

Board Office Use: Legislative File Info.	
File ID Number	14-1837
Introduction Date	9/10/14
Enactment Number	14-1677
Enactment Date	9-10-14




OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel 

**Board Meeting Date** September 10, 2014

**Subject** **JOINT USE LEASE AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND THE CITY OF OAKLAND REGARDING PIEDMONT AVENUE CHILD DEVELOPMENT CENTER, 86 ECHO AVENUE, OAKLAND**

**Action Requested** Approval by the Board of Education of the Facilities Use Agreement between the District and the City of Oakland regarding Piedmont Avenue Child Development Center, 86 Echo Avenue, Oakland.

**Background**  
*A one paragraph explanation*

The City of Oakland Department of Parks & Recreation has requested the joint use of the Piedmont Avenue Child Development Center for a short term, under the Community Recreation Act, during the renovation of the City's Golden Gate Recreational Center.

**Discussion**  
*One paragraph summary*

Under the Joint Use Agreement, Parks & Recreation may jointly use the Piedmont Avenue CDC for a term from August 25, 2014 to June 30, 2017 – although we anticipate the use will be for 18 months.

**Recommendation** Approval by the Board of Education of the Facilities Use Agreement between the District and the City of Oakland regarding Piedmont Avenue Child Development Center, 86 Echo Avenue, Oakland.

**Fiscal Impact** N/A – The City will assume all responsibility for repair, maintenance and upkeep.

**Attachments** Joint Use Lease Agreement the Between District the City of Oakland Department of Parks & Recreation

**JOINT USE LEASE AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL  
DISTRICT AND  
THE CITY OF OAKLAND  
REGARDING PIEDMONT AVENUE CHILD DEVELOPMENT CENTER  
86 ECHO AVENUE, OAKLAND CALIFORNIA 94611**

This Joint Use Lease Agreement ("JUA" and/or "Agreement") is effective August 25, 2014 by and between the Oakland Unified School District, a California public school district ("District") and the City of Oakland, a California municipal corporation ("City") collectively, (the "Parties").

**RECITALS**

**WHEREAS**, District owns and operates PIEDMONT ELEMENTARY SCHOOL SITE, located at 86 Echo Avenue Oakland, California 94611 ("School Site"); and

**WHEREAS**, District desires to allow City's Parks & Recreation Department use of the PIEDMONT AVENUE CHILD DEVELOPMENT CENTER, located on the School Site at 86 Echo Avenue as shown on Attachment A ("CDC" or "Premises") during the renovation of the Golden Gate Recreational Center in Oakland; and

**WHEREAS**, the provisions of Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") authorize and empowers cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of public services which will contribute to the attainment of general recreational and educational objectives for children and adults of the state, and to enter into agreements with each other for such purposes; and

**WHEREAS**, the development, use, and maintenance of the District and City Recreational Facilities and the fulfillment generally of this Agreement are in the vital and best interests of the residents of the City and of the District, and of their health, safety, and welfare, and are in accordance with the public purposes and provisions of applicable federal, State and local law; and

**WHEREAS**, the District and City's joint use of the CDC located on the School Site for recreational purposes will provide a benefit to the students who attend Oakland Schools and to the City's residents.

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

**AGREEMENT**

1. **LEASE AND USE OF PROPERTY.** District hereby leases to City and City hereby leases from District the Premises as described above for City's use of premises as the Golden Gate Recreation Center.
2. **TERM OF AGREEMENT.** The term of this Agreement shall be from August 25, 2014 to June 30, 2017, unless terminated earlier pursuant to the termination provisions set forth in this Agreement.

3. **JOINT USE OF SITE.** District shall work with City staff to determine the appropriate joint use protocol for using the CDC. The District and City shall meet, as needed, to develop a Master Schedule for the shared use of the CDC facility, as well as designate additional recreational facilities that may be appropriate for joint use. District and City shall cooperate and coordinate the scheduling of events and activities that each intends to hold at the Premises to avoid scheduling conflicts or having multiple events or activities occur at the same time on the Premises.
4. **MAINTENANCE.** City agrees to provide, at its own cost and expense, any and all maintenance for the Premises. Maintenance to be provided by City shall be consistent with the normal maintenance levels and shall insure safe and healthful use. District shall have no maintenance or repair obligations with respect to the Premises. City hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of the Civil Code.
5. **INDEMNIFICATION.** To the fullest extent permitted by California law, City shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the City's negligence or willful misconduct in its operation, use or occupancy of the Premises, all improvements thereon, and all areas appurtenant thereto; and in case any action or proceeding be brought against District that would be covered by the foregoing indemnity, City shall defend the same at City's sole expense. City shall keep the Premises clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises.

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

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

6. **INSURANCE.** City acknowledges that it is permissibly self-insured under the applicable Government Code provision and agrees to provide on an annual basis to District adequate proof of self-insurance and excess liability coverage. City shall provide a Certificate of Insurance naming the District as an additional insured with respect to the obligations under this Agreement and the use of Premises.

- 6.1. City shall at its cost maintain sufficient public liability and property damage insurance with a single combined limit of \$1,000,000 and a property damage limit of not less than \$500,000 insuring against all liability of City and its authorized representatives arising out of and in connection with City's use or occupancy of Premises. All such insurance shall insure performance by City of the preceding indemnity provisions. All insurance shall name the Oakland Unified School District, its officers, agents, volunteers and employees as additional insured and shall provide primary coverage with respect to the same.
- 6.2. City shall forward all insurance documents to Oakland Unified School District, Risk Manager, 1000 Broadway, Suite 398, Oakland, CA 94607.
7. **TERMINATION.** City or District may terminate this Agreement at any time by written notice of election to terminate delivered to the other Party at least sixty (60) days in advance of the effective termination date elected.
8. **NOTICES.** All notices required or permitted to be given under this agreement shall be in writing and personally delivered or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

<p><b>CITY:</b>  City of Oakland, Parks &amp; Recreation  Department  250 Frank H Ogawa Plaza #3330,  Oakland, CA 94612</p> <p>Attention: Audree V. Jones-Taylor,  Director</p>	<p><b>DISTRICT:</b>  Oakland Unified School District  Office of the General Counsel  1000 Broadway, Suite 398  Oakland, CA 94607</p> <p>Attention: Jacqueline P. Minor,  General Counsel</p>
---	--

Notice shall be deemed effective on the date personally delivered or, if mailed, three days after deposit in the mail. Notice transmitted by facsimile shall be deemed effective on the following business day. Notice provided by overnight delivery shall be deemed effective the next business day after delivery by the overnight delivery service. The Parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this paragraph.

9. **ASSIGNMENT.** Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall either Party attempt to confer any of its rights, duties or privileges under this Agreement on any third Party, without the written consent of the other Party.
10. **NON-DISCRIMINATION.** Neither Party shall employ any discriminatory practices in its performance hereunder, including its employment practices, on the basis of sex, race, color, religion, national origin, ancestry, age, sexual orientation, or physical or mental disability.
11. **INDEPENDENT CONTRACTOR STATUS.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

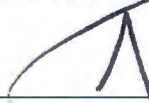
12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
13. **VERIFICATION OF QUALIFICATIONS.** City shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with each Party's duties or obligations pursuant to this Agreement or the use of the Premises.
14. **FINGERPRINTING AND CRIMINAL BACKGROUND INVESTIGATIONS.** City shall ensure compliance with the fingerprinting requirements of Education Code section 10911.5 for all employees, staff, and/or contractors who could have direct contact with minors, regardless of whether such individuals are paid or unpaid.
15. **DISPUTE RESOLUTION.** If a dispute arises that is related, in any way, to this JUA, the Parties agree to attempt first to resolve the dispute through negotiations. If negotiations are unsuccessful, the Parties agree to mediate the dispute prior to initiating legal action.
16. **CALIFORNIA LAW.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Alameda County, California.
17. **PROHIBITED ACTIVITIES.** Use of tobacco products, intoxicants, or narcotics is prohibited in or about the Premises. Profane language, quarreling, fighting, and/or gambling is also prohibited.
18. **WAIVER.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
19. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
20. **AMENDMENTS.** Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring the revision, and any amendment to the Agreement shall only be effective upon the mutual agreement in writing of both Parties hereto.
21. **COUNTERPARTS.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
22. **CAPTIONS.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intentions of the Parties hereto.

23. **SEVERABILITY.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.
24. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

25. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, the City verifies that it does appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

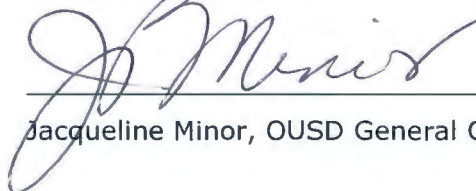
**IN WITNESS WHEREOF**, DISTRICT and CITY have executed this Joint Use Lease Agreement as of the date written on the first paragraph of this Agreement.

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
David Kakishiba, President, Board of Education

  
\_\_\_\_\_  
Antwan Wilson, Superintendent and Board Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jacqueline Minor, OUSD General Counsel

\_\_\_\_\_  
Date

**CITY OF OAKLAND**

\_\_\_\_\_  
Audree V. Jones-Taylor, Director, Parks and Recreation

\_\_\_\_\_  
Henry Gardner, Interim City Administrator

APPROVED AS TO FORM AND LEGALITY

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

\_\_\_\_\_  
Date

25. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, the City verifies that it does appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**IN WITNESS WHEREOF**, DISTRICT and CITY have executed this Joint Use Lease Agreement as of the date written on the first paragraph of this Agreement.

**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
David Kakishiba, President, Board of Education

\_\_\_\_\_  
Antwan Wilson, Superintendent and Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Jacqueline Minor, OUSD General Counsel

\_\_\_\_\_  
Date

**CITY OF OAKLAND**

  
\_\_\_\_\_  
Audree V. Jones-Taylor, Director, Parks and Recreation

  
\_\_\_\_\_  
Henry Gardner, Interim City Administrator

APPROVED AS TO FORM AND LEGALITY

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

  
\_\_\_\_\_  
Date



**ATTACHMENT A  
Property Map**

