

City of Piedmont  
COUNCIL AGENDA REPORT

---

DATE: February 6, 2012

FROM: Mark Delventhal, Director of Recreation

**SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE 702 N.S. APPROVING AN AGREEMENT BETWEEN THE CITY OF PIEDMONT AND THE PIEDMONT EDUCATIONAL FOUNDATION FOR OCCUPANCY OF THE PIEDMONT VETERANS' HALL OFFICE SPACE FOR THE TERM APRIL 4, 2012 THROUGH DECEMBER, 2017.**

---

**STAFF RECOMMENDATION:**

Adopt the first reading of Ordinance 702 N.S. attached hereto as Exhibit 1 approving a Facility Use Agreement with the Piedmont Educational Foundation for their occupancy of the Veterans' Hall Office Space.

**BACKGROUND:**

Piedmont Choirs was the tenant in the Veterans Hall office space beginning in 1986. In January, 2009, the City Council approved an agreement with Piedmont Choirs that terminated their occupancy of this office space effective January 9, 2009.

In July, 2009, the City Council approved an agreement with WEBCOR Builders for occupancy of the Veterans' Hall office space for construction management purposes for the Havens School project. The term of this agreement was from July 1, 2009 through August 31, 2010. Among the terms of this agreement was a provision that upon conclusion of their occupancy, WEBCOR would remodel the office space to the satisfaction of the city. Such remodeling was successfully completed in the fall of 2010.

**CITY OCCUPANCY:**

The initial plan was to relocate several city employees to this office space. Since that time, it has been determined by staff that such a move is not desirable, at least at this time.

**PIEMDONT ED FOUNDATION INTEREST/NEGOTIATIONS:**

In the meantime, the existing agreement between the City of Piedmont and the Piedmont Ed Foundation for their occupancy of the office space in the Community Hall lower level was set to expire on December 31, 2011. In the course of the discussions with PEF for renewal of this lease agreement, the Veterans' Hall vacant office space became a topic of interest to both parties. PEF toured the space and determined that it would be beneficial to their organization to move from the Community Hall lower level offices to the Vets Hall offices.

The Ed Foundation Board of Directors was represented by Mr. Bill Drum in the negotiation process. Following several meetings and discussions and with instructions from the City Council (a matter of real property), agreement was reached and is the basis for the proposed agreement.

**BASIS FOR RENT:**

The arrival at a range of fair value rents was based on my conversations with 3 outside experts. The space is valued in the range of \$1500 per month. Based on the purpose, function and non profit status of the PEF, \$1250 per month seemed fair and reasonable. Each January through 2017, the rent will increase 3% during the term of the agreement.

**NATURE OF AGREEMENT:**

Please note that the Recitals include language that the City may decide to occupy the space (1 year notice for termination) during the course of the term, and that the Vets Hall facility does have loud noise from time-to-time. (see number 18.)

**INDEMNIFICATION:**

The City Risk Management firm has reviewed the Indemnity provisions of the agreement.

**CITY ATTORNEY REVIEW:**

The City Attorney has reviewed and approved the form and legality of this agreement.

ORDINANCE NO. 702 N.S

AN ORDINANCE APPROVING A USE AGREEMENT  
WITH THE PIEDMONT EDUCATIONAL FOUNDATION

The City of Piedmont hereby ordains as follows:

SECTION 1

By adopting this ordinance, the Piedmont City Council intends to implement a use agreement with the Piedmont Educational Foundation for the use of the Piedmont Veterans' Memorial Building office space until December 31, 2017.

SECTION 2

The Use Agreement between the City of Piedmont and the Piedmont Educational Foundation, a copy of which is attached hereto and incorporated by reference, is hereby approved.

SECTION 3.

This ordinance shall be posted at City Hall after its second reading by the city council for at least thirty (30) days and shall become effective thirty (30) days after such second reading.

## FACILITY USE AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the **CITY OF PIEDMONT**, a municipal corporation, hereafter called “CITY,” whose address is 120 Vista Avenue, Piedmont, California 94611, and **PIEDMONT EDUCATIONAL FOUNDATION**, hereafter called “PEF,,” a nonprofit support group of Piedmont Unified School District.

### RECITALS

**WHEREAS**, CITY owns and operates the Piedmont Veterans Hall, 401 Highland Avenue, Piedmont, California 94611; and

**WHEREAS**, PEF is an organization devoted to the support of youth education in Piedmont; and

**WHEREAS**, PEF desires to utilize the Veterans’ Hall office space for its clerical and administrative purpose; and

**WHEREAS**, City has recently remodeled said office space for use by City personnel or other City use and such city use is not needed at this time; and

**WHEREAS**, PEF acknowledges City may, at their discretion pursuant to Section 3 of this Agreement, occupy said office space in the future; and

**WHEREAS**, City desires to reach agreement for Veterans’ Hall office space use by PEF.

NOW THEREFORE, the parties hereto agree as follows:

## USE AGREEMENT

This Agreement is between the City of Piedmont, a municipal corporation, hereinafter called "City," and the Piedmont Educational Foundation, hereinafter called "PEF."

1. Premises.

The City agrees to allow PEF to rent approximately 530 square feet of office space to the left of the second floor entrance to the Veterans' Building, located at 401 Highland Avenue, Piedmont, California ("Premises"), attached hereto as Exhibit 1. The space to be rented shall include the three rooms in the space.

2. Term – Rental Fees

The term of this Agreement shall start on Wednesday, April 5, 2012. It shall end on December 31, 2017. PEF shall pay the City the monthly sum of \$1,250.00 (\$2.36 per square foot) through December 31, 2012. For the period January 1, 2013 through December 31, 2013, PEF shall pay the City the monthly sum of \$1,288.00 (\$2.43 per square foot). For the period January 1, 2014 through December 31, 2014, PEF shall pay the monthly sum of \$1,327.00 (\$2.50 per square foot). For the period January 1, 2015 through December 31, 2015, PEF shall pay the City the monthly sum of \$1,367.00 (\$2.58 per square foot). For the period January 1, 2016 through December 31, 2016, PEF shall pay the City the monthly sum of \$1,408.00 (\$2.66 per square foot). For the period January 1, 2017 through December 31, 2017, PEF shall pay the City the monthly sum of \$1,450.00 (\$2.73 per square foot). PEF shall pay the City on the first day of each month.

3. Termination.

Either party may terminate this Agreement without cause upon at least one year's (365 days) prior written notice to the other party, designating the date of termination.

4. Nature and Hours of Use.

The Premises shall be used for transacting PEF business and storage of PEF documents. No other use of the Premises is permitted.

5. Sublease Prohibited Without Tenant Approval.

PEF may not sublease the Premises or otherwise assign or transfer its rights and duties under this Agreement to any other person or entity without City Council approval.

6. Utilities.

The City will bear the cost of utilities serving the Premises, namely, any electricity, gas and water including HVAC. PEF shall bear the cost of telephone, cable or any computer links.

7. Mail and Other Deliveries.

PEF shall obtain a separate mail box using the address 401 A Highland Avenue, Piedmont, CA, and no PEF correspondence shall be sent to City buildings street addresses. The City shall bear no liability whatsoever for handling any mail or parcels belonging to PEF which are delivered to the City..

8. Maintenance.

PEF shall be responsible for the routine cleanliness and neatness of the Premises. City shall be responsible for all repairs on the Premises, except that PEF shall pay for any supplies, equipment, light bulbs or materials related to their occupancy or for damages to the Premises arising out of PEF use and occupancy of the Premises. Any painting and carpet replacement shall be done at PEF's expense.

9. Insurance.

PEF shall, at its sole expense, obtain and keep in force comprehensive public liability insurance naming City as an additional insured and insuring against claims for bodily injury, death or property damage occurring in or about the Premises. This insurance shall be in the form of a One Million Dollar (\$1,000,000.00) single limited liability policy, written by an insurance company rated A XII or better by A.M. Best Company, including personal injury, death, or property damage and shall cover any and all claims arising as a result of the use of the Premises with the permission of PEF and naming City as an additional insured of the policy through a separate endorsement. PEF shall furnish City with a yearly certificate of insurance. City may, at its discretion, review the nature and amount of such insurance coverage and shall have the right to increase the amount of coverage or make other changes in the insurance coverage requirements under this Agreement with at least ninety (90) days' prior written notice to PEF.

10. Destruction of Premises or Long-Term Repairs of Premises/Theft.

If the Premises are damaged or destroyed by fire, earthquake or other disaster, natural or otherwise so as to render the Premises in the opinion of City unusable, this Agreement shall be terminated. Furthermore, City shall not be liable for any theft or damage to or destruction of property belonging to PEF. In addition, City has no obligation to secure space and/or relocate PEF.

11. Indemnity.

PEF agrees to indemnify and hold free and harmless and to defend City and its officers and employees and each of them against any and all liability, loss, costs, damages, attorneys fees and other expenses which City or any other person or entity, including PEF, may incur or sustain for any death, injury, or damage arising as a consequence of the use of the Premises by PEF or by anyone permitted by PEF to use the same Premises including, but not limited to, sums paid or liabilities incurred in connection with claims, suits, or judgments against the City of Piedmont as owner of the Premises, and expenses paid or incurred in procuring or attempting to procure release from liability, or in recovering or attempting to recover losses or expenses paid or incurred as set forth above, but only if City notifies PEF within ninety (90) days after the date the

claim or lawsuit is filed or served on City. If PEF receives or otherwise becomes aware of a claim or lawsuit that names City as a defendant that also names PEF, PEF shall promptly, within two (2) business days thereafter, provide City with a copy of such claim or lawsuit or if no written documentation has been provided to PEF with all information then available to PEF relating to such claim or lawsuit.

12. Inspection of Premises.

City shall be entitled to enter the Premises at all times with at least 24 hours' prior notice to PEF for the purpose of determining whether PEF is complying with the terms and conditions of this Agreement.

13. Disclaimer.

It is understood and agreed that City shall in no event be construed or held to be a partner, associate or joint venturer with PEF in the use of the Premises, nor shall City be held liable for any debts incurred by PEF in any way connected with the use of the Premises, and that the relationship of the parties is and at all times shall remain that of City being the owner and PEF having use of the space.

14. Disputes.

Any disputes arising out of this Agreement related to matters other than payment of rent by PEF to City shall be resolved first by Mediation and then before the American Arbitration Association's San Francisco office with the hearing locale to be in Piedmont, California, or at such other locale as the parties may mutually agree. Copies of all documents to be used at the arbitration hearing shall be furnished to the other party no later than thirty (30) days prior to the hearing or the documents shall be barred. The arbitration award shall be enforceable in any court having jurisdiction.

15. Notice.

Any demand or notice which either party shall be required, or may desire, to make upon or give to the other party, shall be in writing and shall be given by personal service to an authorized representative of the party to be served or shall be sent by prepaid certified and registered mail, return receipt requested, addressed to the respective parties as follows:

City:            Director of Recreation  
                     City of Piedmont  
                     120 Vista Avenue  
                     Piedmont, CA 94611

PEF:            President  
                     Piedmont Educational Foundation  
                     401A Highland Avenue  
                     Piedmont, CA 94611

Either party may, at any time, change the address to which notice shall be given by giving written notice thereof to the other party as above provided. Nothing or demand by prepaid registered or certified mail addressed as aforesaid shall be deemed to be fully communicated upon the expiration of three (3) business days from the date of mailing.

16. Compliance With City Laws.

Notwithstanding any other provisions of this Agreement, PEF shall always comply with the laws of the City and any other jurisdiction or entity which applies to the Premises, and specifically PEF shall not allow any nuisance to be committed on the Premises, including any nuisance caused by noise.

17. Use of Building.

PEF shall be allowed two (2) rentals per year of the entire Veterans Hall (as mutually acceptable to both parties) for PEF events or activities of no more than ten (10) hours per use. PEF shall pay to City only direct costs incurred by City for said PEF event as determined by City.

18. Noise.

PEF acknowledges and agrees that other use of the Veterans Building may cause noise (including music for exercise classes) that may be disruptive and hereby agrees to this agreement with full awareness and acknowledgement of such noise.

Dated: \_\_\_\_\_, 2012

CITY OF PIEDMONT

PIEDMONT EDUCATIONAL FOUNDATION

\_\_\_\_\_  
Mayor or Council Member

By: \_\_\_\_\_  
Amal Smith, President, Board of Directors

\_\_\_\_\_  
Mark Delventhal  
Director of Recreation

By: \_\_\_\_\_  
Julia Burke, Administrator  
Piedmont Educational Foundation

Approved as to form and legality:

---

City Attorney or Deputy City Attorney

---

Attest: City Clerk