

City of Piedmont
COUNCIL AGENDA REPORT

DATE: July 19, 2021

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of the 2nd Reading of Ordinance 761 N.S. – Approving an Amended and Restated Lease Agreement with the Piedmont Educational Foundation for 401 Highland Avenue

RECOMMENDATION

Approve the 2nd Reading of Ordinance 761 N.S., which approves an Amended and Restated Facilities Use Agreement with the Piedmont Educational Foundation for use of the Veterans' Memorial Building office space.

BACKGROUND

At its meeting of June 21, 2021, the Council approved the first reading Ordinance 761 N.S., which approves an Amended and Restated Facilities Use Agreement with the Piedmont Educational Foundation for use of the Veterans' Memorial Building office space.

A second and final reading is required for adoption. Since the first reading, the ordinance has been posted on the City's web site. No public comments have been received by the City Clerk's office since the first reading. If passed, this ordinance will become effective August 18, 2021.

By: John O. Tulloch, City Clerk

ORDINANCE NO. 761 N.S.

AN ORDINANCE APPROVING AN AMENDED AND RESTATED LEASE
AGREEMENT WITH PIEDMONT EDUCATION FOUNDATION

The City Council of the City of Piedmont hereby ordains as follows:

SECTION 1.

By adopting this ordinance, the Piedmont City Council intends to adopt an Amended and Restated Agreement with the Piedmont Education Foundation for use of a 530 square foot portion of the building located at 401 Highland Avenue, Piedmont, California, known as the Piedmont Veteran's Hall.

SECTION 2.

The lease agreement between the City of Piedmont and Piedmont Education Foundation, a copy of which is attached hereto and incorporated herein 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 and approval by the City Council.

SECTION 4.

Adoption of this Ordinance adopting the Amended and Restated Lease Agreement is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, *et seq.* and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 *et. seq.*), including without limitation, Public Resources Code section 21065 and California Code of Regulations 15378 for the following reasons: the action is exempt under the "common sense" exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment

[END OF ORDINANCE]

AMENDED AND RESTATED FACILITY USE AGREEMENT

This AMENDED AND RESTATED FACILITY USE AGREEMENT (“Restated Agreement”), is made and entered into on this ___ day of _____, 2021 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 (collectively, the “Parties”).

R E C I T A L S

A. City is the owner of certain property located at 401 Highland Avenue, Piedmont, California, known as the Piedmont Veteran’s Hall (“Property”).

B. On or about March 5, 2012, the City entered into a Facility Use Agreement with PEF (“Agreement”), which authorized PEF to occupy an approximately 530 square foot portion of the Property for office space uses.

C. On or about April 4, 2018, the City approved an Agreement to Reinstate and Amend Facility Use Agreement (the “First Amendment”), which authorized PEF’s continued use of the Premises at the rates specified therein (hereinafter referred to collectively as “Agreement”), and pursuant to the terms of the Agreement, the Agreement expired on December 31, 2020.

D. PEF currently occupies the Premises on a month-to-month basis.

E. The Parties now desire to enter into this Amended and Restated Facility Use Agreement to document a long-term arrangement which is intended to incorporate most provisions of the Agreement and will replace and supersede all prior agreements between the Parties related to the Premises.

A G R E E M E N T

In consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals.

The Recitals set forth above are true and correct and are incorporated herein.

2. Premises.

The City agrees to allow PEF to lease approximately 530 square feet of office space to the left of the second floor entrance to the Veteran’s Hall, which specifically includes three rooms, and is located at 401 Highland Avenue, Piedmont, California (“Premises”), and is more particularly described in Exhibit 1 and incorporated herein by reference.

3. Term - Rental Fees.

The Term of this Agreement shall start on _____, 2021 and terminate on December 31, 2025. On the first day of each month PEF shall pay the City a monthly sum in accordance with the schedule set forth below:

<u>Calendar Year</u>	<u>Monthly Payment Amount</u>
January 1, 2021-December 31, 2021	\$ 1,633
January 1, 2022-December 31, 2022	\$ 1,682
January 1, 2023-December 31, 2023	\$ 1,732
January 1, 2024-December 31, 2024	\$ 1,784
January 1, 2025-December 31, 2025	\$ 1,838

4. Termination.

Either Party may terminate this Restated Agreement without cause upon at least 90 days' prior written notice to the other party, designating the date of termination. Notwithstanding the foregoing, in the event the City determines that it is necessary to utilize the Premises due to an Emergency or other Unforeseen Circumstance, or to relocate City staff or operations to the Premises due to such emergency or unforeseen circumstance, the City shall have the sole and absolute right to terminate this Restated Agreement upon at least 30 days' prior written notice to PEF. "Emergency or Unforeseen Circumstance" refers to a situation in which there is a threat to the public, health, safety, and welfare of the community, resulting in the need for the City to utilize any and all available City properties to provide an emergency response, as determined by the City Administrator." To the extent feasible, Landlord will authorize PEF's return to the Leased Premises upon conclusion of the Emergency or Unforeseen Circumstance.

5. 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.

6. Sublease Prohibited Without City Approval.

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

7. 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.

8. Mail and Other Deliveries.

PEF shall maintain 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.

9. 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.

10. 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 Two Million Dollar (\$2,000,000.00) 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.

11. 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.

12. Indemnity.

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

two (2) business days thereafter, provide City with a copy of such claim or lawsuit or if no written documentation has been provided to PEF with all information then available to PEF relating to such claim or lawsuit.

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.

13. City's Right of Entry onto the Premises.

City reserves the right to enter the Premises upon twenty-four (24) hours' notice (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by PEF of the terms and conditions hereof; (iii) to maintain, inspect, and/or repair the Premises; (iv) to perform any other right or duty of City under this Agreement. The City additionally reserves the right to enter and utilize the Premises upon twenty-four (24) hours' notice in the event of a disaster or other unforeseen emergency circumstance, upon the City Administrator's determination.

14. 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.

15. Disputes.

Any disputes arising out of this Restated Agreement related to matters other than payment of rent by PEF to City shall be resolved by Mediation.

16. 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: City Administrator
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. Any notice shall be deemed to have been given three (3) days after such notice is mailed by prepaid certified or registered mail.

17. Compliance with Laws.

Notwithstanding any other provisions of this Restated 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.

18. Use of Building.

PEF shall be allowed two (2) rentals per year of the entire Veteran's 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.

19. Noise.

PEF acknowledges and agrees that the Veteran's Hall will be used by others and that such use may cause noise (including music for exercise classes) that could be disruptive to PEF's use of the Premises. PEF hereby acknowledges the potential for these uses and potential disruption and enters into this Restated Agreement with full awareness and acknowledgement of such noise and waives any potential claims arising out of such third party use.

[SIGNATURES ON FOLLOWING PAGE]

PEF

Piedmont Educational Foundation, a non-profit support group of Piedmont Unified School District

By: _____

Date: _____

CITY

CITY OF PIEDMONT, a California municipal corporation

By: _____
Teddy Gray King, Mayor

ATTEST:

John Tulloch, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney
Deepa Sharma, Assistant City Attorney

EHXIBIT 1

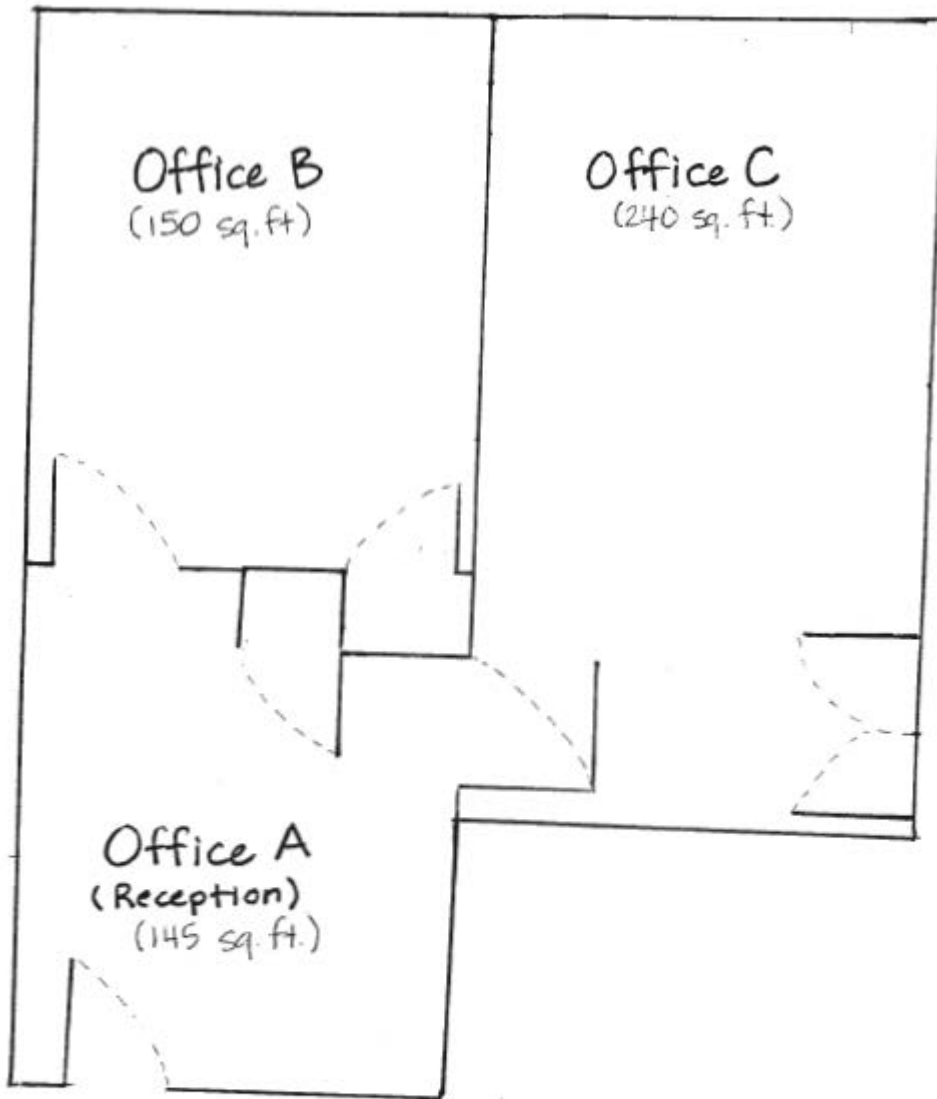


Exhibit #1

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

1-2012