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Enactment Date	11/20/19



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools. Thriving Students.

Memo

To Board of Education
From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff
Josh Daniels, General Counsel

Board Meeting Date November 20, 2019

Subject First Amendment to Ground Lease
Contractor: City of Oakland
Regarding Sobrante Park

Action Requested and Recommendation Approval by the Board of Education of First Amendment to Ground Lease between the District and the City of Oakland regarding the Recreational Facilities Sobrante Park, located at 470 El Paseo Drive, Oakland, CA, extending the time of the Lease from 2034 to 2049, pursuant to the terms and conditions contained in the Ground Lease.

Background The Ground Lease was previously approved by the Board on 3/25/2009 (Enactment No. 09-0640).

The land describe as "Sobrante Park" is particularly suited for recreational purposes and has been used as a recreational facility for over sixty years. No other available publicly owned land in the vicinity of the Madison Park Academy Primary School is adequate to meet the existing and foreseeable needs of the community for outdoor recreation and open-space purposes, as determined by the City of Oakland, which desires to continue to use the Sobrante Park property, pursuant to Education Code, section 17492.

The City desires to enter into this Amendment to modify the Ground Lease to carry out the improvements of the proposed Community-led Renovation of Sobrante Mini Park (the "Renovation Project") in accordance with the terms and conditions contained in this Amendment.

Fiscal Impact Not Applicable. The City will pay the District \$30 (\$1.00 per year) upon commencement of this Amendment.

Attachments

- First Amendment to Ground Lease
- Ground Lease

**FIRST AMENDMENT TO
GROUND LEASE BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND
THE CITY OF OAKLAND REGARDING SOBRANTE PARK
LOCATED AT 470 EL PASEO DRIVE IN OAKLAND, CALIFORNIA**

THIS FIRST AMENDMENT TO GROUND LEASE (this “*Amendment*”) is made and entered into as of November 15, 2019 (“*Effective Date*”), by and between the OAKLAND UNIFIED SCHOOL DISTRICT (“*District*” or “*Landlord*”) and THE CITY OF OAKLAND, a municipal corporation (“*City*” or “*Tenant*”), collectively the “*Parties*”, with reference to the following facts:

RECITALS

A. Landlord and Tenant are parties to that certain Ground Lease, dated as of March 25, 2009 (the “*Ground Lease*”), pursuant to which Landlord agreed to lease Premises to Tenant, and Tenant agreed to lease from Landlord, that certain real property, and the improvements thereon, located at 470 El Paseo Drive, in the City of Oakland, State of California.

B. Landlord and Tenant desire to enter into this Amendment to modify the Ground Lease to carry out the improvements of the proposed Community-led Renovation of Sobrante Mini Park (the “*Renovation Project*”) in accordance with the terms and conditions contained herein. Capitalized terms used but not defined herein shall have the meanings given them in the Ground Lease.

C. The City Planning Bureau has reviewed this Amendment and the Renovation Project for compliance with the California Environmental Quality Act (“*CEQA*”). Although the Planning Bureau has not yet approved the Renovation Project in its regulatory capacity, the City has determined that the approval of this Agreement, including the reasonably foreseeable improvements authorized hereunder, is exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (existing facilities), 15302 (replacement or reconstruction), 15303 (new construction or conversion of small structures), 15304 (minor alterations to land), and 15183 (projects consistent with a Community Plan, General Plan, or zoning).

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by this reference, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Recitals.** The Recitals of this Amendment are hereby incorporated into the Ground Lease as integral provisions.

2. **Definitions.** All references to the “Sobrante Park Improvements Project” or the “Sobrante Park Project” in the Ground Lease recitals and terms are hereby replaced with the term “Renovation Project.”

3. **Amendment of Section 1.03.** Section 1.03 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“The term of this Agreement shall commence on the date on which the Board of Education executes this Agreement and shall continue for a period of thirty (30) years, until 2049, and be irrevocable for that period except only by mutual consent or for cause as set forth herein. District grants to City one option to extend the term for 30 years.”

4. **Amendment to Section 2.01.** Section 2.01 and Section 2.02 are hereby amended to replace the phrase “\$25.00 at the commencement of the Lease Term” with “\$30.00 at the commencement of the first Amendment and \$30.00 upon exercise of the City’s option to extend.”

5. **Amendment of Section 3.01.** Section 3.01 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Tenant shall use Premises solely for the purpose of improving and operating a public recreation facility and other necessary improvements and buildings which shall be necessary for the efficient operation of the park, including but not limited to construction of the Renovation Project; and shall use its best efforts to use and maintain Premises for said purposes throughout the term of this Agreement. Tenant may delegate operational roles to other entities. The Parties shall use their best efforts to develop and coordinate a mutually agreeable schedule for joint use of Premises that will promote use of Premises for District’s physical education classes and accommodate public use of Premises without compromising the safety and security of adjoining District school any time District activities are present at District school. This schedule shall be mutually agreed upon in writing by the Parties.”

6. **Amendment of Section 5.01.** Section 5.01 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Only in the event Tenant is awarded grant funds for the construction of the Renovation Project and the City Planning and Building Department approves such work, at Tenant’s sole cost and expense, Tenant shall construct the Renovation Project on Premises in accordance with applicable state, local and federal law, including compliance with the Field Act, California Education Code Section 17281 et seq. Tenant may delegate construction to other entities.”

7. **Amendment of Section 5.04.** Section 5.04 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Should Tenant deem it necessary or appropriate to obtain any use permit, variance, or rezoning of Premises to operate the Sobrante Park recreational facility, or to construct the Renovation Project, District agrees to execute any documents, petitions, applications, and authorizations that may be reasonably necessary or appropriate to that end. Any such permits, variances, or rezoning shall be obtained at the sole cost and expense of Tenant and Tenant agrees to protect and save District and the property of District, including Premises, free and harmless from any cost and expense.

8. Amendment of Section 5.05. Section 5.05 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Tenant shall make those improvements, alterations, or fixtures that are included in the plans for construction of the Renovation Project, as more particularly described in Exhibit A, attached hereto and incorporated herein.”

9. Amendment of Section 5.08. Section 5.08 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Title to all improvements at Sobrante Park, including but not limited to the Renovation Project, constructed on Premises by Tenant shall be owned by Tenant until expiration of the term of this Amendment or any option to extend. All improvements on Premises at the expiration of the term of this Amendment or option to extend shall, with compensation to Tenant in the amount of one dollar (\$1.00), become District’s property.”

10. Amendment of Section 5.11. Section 5.11 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“For any and all improvements made by Tenant, if a release of hazardous materials or hazardous waste that cannot be controlled occurs on Premises, Tenant shall immediately notify the City of Oakland Police Department and the City of Oakland’s Emergency and Toxic Waste Management Office and District’s Director of Buildings & Grounds. Tenant shall not store hazardous materials or hazardous waste on Premises without a proper permit from City and written permission from Landlord.”

11. Amendment of Section 7.01. Section 7.01 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Premises shall be maintained by Tenant at the sole cost and expense of Tenant. Tenant may delegate maintenance to other entities. Such maintenance shall not require Tenant to perform major capital

projects or repairs. Major capital projects or repairs shall be defined as those projects valued in excess of ten thousand dollars (\$10,000) per occurrence. The Parties shall seek joint funding for major capital projects or repairs through their respective capital budgets, joint grant applications, or other sources. If funding cannot be obtained by the Parties, either jointly or separately, and the capital projects or repairs are necessary to the safe operation of Premises, Tenant shall have the right to terminate this Agreement.”

12. Amendment of Section 8.02. Last paragraph of Section 8.02 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“Tenant shall forward all insurance documents to Oakland Unified School District, Risk Manager, 955 High Street, Oakland, CA, 94601, (510) 879-2229.”

13. Amendment of Section 10.01. Section 10.01 of the Ground Lease is hereby deleted in its entirety and replaced with the following:

“The Parties understand and agree that the purposes of this Agreement are to facilitate the construction and joint use of a public recreational facility at Sobrante Park, the Renovation Project, and use of Premises. Accordingly, Tenant shall not voluntarily assign, transfer, or encumber its interest in this Agreement or in Premises, or sublease all or any part of Premises, or allow any other person or entity (except Tenant’s authorized representative) to occupy or use all or any part of Premises, without Landlord’s consent (such consent not to be unreasonably withheld); and any such assignment, sublease, leasehold encumbrance, or transfer shall be subject to the terms of any agreement for joint use of facilities applicable to Premises that may be executed between the City of Oakland and the District. Any such action shall be voidable and, at Landlord’s election, shall constitute a default. No consent to any assignment, transfer, leasehold encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.”

14. No Further Modifications. Except as amended by this Amendment, all other provisions of the Ground Lease shall remain unchanged and are in full force and effect.

15. Choice of Law and Jurisdiction. This Amendment shall be governed by, and construed in the accordance with, the laws of the State of California. The Parties agree that any dispute with respect to this Amendment shall be subject to the jurisdiction of the Superior Court of Alameda County.

16. **Litigation Costs.** If an action is commenced to enforce any provision of this Amendment, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to other costs and fees from the other party.


17. **Time is of the Essence.** Time is of the essence with respect to each and every provision of this Amendment.

18. **Counterparts.** This Amendment may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. A PDF copy of a party's signature on this Amendment shall constitute an original and be binding on all parties when assembled into a fully executed Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have entered into this First Amendment to Ground Lease as of the date first above written.

DISTRICT

CITY



Dr. Kyla Johnson-Trammell
Superintendent

1/19/2020

Date



Sabrina Landreth
City Administrator

1/16/2020

Date



Jody London
School Board President

1/19/2020

Date



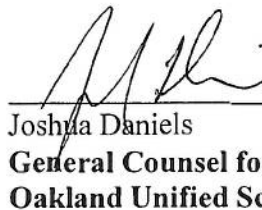
J. Nicholas Williams, Director
Parks, Recreation & Youth Development

1/14/2020

Date

Approved as to Form

Approved as to Form



Joshua Daniels
General Counsel for
Oakland Unified School District

1/14/19

Date



Jordan Flanders
Deputy City Attorney

1/15/20

Date

GRANT SCOPE/COST ESTIMATE FORM

GRANT SCOPE ITEMS ACQUISITIONS: List each parcel number, acreage, estimated date of purchase, and cost DEVELOPMENT: List each RECREATION FEATURE and MAJOR SUPPORT AMENITY	ESTIMATED COST
Deconstruct Existing Playground, Paving, Furnishings, and Landscaping. Construct New Rough Grading and Drainage	\$175,701
Construct New Site Paving to and Around New Recreation Features	\$245,607
Construct new Fencing and Gates	\$36,156
Construct New Play Area	\$440,287
Construct New Par Course Area	\$92,881
Construct New Irrigation for Planting Areas	\$64,224
Construct New Planting Areas	\$261,297
Construct New Amenities and Furnishings for Aesthetics, Passive Recreation, and Site Functionality	\$168,739
Construct New Community Services Center and Renovate Existing Restroom	\$464,807
Total Estimated Cost for the RECREATION FEATURES and MAJOR SUPPORT AMENITIES (A)	\$1,949,699
Total Estimated PRE-CONSTRUCTION COST (B)	\$639,479
TOTAL PROJECT COST (A+B)	\$2,589,178

SOBRANTE PARK - MINI PARK

Exhibit A



**GROUND LEASE BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND
THE CITY OF OAKLAND REGARDING SOBRANTE PARK
LOCATED AT 470 EL PASEO DRIVE IN OAKLAND, CALIFORNIA**

Preamble and Recitals

This Lease is entered into on March 25, 2009 by and between the Oakland Unified School District, ("District", or "Landlord") and the City of Oakland ("City" or "Tenant") collectively, the "Parties".

A. Pursuant to Chapter 4 of Part 10.5 of the Education Code, the State Legislature is concerned that school playgrounds, playing fields, and recreational real property will be lost for those uses by the surrounding communities even if those communities in their planning process have assumed that the properties would be permanently available for recreational purposes and District and City share this concern; and

B. As stated in section 17485, it is the intent of the Legislature to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field, or other outdoor recreational and open space purposes; and

C. The land described as "Sobrante Park" or "Premises" as shown on Attachment A hereto is particularly suited for recreational purposes and has been used as a recreational facility for over fifty (50) years immediately preceding the date of this agreement; and

D. No other available publicly owned land in the vicinity of the schoolsite is adequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes, as determined by City, which desires to lease the Sobrante Park property, pursuant to Education Code, section 17492; and

E. In keeping with the requirements of section 17492, the governing body of City has made a finding, approved by a vote of two-thirds of its members, that public lands in the vicinity of Sobrante Park are inadequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes; and

F. City has grant funds or intends to pursue funds as opportunities arise to fund the Sobrante Park Improvements Project; and

G. It will be beneficial to District and City to accept improvements made by City within the leased premises for enjoyment by District students and the general public; and

H. City desires to lease the Sobrante Park property from District and District desires to enter into a lease for the property to City to accept the completed improvements and for use of the property for recreational purposes.

THEREFORE, DISTRICT AND CITY AGREE AS FOLLOWS:

ARTICLE 1 LEASE OF PREMISES AND TERM OF LEASE

Agreement to Lease

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this Lease, District agrees to lease Premises to Tenant, and Tenant agrees to lease Premises from District, on the terms and conditions set forth in this Lease. Except as expressly otherwise provided in this Lease, the leased premises includes the real property plus any appurtenances and easements and including any Improvements now or subsequently located on Premises, notwithstanding that any Improvements may or shall be construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the improvements is in District or in Tenant.

Status of Title

Section 1.02. Title to the leasehold estate created by this Lease is subject to all exceptions, easements, rights, rights-of-way, and other matters of record which are in effect at the time of the execution of this Lease Agreement. District represents that Premises is not subject to any superior liens.

Term of Lease

Section 1.03. The term of this Lease shall commence on the date on which the Board of Education executes this Agreement and shall continue for a period of twenty-five (25) years, until 2033, and be irrevocable for that period except only by mutual consent or for cause as set forth herein. At the termination of this agreement, renewal of the terms may be executed by mutual agreement of the parties.

ARTICLE 2 RENT

Minimum Rent

Section 2.01. Tenant agrees to pay to District minimum annual rent of One Dollar (\$1.00) ("Minimum Rent") for each year during the term of this Lease. As noted in section 2.02 below, rent shall be due and payable in a lump sum payment of \$25.00 at the commencement of the Lease Term.

Time and Place for Payment of Rent

Section 2.02. Tenant shall pay to Landlord as rent, without deduction, setoff, prior notice, or demand, the lump sum of Twenty-five (\$25.00) at the commencement of the Lease Term. All rent shall be paid to Landlord at the address to which notices to Landlord are given.

ARTICLE 3 USE OF PREMISES

Permitted Use

Section 3.01. Tenant shall use the Leased premises solely for the purpose of improving and operating a public recreation facility and other necessary improvements and buildings which shall be necessary for the efficient operation of the park and shall use its best efforts to use and maintain Premises for said purposes throughout the term of this agreement. Tenant and District shall use their best efforts to develop and coordinate a mutually agreeable schedule for joint use of Premises that will promote use of Premises for District's physical education classes and accommodate public use of Premises without compromising the safety and security of adjoining District school any time District activities are present at District school. Said schedule shall be mutually agreed upon in writing by District and City.

Compliance with Laws

Section 3.02. The Parties shall, at their own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state, county or municipal, including those requiring capital improvements to Premises or Improvements, relating to any use and occupancy of Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of Premises or any portion of Premises, City shall procure and maintain it throughout the term of this Lease, with any reasonably necessary assistance from District. The judgment of any court of competent jurisdiction, or the admission by a party in a proceeding brought against the party by any government entity that the party has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between District and Tenant.

Prohibited Uses

Section 3.03. Parties shall not use or permit Premises or any portion of Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, the Parties shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to Premises or any part of Premises.

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ARTICLE 4 TAXES AND UTILITIES

Tenant to Pay Taxes

Section 4.01. Tenant shall pay during the term of this Lease, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease by any governmental agency or entity on or against the leased premises, the improvements located on the leased premises, personal property located on or in the leased premises or improvements, and the leasehold estate created by this Lease.

Utilities

Section 4.02. Tenant agrees to pay charges for electricity, gas, heat, cooling, telephone, sewer use, water, refuse collection and other utilities used in Premises. Tenant shall arrange for refuse collection services by the City of Oakland.

ARTICLE 5 CONSTRUCTION BY TENANT

Duty to Construct

Section 5.01. At Tenant's sole cost and expense, Tenant shall construct on Premises, improvements as set forth in the Grant; and in accordance with applicable state, local and federal law, including compliance with the Field Act, Education Code Section 17281*et. seq.*

Consultation with District

Section 5.02. Tenant shall consult with District, but not subject to the Division of the State Architect's review process, on the design of the Sobrante Park Project to ensure the adequacy and acceptability of Premises for Parties joint use.

Time for Completion

Section 5.03. Tenant shall complete the construction of the Sobrante Park Improvements in accordance with the terms of the funding agency requirement, as the application may be or have been amended.

Zoning and Use Permits

Section 5.04. Should Tenant deem it necessary or appropriate to obtain any use permit, variance, or rezoning of Premises to operate the Sobrante Park recreational facility, District agrees to execute any documents, petitions, applications, and authorizations that may be reasonably necessary or appropriate to that end. Any such permits, variances, or rezoning shall be obtained at the sole cost and expense of Tenant and Tenant agrees to protect and save District and the property of District, including Premises, free and harmless from any such cost and expense.

Improvements

Section 5.05. Tenant shall make those improvements, alterations, or fixtures that are included in the plans for construction of the Sobrante Park Project.

Section 5.06. Tenant shall promptly repair all damage to Premises caused by Tenant. Upon completion of the work, Tenant shall remove all debris and surplus material, and thoroughly clean Premises.

Section 5.07. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall indemnify and defend Landlord with respect to any claims for labor and materials, damage or injury arising out of the development of the Sobrante Park Improvements and shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon, or about the leased premises and which may be secured by any stop notice, material men's or other lien against Premises or Landlord's interest therein.

Ownership of Improvements

Section 5.08. Title to all improvements at Sobrante Park, including the Sobrante Park Project constructed on Premises by Tenant shall be owned by Tenant until expiration of the term of this Lease. All improvements on Premises at the expiration of the term of this Lease shall, with compensation to Tenant in the amount of one dollar (USD\$1), become District's property.

Compliance with Law and Safety

Section 5.09. For any and all improvements made by Tenant, Tenant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations.

Tenant shall be solely and completely responsible for conditions of the work area for any improvements to be installed and constructed by Tenant, including the safety of

all persons and property during performance of said work. Tenant shall fully comply with all state, federal and other laws, rules, regulations and orders relating to safety of the public and workers. All materials, equipment and supplies provided for work performed by Tenant on Premises shall fully conform to all applicable State, local and Federal safety laws, rules, regulations, and orders. Tenant shall observe strict fire and smoking precautions on Premises. Tenant shall not light any fires on Premises and shall not carry firearms, illegal drugs or intoxicating beverages onto Premises.

Tenant and Landlord understand that any work of construction on Premises will take place during school hours and may take place on evenings or weekends, subject to prearrangement and approval of Landlord, in writing, with any associated cost of such arrangement to be at Tenant's sole expense. The parties agree to coordinate with each other to schedule such work and arrange for appropriate precautions to ensure that the work may be performed safely, without unreasonable delay, and with minimal disruption to District's operation of public school at Sobrante Elementary School and on Premises.

Tenant shall require its officers, employees, agents, volunteers and independent contractors involved in work on Premises to comply with the requirements of California Education Code section 45125.2(a) (1) or 45125.2(a)(2), which code sections are attached hereto as Attachment C.

Tenant shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of improvement work, and to give directions to the public. Tenant shall surround the work area with a locked fence. Landlord and its authorized representatives shall not enter the work area for any purposes without first providing notice to Tenant or its designated representative. Further, Landlord and its authorized representative shall not enter the work area unless accompanied by Tenant or its designated representative. In the event Landlord or its authorized representative enters the work area without notice or without a designated representative of Tenant, Tenant shall not be responsible for the safety of any such individuals.

Section 5.10. For any and all improvements made by Tenant, if a death, serious personal injury, or substantial property damage occurs in, on or about Premises, Tenant shall immediately notify Landlord's Risk Management Office by telephone. If any accident occurs on Premises Tenant shall promptly submit a written report to Landlord in such form as Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carriers; (4) a detailed description of the accident.

Section 5.11. For any and all improvements made by Tenant, if a release of hazardous materials or hazardous waste that cannot be controlled occurs on Premises, Tenant shall immediately notify the City of Oakland Police Department and the City of Oakland's Emergency and Toxic Waste Management Office and District's Director of Buildings & Grounds. Tenant shall not store hazardous materials or hazardous waste on Premises without a proper permit from City.

ARTICLE 6

Reserved.

ARTICLE 7 REPAIRS AND RESTORATION

Maintenance by Tenant

Section 7.01. Premises shall be maintained by City at the sole cost and expense of City. Such maintenance shall not require Tenant to perform major capital projects or repairs. Major capital projects or repairs shall be defined as those projects valued in excess of ten thousand dollars (\$10,000) per occurrence. Tenant and Landlord shall seek joint funding for major capital projects or repairs through their respective capital budgets, joint grant applications or other sources. If funding cannot be obtained by either party either jointly or separately and the capital projects or repairs are necessary to the safe operation of Property, Tenant shall have the right to terminate this Lease.

Section 7.02. Tenant will maintain any and all fencing and gates on and surrounding Premises and keep the fencing and gates in a good and safe condition for public and school use.

Option to Terminate Lease for Destruction

Section 7.03. Tenant shall have the right to terminate this Lease if, during the Lease's term, the improvements are damaged or destroyed by a casualty for which Tenant is not required under this Lease to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds 50 percent of the fair market value of the improvements immediately before the damage or destruction.

ARTICLE 8 INDEMNITY AND INSURANCE

Indemnity Agreement

Section 8.01. Except with respect to the use of Premises by Landlord, Tenant shall indemnify, defend and hold Landlord, its officers, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Leased premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this Lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of

1990 for the Leased premises. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from acts or omissions of Landlord or its authorized representatives.

Landlord will defend, indemnify and hold harmless the Tenant from any and all claims, demands, actions, or damages arising out of Landlord's use of Tenant's facilities to which Tenant may be subjected as a direct consequence of this Agreement, except to those claims, demands, actions or damages resulting from the sole negligence of Tenant.

Liability Insurance

Section 8.02. Each party acknowledges that it is permissibly self-insured under the applicable Government Code provision and agrees to provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall provide to the other a Certificate of Insurance naming the other as an additional insured with respect to the obligations under this Agreement and the use of Premises. Each party shall provide a letter of self-insurance and give a copy to the other party.

Tenant 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 Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of Premises. All such insurance shall insure performance by Tenant 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.

Tenant shall forward all insurance documents to Oakland Unified School District, Risk Manager, 1025 Second Avenue, Street, Oakland, California, 94606.

ARTICLE 9 EMINENT DOMAIN

Section 9.01. If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by condemnation; this Lease shall terminate on the date of taking. If any portion of Premises is taken by condemnation, Tenant shall have the right to either terminate this Lease or to continue in possession of the remainder of Premises under the terms of this Lease or to continue in possession of the remainder Premises under the terms of this Lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of installations or improvements made by Tenant in accordance with this Lease.

ARTICLE 10
ASSIGNMENT, SUBLEASING, LEASEHOLD ENCUMBRANCES AND TRANSFERS

No Assignment Without District's Consent

Section 10.01. The parties understand and agree that the purposes of this Lease is to facilitate the construction and joint use of a public recreational facility at Sobrante Park and use of Premises. Accordingly, Tenant shall not voluntarily assign, transfer or encumber its interest in this Lease or in Premises, or sublease all or any part of Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of Premises, without Landlord's consent. Any such action shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, transfer, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

ARTICLE 11
ENTRY

Section 11.01. Landlord and its authorized representatives shall have the right to enter Premises at all reasonable times for any of the following purposes: 1) to determine whether Premises are in good condition and whether Tenant is complying with its obligation under the Lease; 2) to perform any acts that may be necessary to protect Landlord's interest in Premises; and 3) to perform Landlord's duties under the Lease.

Landlord shall not be liable for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on Premises as provided in this section, except damage resulting from the acts or omissions.

ARTICLE 12
DEFAULT AND REMEDIES

Breach and Default

Section 12.01. The occurrence of any of the following shall constitute a default:

- a. Abandonment and vacation of premises (failure to occupy and operate Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).
- b. Failure to perform any other provision of this Lease if the failure to perform is not cured within 30 days after notice has been given to the Party. If the default cannot reasonably be cured within 30 days, Party shall not be in default of this Lease if Party commences to cure the default within the 30 day period and diligently and in good faith continues to cure the default.

- c. Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that the defaulting Party perform the provisions of this Lease within the applicable period of time, or pay to the non-defaulting Party just compensation for such default. The purpose of the notice requirement set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

Remedies

Section 12.02. The Parties shall have the following remedy if the other Party commits a default. This remedy is not exclusive; however, during the term of this Lease, unless otherwise specified, Parties shall not have the right to terminate this Lease:

Right to Cure or Seek Specific Performance. A Party, at any time after the other Party commits a default, can cure the default at the other Party's cost or seek specific performance of the terms of this Lease by the defaulting Party. If the Party at any time, by reason of the other Party's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the Party shall be due immediately from the defaulting Party to the Party at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate individual is permitted by law to charge from the date the sum is paid by the Party until the Party is reimbursed by defaulting Party.

Waiver of Breach

Section 12.03. The waiver by a Party of any breach by the other Party of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by the other Party of either the same or a different provision of this Lease.

ARTICLE 13 OTHER PROVISIONS

Force Majeure

Section 13.01. Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either District or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

Notices to District

Section 13.02. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to District by Tenant or any Lender described in this Lease shall be in writing and shall be deemed duly served and given when personally delivered to District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at Oakland Unified School District, 955 High Street, Oakland, CA 94607, Attn: Assistant Superintendent of Facilities Planning and Management, Buildings and Grounds and Custodial Management. District may change District's address for the purpose of this section by giving written notice of that change to Tenant in the manner provided in Section 13.03.

Notices to Tenant

Section 13.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Tenant by District shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Tenant at City of Oakland, Office of Parks and Recreation, 250 Frank Ogawa Plaza, Suite 3330, Oakland, CA 94612, Attn: Director. Tenant may change its address for the purpose of this section by giving written notice of that change to District in the manner provided in Section 13.02 of this Lease.

Governing Law

Section 13.04. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

Binding on Heirs and Successors

Section 13.05. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as consent by District to any assignment of this Lease or any interest in the lease by Tenant except as provided in Article 10 of this Lease.

Partial Invalidity

Section 13.06. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Time of Essence

Section 13.07. Time is expressly declared to be of the essence of this Lease.

Memorandum of Lease for Recording

Section 13.08. Neither District nor Tenant shall record this Lease without the written consent of the other. However, District and Tenant shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease for purposes of, and in a form suitable for, recordation. The memorandum or "short form" of this Lease shall describe the parties, set forth a description of the leased premises, specify the term of this Lease, incorporate this Lease by reference, and include any other provisions required by Lender(s).

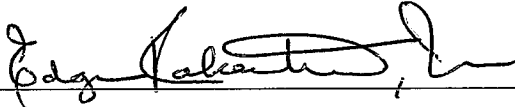
IN WITNESS WHEREOF, DISTRICT and CITY have executed this Lease Agreement as of the date written on the first paragraph of this Lease.

OAKLAND UNIFIED SCHOOL DISTRICT



Alice Spearman, President, Board of Education

3/26/09
Date



Edgar Rakestraw, Jr., Secretary, Board of Education

3/26/09
Date

CITY OF OAKLAND



Dan Lindheim

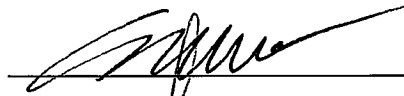
4/20/09
Date



Audree V. Jones-Taylor

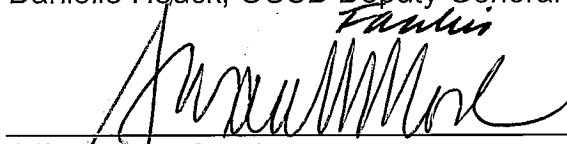
4-16-09
Date

APPROVED AS TO FORM:



Danielle Houck, OUSD Deputy General Counsel

3.6.09
Date



Office of the City Attorney

4/22/09
Date

ATTACHMENT A
Property Map

ATTACHMENT B
Sections of the California Education Code Cited in Lease
Excerpted from the website: <http://www.leginfo.ca.gov/calaw.html>

PART 10.5 – School Facilities

CHAPTER 4 – Property Sale, Lease, Exchange

ARTICLE 5 - Surplus School Playground, Playing Field, and Recreational Property

SECTIONS 17485-17500

17485. The Legislature is concerned that school playgrounds, playing fields, and recreational real property will be lost for those uses by the surrounding communities even if those communities in their planning process have assumed that the properties would be permanently available for recreational purposes. It is the intent of the Legislature in enacting this article to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field or other outdoor recreational and open-space purposes.

17486. This article shall apply to any school site owned by a school district, which the governing board determines to sell or lease, and with respect to which the following conditions exist:

(a) Either the whole or a portion of the school site consists of land which is used for school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes.

(b) The land described in subdivision (a) has been used for one or more of the purposes specified therein for at least eight years immediately preceding the date of the governing board's determination to sell or lease the school site.

(c) No other available publicly owned land in the vicinity of the school site is adequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes, as determined by the governing body of the public agency which proposes to purchase or lease land from the school district, pursuant to Section 17492.

17487. As used in this article, "school site" means a parcel of land, or two or more contiguous parcels, which is owned by a school district. "Governing board" means the governing board of the school district which owns the school site.

17488. The governing board of any school district may sell or lease any school site containing land described in Section 17486, and, if the governing board decides to sell or lease such land, it shall do so in accordance with the provisions of this article.

17489. Notwithstanding Section 54222 of the Government Code, the governing board, prior to selling or leasing any school site containing land described in Section 17486, excluding that portion of a school site retained by the governing board pursuant to Section

17490, shall first offer to sell or lease that portion of the school site consisting of land described in Section 17486, excluding that portion retained by the governing board pursuant to Section 17490, to the following public agencies in accordance with the following priorities:

(a) First, to any city within which the land may be situated.

(b) Second, to any park or recreation district within which the land may be situated.

(c) Third, to any regional park authority having jurisdiction within the area in which the land is situated.

(d) Fourth, to any county within which the land may be situated.

The governing board shall have discretion to determine whether the offer shall be an offer to sell or an offer to lease.

An entity which proposes to purchase or lease a school site offered by a school district shall notify the district of its intention, in writing, within 60 days after receiving written notification from the district of its offer to sell or lease.

17490. In determining what portion of a school site shall be offered for sale or lease pursuant to this article, the governing board may retain any part of the school site containing structures or buildings, together with such land adjacent thereto which, as determined by the governing board, must be included in order to avoid reducing the value of that part of the school site containing such structures or buildings to less than 50 percent of fair market value.

17491. (a) Except as otherwise provided in subdivision (b) or (e), the price at which land described in Section 17486, excluding that portion of a school site retained by the governing board pursuant to Section 17490, is sold pursuant to this article shall not exceed the school district's cost of acquisition, calculated as a pro rata cost of acquiring the entire parcel comprising the school site, adjusted by a factor equivalent to the percentage increase or decrease in the cost of living from the date of purchase to the year in which the offer of sale is made, plus the cost of any improvement to the recreational and open-space portion of the land which the school district has made since its acquisition of the land. In no event shall the price be less than 25 percent of the fair market value of the land described in Section 17486 or less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property, excluding that portion of a school site retained by the governing board pursuant to Section 17489, at the time of the offer.

These provisions shall apply to land that the school district acquired by gift or for consideration.

(b) A school district that offers a portion of a school site for sale may offer such portion of property for sale at its fair market value provided the school district offers an equivalent size alternative portion of that school site for school playground, playing field, or other recreational and open-space purposes.

(c) Land which is leased pursuant to this article shall be leased at an annual rate of not more than 1/20th of the maximum sales price determined pursuant to subdivision (a) of this section, adjusted annually by a factor equivalent to the percentage increase or decrease in the cost of living for the immediately preceding year.

(d) The percentage of annual increase or decrease in the cost of living shall be the amount shown for January 1st of the appropriate year by the then current Bureau of Labor Statistics Consumers Price Index for the area in which the school site is located.

(e) Whenever a school district closes a school site and sells any land described in Section 17486 pursuant to this article to help pay only for capital outlay costs incurred directly as a result of the transfer of pupils from the closed school to another school or other schools of the district, the sale price of the property determined pursuant to subdivision (a) shall be increased by an amount equal to the additional costs incurred due to the school closure.

17492. The governing body of a public agency which proposes to purchase or lease land from a school district pursuant to this article shall first make a finding, approved by a vote of two-thirds of its members, that public lands in the vicinity of the school site are inadequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes.

17493. (a) No public agency may purchase surplus school property from a school district pursuant to this article unless it has first adopted a plan for the purchase of surplus school property. The plan shall designate the surplus site or sites all or a portion of which the public agency desires to purchase at the price established pursuant to this article and shall designate at least 70 percent of the total surplus school acreage as property which the agency does not desire to purchase at the price established pursuant to this article. Where the plan indicates that the agency desires to purchase only a portion of a school site at the price established pursuant to this article, it shall designate the percent of the property to be so purchased and provide a description of the general location of the property to be purchased, without designating the metes and bounds.

(b) Any property designated by public agencies as surplus school sites which the agencies do not wish to purchase, pursuant to subdivision (a), may be sold or leased by a school district without regard to this article.

(c) This section shall become operative on April 1, 1982.

17494. Any land purchased or leased by a public agency pursuant to this article shall thereafter be maintained by such agency for playground, playing field, or other outdoor recreational and open-space uses. Land which prior to its sale or lease was used for playground or playing field purposes, shall continue to be maintained for such use by the acquiring agency, unless the governing body of that agency, by a two-thirds vote at a public hearing, determines that there is no longer a significant need for the land to be so used, in which case the land may thereafter be used for other outdoor recreational or open-space purposes. The school district may, at any time, reacquire the land at a price calculated in the manner prescribed in Section 17491, and the rights of reacquisition provided in this section shall be set forth in the deed or other instrument of transfer. If the governing board of the public agency determines that the land is no longer needed for playground, playing field, or other outdoor recreational and open-space purposes, the public agency shall offer the property to the school district for reacquisition under this section, and the school district shall notify the public agency within 60 days of its intent to reacquire the land. If the school district intends to sell the property within one year of the reacquisition date, the school district may finance the reacquisition of the land by lien against the proceeds to be obtained from the sale of the land by the school district. If the school district fails to give the public agency timely notice of its intent to reacquire the property, or if it fails to exercise its right of reacquisition, the public agency may use or dispose of the property.

For purposes of this section, "cost of acquisition," as used in Section 17491, shall refer to the cost at which the land was acquired by the public agency.

17495. The sale or lease of land by a school district pursuant to this article shall be subject to, and governed by, the provisions of Article 2 (commencing with Section 17230) of Chapter 1 and Article 4 (commencing with Section 17455), except to the extent that the provisions of this article are inconsistent with a provision or provisions of Article 2 or 4, in which event the provisions of this article shall govern the sale or lease.

17496. Failure by the school district to comply with the provisions of this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.

17497. Notwithstanding the other provisions of this article, any school district governing board may designate not more than two surplus school sites as exempt from the provisions of this article for each planned school site acquisition if the school district has an immediate need for an additional school site and is actively seeking to acquire an additional site, and may exempt not more than one surplus school site if the district is seeking immediate expansion of the classroom capacity of an existing school by 50 percent or more.

The exemption provided for by this section shall be inapplicable to any school site which, under a lease executed on or before July 1, 1974, with a term of 10 years, was leased to a city of under 100,000 population for park purposes, was improved at city expense, and used for public park purposes.

17498. A school district having a school site described in Section 17486 may, as an alternative to sale or lease of the land pursuant to the foregoing provisions of this article, enter into other forms of agreement concerning the disposition of the property with any entity enumerated in Section 17489, in accordance with the priorities therein specified, including, but not limited to each of the following:

(a) An agreement to lease to such entity all or part of the school site for a specified term, with an option to purchase such properties at the end of the term.

(b) An agreement granting to the entity a permanent open-space easement for recreational use over a portion of the leased site.

(c) If the lessee or a grantee under an agreement is an entity having zoning powers, an agreement requiring the entity to rezone any portion of the property retained by the school district in accordance with conditions specified in the agreement, to the extent that rezoning in accordance with the conditions is in compliance with applicable laws of the state.

17499. (a) No more than 30 percent of the total surplus school acreage owned by a school district may be purchased or leased by public agencies pursuant to this article.

(b) The right of any public agency to purchase or lease surplus school property pursuant to this article shall exist only with respect to an amount of surplus school acreage within its jurisdictional boundaries which, when added to the surplus school acreage within its jurisdictional boundaries already purchased or leased pursuant to this article, will not exceed 30 percent of the surplus school acreage owned by the school district which is within the jurisdictional boundaries of that agency.

(c) For purposes of this section, "surplus school acreage" of a school district means property which is owned by a district and not used for school purposes, including, but not limited to, undeveloped property and property which contains school buildings that are not in use as a result of a school closure and which is not subject to any lease or agreement executed on or before July 1, 1974, for a term in excess of six years, in which any city containing a population of less than 100,000 had use of the property for park purposes on January 1, 1981, and had improved the property.

(d) Nothing in this section shall be construed to deny local agencies the opportunity to purchase at full market value all or part of the 70 percent of the total surplus school acreage which is not affected by this article.

17500. This article shall not apply to any school district having more than 400,000 pupils in average daily attendance.

PART 25 - Employees
CHAPTER 5 – Classified Employees
ARTICLE 1 - Employment
SECTION 45125.2

45125.2.

(a) A school district contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

- (1) The installation of a physical barrier at the worksite to limit contact with pupils.
- (2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.
- (3) Surveillance of employees of the entity by school personnel.

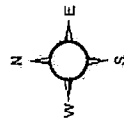
Sobrante Park



It is imperative that you obtain BOTH the Zoning and General Plan designations for the property(s) you are searching for.

Questions? Contact a planner at (510) 238-3911.

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As amended by the City Council at the July 16, 2019 City Council meeting

OFFICE OF THE CITY CLERK
OAKLAND

19 JUL 22 PM 12:21

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL
RESOLUTION NO. 87824 C.M.S.

INTRODUCED BY VICE MAYOR LARRY E. REID

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR
DESIGNEE, TO APPLY FOR AND ACCEPT GRANT FUNDS FROM THE
STATEWIDE PARK DEVELOPMENT AND COMMUNITY
REVITALIZATION PROGRAM FOR SOBRANTE MINI PARK IN
SOBRANTE PARK**

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project; now, therefore, be it

RESOLVED: That the Oakland City Council hereby approves the filing of an application for the community-led renovation of Sobrante Mini Park, and authorizes the City Administrator to enter into a contract with the State of California to accept the Statewide Park Development and Community Revitalization Program grant funds in an amount not to exceed \$2,600,336; and be it

FURTHER RESOLVED: That the City of Oakland has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and that if the project is awarded, the City has or will have sufficient funds to operate and maintain the project, and be it

FURTHER RESOLVED: That the City of Oakland has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide, and delegates the authority to the City Administrator or a designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope; and be it

FURTHER RESOLVED: That the City of Oakland agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines and will consider promoting inclusion per California Public Resources Code section 80001(b)(8)(A)-(G).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

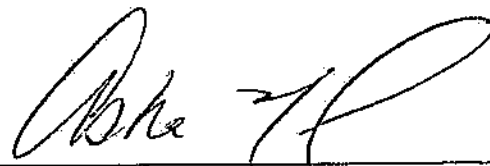
AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California