be **\$24,000**. Entering the proposed license agreement with Friends of Peralta Hacienda allows the City to leverage existing resources to secure educational programs and facility services.

Friends of Peralta Hacienda will be responsible for providing janitorial and custodial services, as well as providing security services to the property. Additionally, Friends of Peralta Hacienda will be responsible for the payment of all utilities serving the property and providing adequate liability insurance as described within the License Agreement. Friends of Peralta Hacienda may not make improvements or alterations to the Property without first obtaining the written consent from the City.

Calculation of Service and Rental Values

The value of the programs to be offered by Friends of Peralta Hacienda was based on educational programs being offered 25 hours per week using a salary rate comparable to a Recreation Leader I – part-time for the City of Oakland with benefits allowance. The custodial/ janitorial and security services were based on costs previously incurred to the City and calculated at a rate of \$17.00 per hour. The insurance values and fair market value calculations for insurance purposes were based on the following property values: Peralta Hacienda - \$880,612 and Vista (storage) House - \$269,075. Fair Market Rent value was estimated by CEDA Real Estate based on the office space, the caretaker living space, and the storage building.

Services / Real Estate	Value of Friends of Peralta Hacienda Provided Services and Rent (per year)	Value of City Provided Services and Facility Use (per year)
Cultural Museum Activities and Programs	\$ 18,876	-
Custodial/ Janitorial Services	8,840	-
Security	35,360	-
Annual Payment	1	-
Insurance	394	-
Fair Market Rental Value	-	\$24,000
Total Estimated Value	\$63,471	\$24,000

Maintenance Costs

Peralta House, park, and the storage building are managed by the Office Parks and Recreation and will continue to be maintained by the Public Works Agency. This agreement does not impact those costs. The building maintenance and repair costs are covered by charges to the Facilities

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Fund (4400). Park maintenance will continue to be performed by the Public Works Agency and is funded through the Landscaping Lighting Assessment District funds (LLAD) fund 2310.

This proposed license agreement leverages existing City resources for additional services to the community with no increased costs to the City's budget.

BACKGROUND

Friends of Peralta Hacienda Historical Park is a grass-roots community group formed in the mid-1970s specifically to preserve, restore, interpret, raise funds for, and maintain the Peralta House and property, built in 1870 and site of the headquarters of Rancho San Antonio, for the benefit of the Oakland community. The organization, a public benefit corporation since 1985, has as its mission:

To illuminate the history of Peralta Hacienda Historical Park for the general public, while exploring and maintaining its connection to the diverse and changing cultures of today's Fruitvale community.

We accomplish this through arts and educational activities, performances, exhibits and celebrations and through the extraordinary historical landscape and architecture of this nationally significant site.

With the help of Friends of Peralta Hacienda Park, the Antonio Maria Peralta House ("Peralta House") is on the National Register of Historic Places, and Peralta House and parts of Peralta Hacienda Park have been designated as an Oakland landmark, an Alameda County Landmark, and a State Historic Landmark. The park is a site on the National Park Service Anza National Trail.

In 1999, the park was chosen as one of ten projects nationwide to receive funding for planning from The National Endowment for the Humanities to revise the former Master Plan which was over 25 years old. Eminent historians, landscape architects, museum and interpretative experts, educators, Friends of Peralta Hacienda staff, and community representatives joined with the City of Oakland to develop a new design for this historic landscape which reflects its regional and national significance, and to begin to plan its interpretive programs. The results of this planning process are an updated Peralta Hacienda Historical Park Master Plan with three major phases to be completed in over 5 years with a total estimated cost of over \$8.5 million.

With completion of the house restoration in 2001, Peralta Hacienda Historical Park entered in Phase I of the revised Master Plan development that focuses on landscape development, creating exhibits for the Peralta House and interpretive programs for the whole site. This phase will begin in the summer of 2005 and is expected to be completed in December 2005. The Master Plan revisions will allow Friends of Peralta Hacienda to offer an environment for the enjoyment of the community, where neighbors as well as visitors from the region, state, and nation can be actively

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involved in its historical and natural features through performances, celebrations and educational workshops, and programs.

KEY ISSUES AND IMPACTS

The License Agreement under discussion allows Friends of Peralta Hacienda the use of the Peralta House as a cultural museum open to the public during prescribed hours and for other related activities. Part of the Peralta House may be used for an office and for meetings relating to the use of the property as a museum and may provide a room to accommodate one adult caretaker. With written permission from the City, Friends of Peralta Hacienda may charge fees for events that are socially compatible with the use of Peralta House as museum and consistent with the Master Fee Schedule.

The agreement also allows Friends of Peralta Hacienda use of the storage building to store fixtures, equipment, tools and other related accessories for the use by the cultural museum, and use of the Community Garden to cultivate plants, trees, fruits, vegetables, and other related vegetation. If Friends of Peralta Hacienda would like to host activities in other parts of Peralta Hacienda Park related to their function as a cultural museum, they may do so by procuring the customary park use permits required and by paying the requisite fees designated in the City of Oakland Master Fee Schedule for such events.

Under the terms of the agreement, Friends of Peralta Hacienda will provide janitorial and custodial services to the property at no cost to the City. They will also provide security services which include a fire and alarm system, an internal detection system, monitors and other related equipment.

Friends of Peralta Hacienda are required, under the agreement, to provide 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 (at no cost to the City). They must also provide a Certified Statement signed by a duly authorized director or officer of Friends of Peralta Hacienda confirming the number of visitors (and related museum admission fees and contributions collected), the number of activities undertaken (and related charges for each activity and contributions collected for each activity) an operating budget for the current year, and the names and telephone numbers of the current President and Directors. They are also required to make all books and records open to audit and inspection by the City, with due notice, and they are required to retain their records for four years after the close of each fiscal year.

By granting a license to Friends of Peralta Hacienda, the City benefits by receiving educational programs and activities to the community (listed on Exhibit B), by having on-site security through a resident caretaker thereby protecting the City's assets, and by eliminating custodial costs to the City while still having the services provided at the site. The License Agreement clearly specifies the responsibilities of each party and identifies the terms and conditions of the

agreement. This License Agreement also leverages existing City resources for additional services to the community with no increase to the City's budget.

Friends of Peralta Hacienda Historical Park seeks and receives grants and donations for restoring Peralta Hacienda Historical Park and for exhibits and public programming. Their efforts improve the City's assets for its citizens and will continue to do so under this agreement.

SUSTAINABLE OPPORTUNITIES

Economic: This License Agreement with Friends of Peralta Hacienda brings additional resources to the renovation effort thereby increasing the property value of the real estate as well as the surrounding property values.

Environmental: The improvements and renovations to the park and community garden are designed to comply with environmental standards and will enhance the integrated eco-system of the park using native plants while emphasizing historical elements, such as planting fruit trees that were prosperous in that era. The educational programs and events offered by Friends of Peralta Hacienda will highlight the park's environment, flora, and fauna, both historically and present day.

Social Equity: By increasing the awareness of this particular piece of property in the history of Oakland and the *Californio* period, the immediate neighborhood and community will better understand the importance of their cultural heritage and its value to the diversity of the Oakland community. The programs and renovated property at Peralta Hacienda will help the continued efforts to enhance civic pride.

DISABILITY AND SENIOR CITIZEN ACCESS

The Peralta Hacienda Historical House is ADA accessible and compliant and therefore able to be open to the public. The adjacent storage building, located at 2496 Coolidge Avenue, is not ADA compliant and is therefore not open to the public but may be used for storage of program supplies and exhibits.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve a resolution authorizing the City Administrator or her designee to execute, modify, and amend a license agreement between the City of Oakland and Friends of Peralta Hacienda Historical Park for limited use of Peralta House, the adjacent garden area, and storage building for \$1 per year for a five-year term, July 1, 2005 to June 30, 2010, with two consecutive five-year options to renew, provided that Friends of Peralta Hacienda

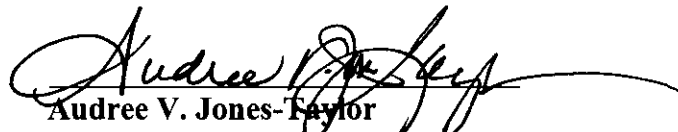
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satisfies the provisions of the License Agreement. Without a License Agreement, the City would not receive the full benefits of Friends of Peralta Hacienda and would be limited in its ability to provide historical education programs, to oversee the property, and to access funds for continued restoration of Peralta Hacienda and park.

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, modify, and amend a license agreement between the City of Oakland and Friends of Peralta Hacienda Historical Park for limited use of Peralta House, the adjacent garden area, and storage building for \$1 per year for a five-year term, July 1, 2005 to June 30, 2010, with two consecutive five-year options to renew.

Respectfully submitted,


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

Prepared by:
Jennifer Koney, Recreation Supervisor
Office of Parks and Recreation

APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

DRAFT

**LICENSE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND FRIENDS OF PERALTA HACIENDA HISTORICAL PARK**

This License Agreement ("License") is made as of this ___ day of _____, 2005 by and between the City of Oakland ("the City") and Office of Parks and Recreation ("OPR") jointly and severally called "Licensor" and Friends of Peralta Hacienda Historical Park, a California non-profit corporation, called "Licensee."

RECITALS

WHEREAS, the City of Oakland is the owner and OPR is the custodial agency of the real property shown ("Property") on the Plot Plan attached hereto and incorporated as Exhibit "A". The Property includes:

1. A building located at 2465 34th Avenue, Oakland, California ("Peralta House"). The Peralta House is located on a parcel of land that also includes a garden area ("Community Garden").
2. A building located at 2496 Coolidge Avenue, Oakland, California called the ("Storage Building").

WHEREAS, Licensee is a tax exempt public benefit organization defined under the Internal Revenue Code.

WHEREAS, Licensee wishes to use the Property as follows:

1. The Peralta House will be used for a cultural museum and related activities.
2. The Storage Building will be used for storage of fixtures, equipment, tools and other related accessories for the use of the cultural museum.
3. The Community Garden will be used to cultivate plants, trees, fruits, vegetables, and other vegetation.

WHEREAS, Licensor is willing to grant to Licensee a license for the restricted uses of the Property subject to the terms and conditions of this License.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Grant of Revocable License.** Licensor grants and Licensee accepts a license to use the Property for the License Period and any Extended License Period subject to the terms and conditions set forth in this License.
2. **License Period.** The License Period shall be for five (5) years commencing July 1, 2005 and ending June 30, 2010, unless terminated sooner by either party in accordance with this License.
3. **Extended License Period.** Subject to earlier termination by either party in accordance with this License, Licensee shall have the two (2) consecutive options to extend the License for an Extended License Period of five (5) years per Extended License Period on the same terms and condition 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 ninety (90) 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 in advance and in lawful money of the United States an annual license fee of one dollar (\$1) per year to Licensor. The first License Fee shall be paid on July 1, 2005 and shall thereafter be paid to Licensor on the same day of each and every year for the License Period and any Extended License Period. All License Fees and other charges due under this License shall be payable to the City of Oakland and shall be remitted to the Office of Parks and Recreation, Attention: **OPR Fiscal Manager, 250 Frank H. Ogawa Plaza, 3rd Floor, Ste. 3330, Oakland, CA 94612.**

5. **Use.** Licensee shall have no other use of the Property except for the following:

5.1. **Peralta House.** The use of the Peralta House shall be restricted to a cultural museum and other related activities open to the public in accordance with the Museum Hours attached hereto as Exhibit B. Part of the Peralta House may be used for an office and for meetings relating to the use of the Property as a museum and a room to accommodate Licensee's caretaker (limited to 1 adult person). Subject to first obtaining Licensor's written approval, Licensee may charge fees for events that are socially compatible with Licensee's use of the Peralta House as museum and are consistent with the City's Master Fee Schedule.

5.2. **Storage Building.** The use of the Storage Building shall be restricted to the storage of fixtures, equipment, tools and other related accessories for the use of the cultural museum.

5.3. **Community Garden.** The use of the Community Garden shall be restricted to cultivate plants, trees, fruits, vegetables, and other related vegetation.

5.4. **Other Areas (within the Exhibit "A" Plot Plan).** The use of the other areas within the Exhibit "A" Plot Plan shall be restricted for cultural activities relating to the restricted use of the Peralta House.

5.5. **Areas Outside of the Exhibit "A" Plot Plan.** If Licensee wishes to conduct any activity beyond boundaries of the Exhibit "A" Plot Plan, Licensee shall be required to obtain the proper permits for such use and to pay the applicable fees set forth in the Master Fee Schedule.

6. **Improvements.** Licensee shall not make any improvements or alterations to the Property without first obtaining the written consent from Licensor.

6.1. **Conditions of Approval.** Licensor may impose as a condition to the aforesaid consent such requirements as Licensor may deem necessary in its sole discretion, including without limitation thereto, performing the work itself, specifying the manner in which the work is to be done, selecting the contractor by whom the work is to be performed and the times during which it is to be accomplished, and requiring the removal of any additions, alterations or improvements upon the expiration of the Term and the restoration of the Property to the same condition as on the date Licensee took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Licensor, and such work shall be diligently prosecuted to completion. Unless otherwise agreed to by Licensor, Licensee shall reimburse Licensor for all costs incurred by Licensor to implement such work, including but not limited to all design review fees, permit and plan check fees, architectural and engineering fees,

bonds & insurance, construction management costs, legal fees and any contractor, subcontractor, material supplier or equipment supplier costs. In addition, unless otherwise required by Licensor, Licensee shall pay Licensor an administrative review fee of five percent (5%) of the total cost of constructing the work, regardless of whether or not the Licensor or Licensee retains the contractor for the work. Further, unless otherwise required by Licensor, Licensee shall pay Licensor all amounts due under this Section prior to the commencement of construction.

- 6.2 Improvements Required by Law. Subject to the approval conditions of this of Section, Licensee shall, at no cost to Licensor, make or cause to be made 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, Licensor shall have the option to terminate this License in accordance with this License.
- 6.3 Alterations and Additions. All capital improvement projects on Property shall be done under proper permits and in accordance with local regulations and codes in effect at the time and the special requirements of the City of Oakland and its Public Works Agency, subject to the official state and national standards for the historic preservation, reconstruction, and adaptive reuse. All such work shall be done in accordance with complete and detailed review and approval by the appropriate City agency, as subject to the official state and national standards for the historic preservation, reconstruction, and adaptive reuse.
- 6.4 Liens. Licensee shall pay the costs of any work done on the Property and shall keep the Property, Buildings and Project free and clear of liens of any kind. Licensee shall indemnify, defend against and keep Licensor free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Licensee or any person claiming under Licensee. Licensee shall keep Licensee's leasehold interest, and any additions or improvements which are or become the property of Licensor under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Licensee shall give Licensor notice of the intended commencement date a sufficient time before that date to enable Licensor to post notices of non-responsibility or any other notice which Licensor deems necessary for the proper protection of Licensor's interest in the Property, Building or Project, and Licensor shall have the right to enter the Property and post such notices at any reasonable time.
- 6.5 Bonds. Licensor may require, at Licensor's sole option, that Licensee's Contractor, or if Licensor's Contractor is performing the Work, the Licensor's Contractor, provide to Licensor, at Licensee's expense, a performance bond in an amount equal to at least one and one-half (1-1/2) times the total estimated costs of any additions, alterations or improvements to be made in or to the Property, and a payment bond in an amount equal to at least 100% the total estimated costs to protect Licensor against any liability for mechanic's and materialmen's liens and to insure timely completion of the work. Nothing contained in this Section shall relieve Licensee of its obligation to keep the Property, Building and Project free of all liens.
- 6.6 Removal of Improvements upon Termination of License. If Licensee makes any improvements or alterations to 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 Licensee fails to comply with Licensor's request to remove any such improvements or alternations, Licensor shall have the option to remove any such improvements or alterations at Licensee's cost. In that event, Licensee shall promptly reimburse Licensor for Licensor's cost within 10 days after receiving Licensor's written demand. If any improvements or alterations are not removed when this License terminates, such improvements or alterations shall become part of the Property and Licensee shall not have any claim against Licensor or interest in such improvements or alterations. Provided, however, Licensee's equipment, machinery and trade fixtures which can be removed without damage to the Property shall remain the property of Licensee and may be removed, subject to the provisions of this License.

7. **Landscaping, Maintenance and Repair of the Property.** Licensor shall be responsible for the repair and maintenance of the landscaping of the Property except for the Community Garden. Licensee shall be responsible for the repair and maintenance of the Community Garden at no cost to Licensor. Licensor shall also be responsible for the maintenance and repair of the Property except that Licensee shall be required to provide janitorial and custodial services to the Property at no cost to Licensor for the License Period and any Extended License Period. The scope and frequency of Licensee's service to the Property are more specifically described in Exhibit C attached hereto and made a part hereof. In addition, Licensee shall be responsible for providing security services to the Property. At no cost to Licensor, Licensee shall at a minimum install and maintain fire detection and alarm system that shall comply with all applicable code requirements. If such services are not provided or if such services fail to satisfy the requirements set forth in Exhibit C and if the condition continues for more than 10 days after receiving written notice from Licensor, Licensee shall be in default and Licensor shall be entitled to exercise all rights and remedies under this License.

8. **Utilities and Telephone/Cable Television.** Licensee shall pay for all utilities including but not limited gas, electricity, and water serving the Property. Licensee shall also be responsible for its telephone and cable television hook-up, services and related charges.

9. **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 normally and customarily used for housekeeping, maintenance or cleaning considered safe. Licensee shall not cause or allow the deposit or disposal of any such hazardous material 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 involvement in the Property.

10. **Insurance.** At Licensee's own cost, Licensee shall purchase and maintain insurance policies in an amount and coverage satisfactory to Licensor for the License Period and any Extended License Period. A copy of all required insurance policies shall be delivered to Licensor prior to the execution of this License unless Licensor shall request from Licensee a Certificate of Insurance. In any event, a copy of any required insurance policy or Certificate of Insurance as requested by Licensor shall be attached hereto as Exhibit D and made a part of this License

10.1 Licensee's Insurance. Licensee's insurance policies shall consist of the following:

(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)

If the insurance is written on a claims-made form, following termination of this License, the coverage shall survive for a period of not less than three years. Coverage shall provide for a retroactive date of coverage coinciding with the commencement date of this License.

- (b) Business Automobile Liability Insurance for any owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
- (c) Workers' Compensation and Employers Liability Insurance in a form and amount covering Licensee's full liability under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.
- (d) Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse Licensor for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises and for all leasehold improvements including those hereinafter constructed or installed by Licensor or Licensee.
- (e) Such other insurance in amounts which at any time may be reasonably required by the City against other insurable risks relating to Licensee's use of the premises. In no event shall Licensee be required to secure and maintain earthquake insurance.

In each of the insurance policy referenced under this paragraph, the City of Oakland shall be a named insured. The insurance policies shall apply only to the extent of the negligent acts or omissions of Licensee, its officers, agents, employees; or any other person or persons under Licensee's direct supervision and control. Prior to the execution of this License, Licensee shall either furnish the City with a copy of the insurance policies or Certificates of Insurance evidencing compliance with all insurance requirements. The Certificates shall contain provisions for thirty (30) day advance written notice to City of any modification, change or cancellation of any of the above insurance coverage.

The insurance coverage required herein shall not limit the liability of Licensee, its officers, agents, or employees.

10.2 Waivers of Subrogation. The City and Licensee each hereby waive any right of recovery against the other due to any loss or damage to the Property owned either by the City or Licensee when such loss of or damage to Property arises from any acts of God or any of the property perils included in the classification of fire, extended perils ("all risk" as such term is used in the insurance industry) including perils that have been insured, self-insured or non-insured.

10.3 Exemption of City from Liability. Licensee agrees that City shall not be liable under this License for any injury to Licensee's business or loss of Licensee's income or for damage to the goods, wares, merchandise or other property of

Licensee, Licensee's employees, invitees, customers, or any other person in or about the Property, nor shall the City be liable for injury to any person of Licensee, Licensee's employees, agents or contractors, as a result of any condition of the Property or any building or structure on the Property, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause in or about the Property, whether the said damage or injury results from conditions arising from the Property or in other parts of the building or structure on the Property, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee. The City shall not be liable under this License for any damages arising from any act or neglect of any other Licensee, if any, of the building or structure on the Property.

11. **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.

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

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

14. **Right of Entry.** After providing advance 24 hour notice to Licensee, Licensor may enter the Property to inspect, install, construct, repair or maintain any part of the Property. In the event of any emergency, Licensor shall not be required to provide any advance 24 hour notice.

15. **Condition of Property.** Licensee has inspected the Property and agrees to accept the Property in the "as is" condition, without any warranty expressed or implied. When the License terminates, at Licensee's own cost, Licensees shall clean and restore the Property to the condition which existed on the day this License Period commenced, except for normal wear and tear.

16. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, assign or sublicense this License or any rights or interest under this License. Any attempted transfer, pledge, assignment, or sublicense of this License shall be null and void resulting in a default under this License.

17. **Termination.** Either party may terminate this License at any time. When the party intending to terminate this License delivers 90 days advance written notice to the other party, this License shall terminate 90 days thereafter from the receipt of such notice.

18. **Notices.** Any notice, demand, or communication relating to this License shall be delivered personally or sent by prepaid, registered or certified, U.S. 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: Friends of Peralta Hacienda Historical Park
Box 7172
Oakland, CA 94601

Any notice given by registered mail shall be deemed given on the third business day after its deposit in the United States mail. Any notice given by certified mail shall be deemed given on the date receipt is acknowledged to the postal authorities. Any notice given by mail shall be deemed given only if received by the other party, and then on the date of such receipt. *Each party may by written notice to the other party in the manner described in this paragraph change the address to which notices addressed to it shall thereafter be mailed.*

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

19.1 Failure to pay any sums of money due under this License when such failure to pay continues for ten (10) days after Licensee shall have received notice from Licensor.

19.2 Failure to perform the services described in Exhibit B or any other provision of this License if the failure to perform is not cured after ten (10) days after Licensee shall have received 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.*

19.3 Licensee shall have abandoned the Property or have breached or violated any terms and conditions of this License.

20. **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:

20.1 Licensor shall have the option to keep this License in force and effect and to enforce any action at law or in equity to: (1) recover any sums of money becoming due under this License, (2) make payments required by Licensee or perform Licensee's obligations and to be reimbursed by Licensee for such cost with interest at the then maximum rate of interest permitted by law from the date of Licensor's payment 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 obligation under this License.

20.2 Licensor shall 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 release Licensee from its obligation to make any payments due under this License or to comply with any provision of this License.

20.3 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.

21. **Damage or Destruction.** If all or part of the Property is destroyed or damaged from any cause and the resulting damages frustrates Licensee's use of the Property or causes the use of Property to be unfit for the intended purpose or use described in this License or creates a unsafe or hazardous condition, either party shall have the option to terminate this License upon 30 days written notice to the other party. In any event, 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.

22. **Compliance with Laws and Nondiscrimination.** 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 or Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC).

23. **Annual Reporting and Accounting Records** At the end of each year of the License Period and for any Extended License Period, Licensee shall deliver to Licensor on or before October 1 of that year current statements for fiscal year beginning July and ending June 30 of that year the following:

23.1 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.

23.2 Certified Statement signed by a duly authorized director or officer of Licensor confirming the number of visitors (and related museum admission fees and contributions collected), the number of activities undertaken (and related charges for each activity and contributions collected for each activity) an operating budget for the current year, and the names and telephone numbers of the current President and Directors of Licensee.

23.3 Accounting Records pertaining to funds received for restoration, repair, and all operations of the Property shall be kept and maintained in a manner acceptable to the Licensor including up-to-date general ledger accounts on the accrual basis in accordance with Generally Accepted Accounting Principles. End-of-year financial statements shall be prepared by a Certified Public Accountant for Licensee in accordance with Generally Accepted Accounting Principles acceptable to the Licensor. Licensee shall make all books and records open to audit and inspection by Licensor or any assigned designee, with five (5) days notice, during normal business hours at the Peralta House for the period of this License and any extended period. All books and records of Licensee shall be retained for a period of four (4) years after the close of each Licensee fiscal year.

- a. Licensee shall maintain financial and operational records until the later of four (4) years after the termination of this License or two (2) years after the closure of any disputed matter. Such records shall be retained at the Peralta House. When this License terminates, all accounting records including books and records of Licensee shall be delivered to Licensor.
- b. Licensee unconditionally and irrevocably waives the confidentiality of all information in the possession of banks, financial institutions, credit reporting services, bookkeeping services, certified public accountants, and financial consultants. Licensee authorizes Licensor or any designee to obtain such information directly from these sources.

23.4 All other documents requested by the City Auditor relating to the Property.

24. **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.

25. **Entire Agreement.** This License contains the entire agreement of the parties relating to the subject matter of this License 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.

26. **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.

27. **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.

Licensee: Friends of Peralta Hacienda Historical Park

By: _____

Title: _____

Date: _____

Licensor: Office of Parks and Recreation

By: _____

Title: _____

Date: _____

Approved as to Form and Legality: Office of the City Attorney

By: _____

Title: _____

Date: _____

Table of Exhibits

Exhibit	Description
A	Plot Plan and Property Description
B	Museum Hours
C	Licensee's Obligation under Paragraph 7 of License Agreement
D	Certificates of Insurance (or copy of the policies)

EXHIBIT A

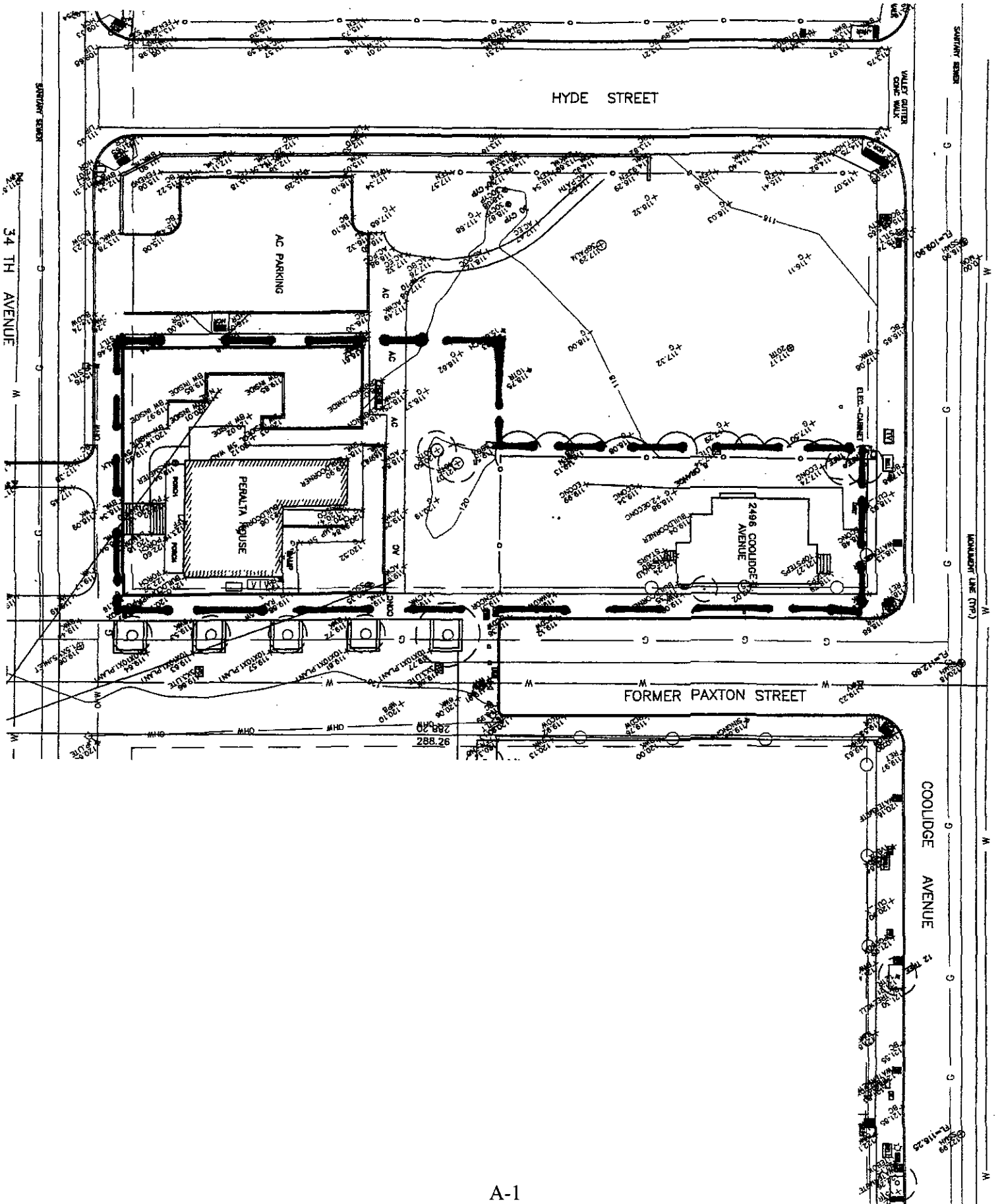


EXHIBIT B – MUSEUM HOURS, SERVICES, AND FEES

Friends of Peralta Hacienda Historical Park will maintain hours of operation (excluding construction period):

Tuesday through Friday – 12 – 5 p.m.

Special Events: Saturday/Sunday – 12 – 5 p.m.

House Tours: Wednesday through Friday - 1-3 p.m.

PROGRAMS AND SERVICES

Program / Service	Fees
Guided Educational Tours of Site and House (1 hour)	\$3.00 per person; \$20.00 per classroom (negotiable) Free Admission on specially designated event days throughout the year
Half-day School Field Trips with Hands-on Educational Activity Sessions (i.e. adobe brick making) with Site Tour	\$2.00 per child (negotiable)
Rental of Historical House (ground floor)	\$300 per day (negotiable)
After School Youth Arts, Gardening, Cultural Programs	Free (grant supported)
Collaborative Programs with Neighborhood Schools	Free
Interpretive Programs relating to completion of Master Plan Phases (future)	Undetermined

**EXHIBIT C
To
License Agreement**

Licensee's Obligation under Paragraph 7 of License Agreement

Minimum Scope of Services	Minimum Time Requirements
Janitorial & Custodial (Exterior)	1.5 hours per day per day (5 days per week)
Janitorial & Custodial (Interior)	3 hours per day per day (5 days per week)
Landscape Repair & Maintenance (limited to Community Garden)	As much time as required to maintain and to keep the appearance consistent with the standards describe below.

Notes:

1. **Minimum Requirements.** The scope of services and the time for such services to be provided by Licensee are minimum requirements. Licensee shall provide such services to the Property in a professional and workmanlike manner creating an appearance and atmosphere that is appealing and inviting to the general public. Licensee shall expand the scope of services and time required to provide such services if the overall appearance of the Property falls below the standards required to maintain the Property consistent with its historical and architectural value as a landmark property.
2. **Minimum Standards.** The Property has been designated an Oakland Landmark, Alameda Landmark, State Historic Landmark, and the site of the National Park Service Anza National Trail, and Peralta House has been placed on the National Register of Historic Places. Licensee agrees to provide such janitorial and custodial services and to maintain the Community Garden at a high level consistent with properties having such designations that is open to the general public and viewed as a landmark property.

EXHIBIT D
To
License Agreement

Certificates of Insurance
(or copy of the policies)

To be provided by Licensee upon signing of the agreement.

OAKLAND CITY COUNCIL

Luis

RESOLUTION No. _____ C.M.S.

OFFICE OF THE CITY CLERK
OAKLAND

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND FRIENDS OF PERALTA HACIENDA HISTORICAL PARK FOR LIMITED USE OF PERALTA HOUSE, THE ADJACENT GARDEN AREA, AND STORAGE BUILDING FOR \$1 PER YEAR, FOR A FIVE-YEAR TERM, JULY 1, 2005 TO JUNE 30, 2010, WITH TWO CONSECUTIVE FIVE-YEAR OPTIONS TO RENEW

WHEREAS, the Antonio Maria Peralta House ("Peralta House") is on the National Register of Historic Places and Peralta House and parts of Peralta Hacienda Park have been designated as an Oakland landmark, an Alameda County Landmark, and a State Historic Landmark. The park is a site on the National Park Service Anza National Trail; and

WHEREAS, Peralta House, located at 2465 34th Avenue; the adjacent garden area; and the adjacent storage building, located at 2496 Coolidge Avenue ("the property"); are owned by and in the custodial care of the City of Oakland; and

WHEREAS, Friends of Peralta Hacienda Historical Park, a California 501(c)(3) non-profit corporation dedicated to historical preservation and educational outreach, seeks to operate its cultural museum and related activities at Peralta House and its adjacent garden area and storage building; and

WHEREAS, Friends of Peralta Hacienda Historical Park actively seeks and receives grants and donations for restoring Peralta Hacienda Historical Park and for exhibits and public programming; and

WHEREAS, Friends of Peralta Hacienda Historical Park agrees to provide janitorial, custodial, and security services to the property; and

WHEREAS, Friends of Peralta Hacienda Historical Park agrees to be responsible for the payment of all utilities serving the property and providing adequate liability insurance; and

WHEREAS, Friends of Peralta Hacienda Historical Park agrees to pay the sum of one dollar per year as the license fee for the property; and

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

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

RESOLVED: that the City Administrator or her designee is hereby authorized to negotiate, execute, modify, and amend a license agreement between the City of Oakland and Friends of Peralta Hacienda Historical Park for limited use of the Peralta House, the adjacent garden area, and storage building for \$1 per year for a five-year term, July 1, 2005 to June 30, 2010, with two consecutive five-year options to renew; and be it

FURTHER 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, _____, 20____.

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

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

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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
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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