

City of Piedmont  
CITY COUNCIL AGENDA REPORT

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DATE: February 5, 2018

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Introduction and First Reading of Ordinance 740 N.S. Approving an Agreement to Reinstate and Amend Facility Use Agreement with Piedmont Educational Foundation

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RECOMMENDATION:

Approve the first reading of Ordinance 740 N.S., approving a reinstatement and amendment to a Facility Use Agreement with the Piedmont Educational Foundation for their occupancy of the Veterans' Hall Office Space.

BACKGROUND:

The Piedmont Educational Foundation has been the tenant in the Veterans Hall office space since 2012. On March 5, 2012, the City Council approved an agreement with PEF that expired on December 31, 2017. The proposed agreement leaves most terms unchanged including a 3% yearly escalation in rent. The only significant change in the reinstatement agreement is in the termination clause which will require 90 days rather than a one year written notice. This change was made in light of master planning efforts currently underway for the Recreation Department Building and the Veterans Memorial Hall.

The Piedmont Educational Foundation has reviewed and approved the proposed agreement. The attached ordinance was prepared by the City Clerk and has been reviewed and approved by the City Attorney.

Attachments:

- A: Ordinance 740 N.S. (Including Agreement to Reinstate and Amend)
- B: 2012 Ordinance and Lease Agreement

By: Sara Lillevand, Recreation Director

ORDINANCE NO. 740 N.S.

AN ORDINANCE APPROVING AN AGREEMENT TO REINSTATE AND AMEND  
FACILITY USE AGREEMENT WITH PIEDMONT EDUCATIONAL FOUNDATION

The City of Piedmont hereby ordains as follows:

SECTION 1

By adopting this ordinance, the Piedmont City Council intends to reinstate and amend a use agreement with the Piedmont Educational Foundation for the use of the Piedmont Veterans Memorial Building office space until December 31, 2020.

SECTION 2

The Agreement To Reinstate And Amend Facility 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.

[END OF DOCUMENT]

## **AGREEMENT TO REINSTATE AND AMEND FACILITY USE AGREEMENT**

THIS AGREEMENT TO REINSTATE AND AMEND FACILITY USE AGREEMENT (“Amendment”) is made and entered into on this \_\_\_ day of \_\_\_\_\_ 2018 (the “Effective Date”) by and between the City of Piedmont, a California municipal corporation (“City”), and Piedmont Educational Foundation (“PEF”), a nonprofit support group of Piedmont Unified School District.

### RECITALS

A. On or about March 5, 2012, the City and PEF entered into a Facility Use Agreement (“Facility Use Agreement”), attached hereto as Exhibit A and incorporated herein by reference, regarding PEF’s use of the Piedmont Veterans Hall (“Premises”), which is owned and operated by the City.

B. The term of the Facility Use Agreement expired on December 31, 2017. Since that date, PEF has continued to use the Premises as a month to month tenant.

C. The City is considering future renovations to the Premises, however, in the interim, PEF wishes to continue to use the Premises, and the City wishes to continue to lease the Premises to PEF.

### AGREEMENT

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this First Amendment, the parties hereto agree as follows:

1. The Facility Use Agreement is reinstated and Section 2 of the Facility Use Agreement (“Term-Rental Fees”) is amended and restated in its entirety as follows:

The term of this Agreement shall start on \_\_\_\_\_, 2018. It shall end on December 31, 2020. PEF shall pay the City a monthly sum of \$1,494.00 through December 31, 2018. For the period January 1, 2019, through December 31, 2019, PEF shall pay the City the monthly sum of \$1,539.00. For the period January 1, 2020, through December 31, 2020, PEF shall pay the City the monthly sum of \$1,585.00. PEF shall pay the City on the first day of each month.

2. Section 3 of the Facility Use Agreement (“Termination”) is amended and restated in its entirety as follows:

Either party may terminate this Agreement without cause upon 90 days’ prior written notice to the other party, designating the date of termination.

3. Unless explicitly amended by this Amendment, all terms and provisions of the Facility Use Agreement shall remain in full force and effect.

**CITY**

CITY OF PIEDMONT, a California municipal corporation

By: \_\_\_\_\_  
Paul Benoit, City Administrator

ATTEST:

\_\_\_\_\_  
John Tulloch, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney  
Chad Herrington, Assistant City Attorney

**PEF**

PIEDMONT EDUCATIONAL FOUNDATION, a nonprofit support group of Piedmont Unified School District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

0045  
x 0705 0350

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.

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**FACILITY USE AGREEMENT**

**THIS AGREEMENT** is made this 5<sup>th</sup> day of March, 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:

JFS

## 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 4, 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 City 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 shall pay 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. Repairs and 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

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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.

City agrees to indemnify and hold free and harmless and to defend PEF and its officers and employees and each of them against any and all liability, loss, costs, damages, attorneys fees and other expenses which PEF may incur or sustain as a consequence of the use of the Premises due to the sole negligence of City.

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 by Mediation.

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

P.O. Box 11192  
 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: April 4, 2012

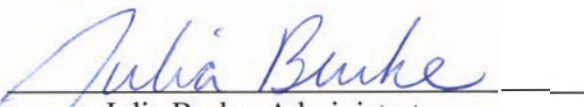
CITY OF PIEDMONT  
 FOUNDATION

PIEDMONT EDUCATIONAL

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

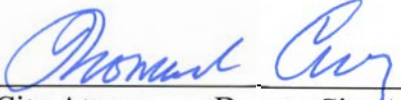
  
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 Amal Smith, President, Board of Directors

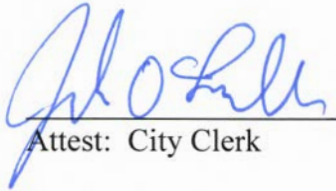
  
 \_\_\_\_\_  
 Mark Delventhal  
 Director of Recreation

  
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 Julia Burke, Administrator  
 Piedmont Educational Foundation



Approved as to form and legality:

  
\_\_\_\_\_  
City Attorney or Deputy City Attorney

  
\_\_\_\_\_  
Attest: City Clerk

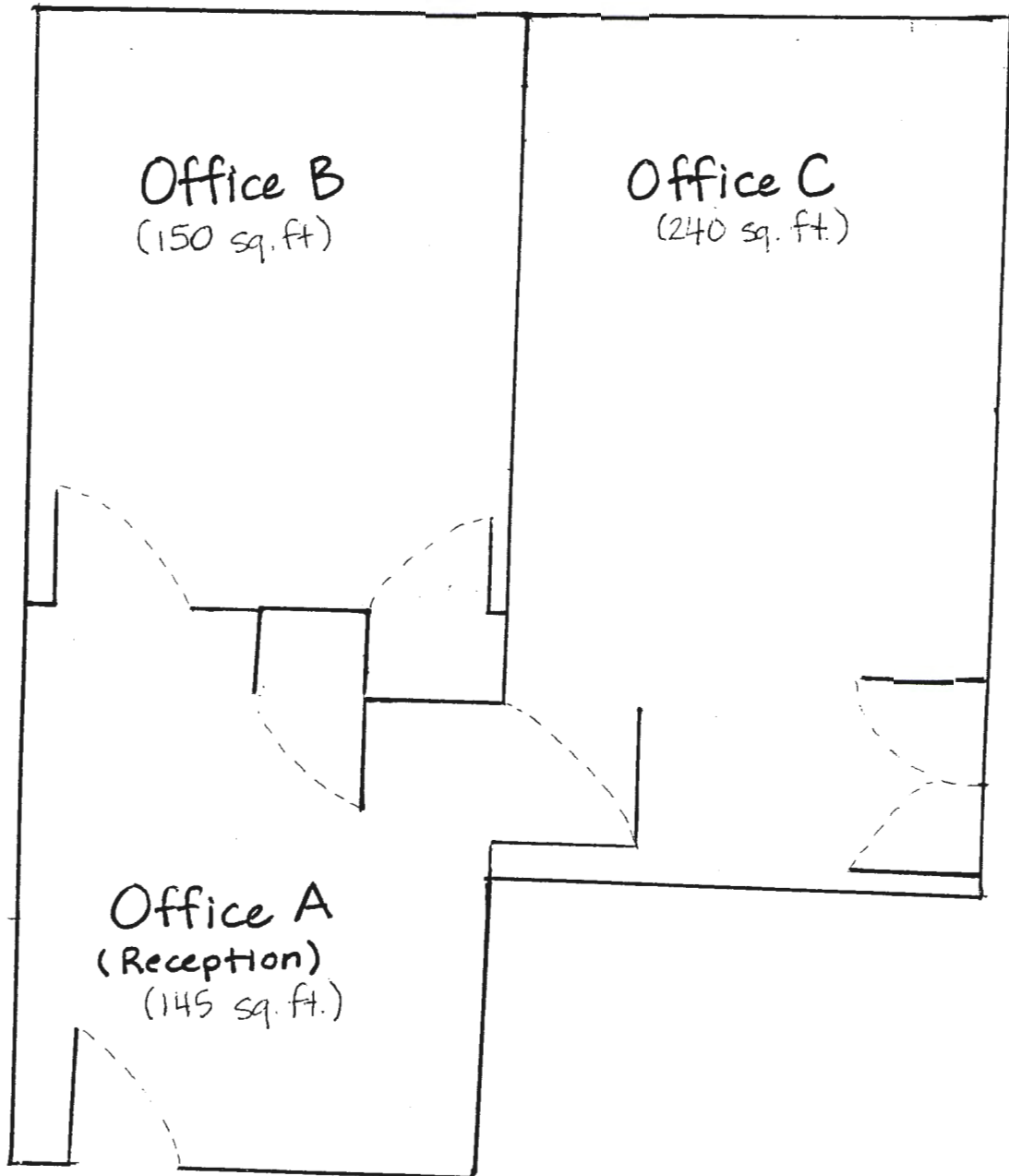


Exhibit #1

Veterans' Hall Office Space (535 sq. ft.)

1-2012