

1 CELIA MCGUINNESS, Esq. (SBN: 159420)
 2 DERBY, MCGUINNESS & GOLDSMITH, LLP
 3 200 Lakeside Drive, Suite A
 4 Oakland, CA 94612
 5 Telephone: (510) 987-8878 ext 102
 6 Facsimile: (510) 359-4419
 7 cmcguinness@dmglawfirm.com

8 PAUL L. REIN, Esq. (SBN: 43053)
 9 LAW OFFICES OF PAUL L. REIN
 10 200 Lakeside Drive, Suite A
 11 Oakland, CA 94612
 12 Telephone: (510) 832-5001
 13 Facsimile: (510) 832-4787
 14 reinlawoffice@aol.com

15 Attorneys for Plaintiff
 16 JANICE PAYNE

17 LOUIS A. LEONE, ESQ. (SBN: 099874)
 18 CLAUDIA LEED, ESQ. (SBN: 122676)
 19 LEONE & ALBERTS
 20 A Professional Corporation
 21 2175 N. California Blvd., Suite 900
 22 Walnut Creek, California 94596
 23 TELEPHONE: (925) 974-8600
 24 Facsimile: (925) 974-8601
 25 E-mail: cleed@leonealberts.com

26 Attorneys for Defendant
 27 PERALTA COMMUNITY COLLEGE DISTRICT

28 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

29 JANICE PAYNE,
 30 Plaintiff,
 31 v.
 32 PERALTA COMMUNITY COLLEGE
 33 DISTRICT,
 34 Defendant.

Case No. 4:16-cv-04390 MMC
AMENDED*
CONSENT DECREE AND ~~[PROPOSED]~~
ORDER FOR INJUNCTIVE RELIEF
ONLY

Action Filed: August 4, 2016

1. Plaintiff Janice Payne filed a Complaint in this action on August 4, 2016, to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§

*The sole amendment is to include Exhibit 1 to Attachment A.

1 12101 *et seq.*, and California civil rights laws and to obtain recovery of damages for
2 discriminatory experiences, denial of access, and denial of civil rights against Defendant Peralta
3 Community College District (sometimes “Defendant”), relating to disability discrimination at
4 Defendant’s public accommodations as of February 6, 2016, and continuing. Plaintiff has
5 alleged that Defendant violated Titles II of the ADA, the Rehabilitation Act of 1973, sections 51,
6 54, and 54.1 of the California Civil Code, and section 11135 of California Government Code by
7 failing to provide full and equal access to the users of the facilities at 900 Fallon Street, Oakland,
8 California, known as Laney College.

9 2. In order to avoid the costs, expense, and uncertainty of protracted litigation,
10 Plaintiff and Defendant (together sometimes the “Parties”) agree to entry of this Consent Decree
11 and Order to resolve all claims regarding injunctive relief raised in the Complaint without the
12 need for protracted litigation. Accordingly, the Parties agree to the entry of this Order without
13 trial or further adjudication of any issues of fact or law concerning Plaintiff’s claims for
14 injunctive relief.

15 3. Plaintiff’s claims for damages, attorney fees, litigation expenses and costs have
16 not been resolved. They will be the subject of further negotiation and/or litigation.

17 **JURISDICTION:**

18 4. The Parties to this Consent Decree and Order agree that the Court has jurisdiction
19 of this matter pursuant to 28 U.S.C. § 1331 for alleged violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* and pursuant to supplemental jurisdiction for
21 alleged violations of California Civil Code sections 51, 54, and 54.1.

22 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate to the
23 Court’s entry of this Consent Decree and Order, which provide as follows:

24 **SETTLEMENT OF INJUNCTIVE RELIEF:**

25 5. This Order shall be a full, complete, and final disposition and settlement of
26 Plaintiff’s claims against Defendant for injunctive relief that have arisen out of the subject
27 Complaint.

28 6. The Parties agree and stipulate that the corrective work will be performed in

1 compliance with the standards and specifications for disabled access as set forth in the
2 California Code of Regulations, Title 24-2, and Americans with Disabilities Act Standards
3 for Accessible Design, unless other standards are specifically agreed to in this Consent
4 Decree and Order.

5 a. **Remedial Measures and Administrative Procedures:** Except as
6 otherwise provided herein, the corrective work agreed upon by the Parties to be performed at
7 Laney College is set forth in **Attachment A**, attached and incorporated herewith. Defendant
8 agrees to undertake all of the respective remedial measures and implement the administrative
9 procedures as set forth therein.

10 b. **Timing:** Defendant will complete each item on the schedule stated in
11 Exhibit A. In the event that unforeseen difficulties prevent Defendant from completing any
12 of the agreed-upon injunctive relief, Defendant or its counsel will notify Plaintiff's counsel in
13 writing within seven (7) days of discovering the delay. Plaintiff will have thirty (30) days to
14 investigate and meet and confer with Defendant, and to approve the delay by stipulation or
15 otherwise respond to Defendant's notice. If the Parties cannot reach agreement regarding the
16 delay within that time period, Plaintiff may seek enforcement by the Court.

17 c. Defendant or defense counsel will notify Plaintiff's counsel when the
18 corrective work is completed, and, whether completed not, will provide a status report to
19 Plaintiff's counsel no later than 120 days from the Parties' signing of this Consent Decree
20 and Order.

21 d. Defendant or defense counsel will notify Plaintiff in writing at the end
22 of 120 days from the Parties' signing of this Consent Decree and Order as to the current
23 status of agreed-to injunctive relief, and every 90 days thereafter until all corrective measures
24 are completed. If Defendant fails to provide injunctive relief on the agreed upon timetable
25 and/or fails to provide timely written status notification, and Plaintiff files a motion with the
26 Court to obtain compliance with these terms, Plaintiff reserves the right to seek additional
27 attorney's fees for any compliance work necessitated by Defendant's failure to keep this
28 agreement. If the Parties disagree, the parties agree to participate in a Magistrate Judge-

1 conducted Settlement Conference for the purposes of resolving the disputed fees. If the
2 Settlement Conference fails to resolve the fee dispute, plaintiff may seek relief via motion for
3 an order directing the Defendant to pay Plaintiff's counsel reasonably incurred fees.

4 **ENTIRE CONSENT DECREE AND ORDER:**

5 7. This Consent Decree and Order and **Attachment A** constitute the entire
6 agreement between the signing Parties on the matters of injunctive relief, and no other statement,
7 promise, or agreement, either written or oral, made by any of the Parties or agents of any of the
8 Parties that is not contained in this written Consent Decree and Order, shall be enforceable
9 regarding the matters of injunctive relief described herein.

10 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS IN
11 INTEREST:**

12 8. This Consent Decree and Order shall be binding on Plaintiff, Defendant, and any
13 successors-in-interest. Defendant has a duty to so notify all such successors-in-interest of the
14 existence and terms of this Consent Decree and Order during the period of the Court's
15 jurisdiction of this Consent Decree and Order.

16 9. Except for all obligations required in this Consent Decree and Order – and
17 exclusive of Plaintiff's continuing claims for damages, statutory attorneys' fees, litigation
18 expenses, and costs – each of the Parties to this Consent Decree and Order, on behalf of each,
19 their respective agents, representatives, predecessors, successors, heirs, partners, and assigns,
20 releases and forever discharges each other Party and all officers, directors, shareholders,
21 subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents,
22 attorneys, insurance carriers, heirs, predecessors, and representatives of each other Party, from all
23 claims, demands, actions, and causes of action of whatever kind or nature, presently known or
24 unknown, arising out of or in any way connected with the lawsuit.

25 **SEVERABILITY:**

26 If any term of this Consent Decree and Order is determined by any court to be
27 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full
28 force and effect.


SIGNATORIES BIND PARTIES:

10. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

**END OF PAGE.
SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE END OF
THE DOCUMENT.**

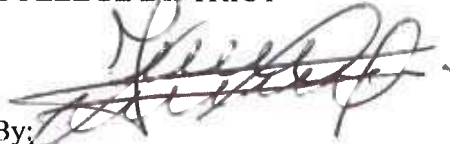
1 Dated: 01/22, 2018

PLAINTIFF JANICE PAYNE

2
3 
4 JANICE PAYNE

5
6 Dated: 3/13/, 2018


DEFENDANT PERALTA COMMUNITY COLLEGE DISTRICT

7
8 
9 By: _____
10 Print name: Jowel Laguerre
11 Title: Chancellor

12 Approved as to form:


13 Dated: 1-22, 2018

LAW OFFICE OF PAUL L. REIN
DERBY, McGUINNESS & GOLDSMITH, LLP

14
15 
16 By: _____
17 CELIA McGUINNESS, ESQ.
18 Attorneys for Plaintiff
19 JANICE PAYNE

20 Dated: March 13 2018


LEONE & ALBERTS

21
22 
23 By: _____
24 SHERRIS KAISER, ESQ.
25 Attorneys for Defendant
26 PERALTA COMMUNITY COLLEGE DISTRICT
27
28

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: Oct. 23, 2018


Honorable Maxine M. Chesney
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

ATTACHMENT A
REMEDIAL MEASURES AND ADMINISTRATIVE PROCEDURES
PAYNE v. PERALTA COMMUNITY COLLEGE DISTRICT
CASE NO. 4:16-cv-04390 MMC
COURT ORDERED SETTLEMENT

The parties agree that PERALTA shall institute the following physical remediation to disabled access barriers on the Laney College Campus and establish written administrative procedures by the compliance dates indicated below. Laney College is now conducting final interviews to hire a Director of Facilities whose responsibilities (among other duties and responsibilities) will include the remediation of Laney College facility disabled access barriers and will oversee the enactment of Administrative Procedures and ensure that training is conducted as described below. PERALTA represents that the Laney College Director of Facilities will be hired by January 31, 2018. In the interim, Dr. Sadiq B. Ikharo, the Peralta Community College District Vice Chancellor for the Department of General Services will manage the remediation of disabled access barriers at Laney College and will oversee the enactment of Administrative Procedures and ensure that training is conducted as described below. The following applies to the Laney College Campus.

I. BUILDING G

1. ADMINISTRATIVE PROCEDURES:

- a. If any DSPS student reports that access to the Building G restroom causes them difficulty or discomfort or otherwise presents a barrier to equal access, DSPS will provide the student a key to the locked staff restroom adjacent to the A Building breezeway under reasonable terms and conditions. Laney College represents that the restroom in the A Building breezeway is now open during business hours.

Compliance Date: Laney College represents this procedure is now in place.

II. THEATRE BUILDING

1. ADMINISTRATIVE PROCEDURES:

- a. The Theatre Building chair lift will be kept unlocked at all times, allowing people with disabilities independent access.
- b. The Theatre Building chair lift will not be used to store furniture or other items.

- c. The Theatre Building chair lift will not be used as a service elevator.
- d. No later than the beginning of each semester, PERALTA will conduct training for stationary engineers, custodians, and employees who work in the Theatre Building in this Administrative Procedure. New janitorial and custodial hires will be trained at the time of hiring. The training will be conducted every semester and at orientation for new and existing staff. PERALTA represents that staff have already been trained in the last 3 months.

Compliance Date: Laney College represents that this procedure is now in place.

2. THEATRE BUILDING- PHYSICAL ACCESS REMEDIATION:

- a. As a provisional measure Plaintiff has been provided with a key to the chair lift in the Theatre Building. This task has been completed.
- b. PERALTA agrees that the Theatre Building chair lift locking mechanism will now being placed on "by pass" mode to facilitate access for disabled persons. Laney College represents that this has been completed.
- c. A sign will be placed adjacent to the chair lift warning that the chair lift is for the exclusive use of disabled persons and that unauthorized use of the chair lift is unsafe. This placement of a permanent sign will be incorporated in the Laney College Signage Project as detailed below in Section IV. An interim sign will be in place during the winter break. The installation of a permanent sign will be included in the Laney College signage contract.
- d. Door No. TH 114 will be replaced and fitted with ADA paddles. Appropriate signage will be affixed to this door. The interior door will be affixed with push bar. Door No. G 114 will also be fitted with an ADA paddle and will be included in the Master Door contract. PERALTA represents that this task has been completed.
- e. ROOM G 189A (Music Room): PERALTA agrees to remove all architectural barriers to access to the area in and around the piano to ensure that students with mobility disabilities can perform at the piano in the same manner as able-bodied students. A schematic of the agreed remediation is attached and incorporates as Exhibit 1. A contractor will be identified and a contract for this project will be in place by December 29, 2017. The construction will be completed by January 22, 2018.

Compliance Dates: As noted above.

III. MAINTENANCE OF EXTERIOR and ADA PADDLED DOORS

1. ADMINISTRATIVE PROCEDURES:

a. Signs will be posted next to all ADA-paddled automatic door openers, Tower elevator doors, and exterior steel doors indicating that if the doors are not operating properly, the Laney Business Office, Facilities Specialist will be contacted at, 510-464-6984 to place a service work order to mitigate the door issues. Interim signs will be placed before school starts on January 22, 2018. (School is closed by December 15, 2017). This placement of permanent signage will be incorporated in the Laney College Signage Project as detailed below in Section IV.

b. PERALTA will retain, on a three-year contract cycle, an outside contractor to inspect, repair, and maintain for the purposes of ADAAG and Title 24 compliance, the Exterior and ADA paddled doors on the Laney College Campus.

c. PERALTA shall establish a maintenance policy for the Laney College Campus that requires an outside vendor to inspect, maintain and repair all ADA paddled doors and exterior doors on a quarterly basis, in addition to repairs and maintenance issues that are brought to its attention at other times.

d. PERALTA shall establish a maintenance policy that requires the outside vendors to check the door pressure, opening force and closing speed of exterior doors on the Laney College Campus on a monthly basis for the purposes of maintaining such doors in compliance with the ADA and or Title 24, whichever is more stringent.

e. PERALTA agrees that the repair and/or adjustment of ADA paddled doors and exterior steel doors shall be performed within four hours of receiving notice, and in no case later than one business day following the report of an ADA paddled or exterior door being out of compliance, except in situations when relevant parts are not readily available.

f. Until the elevators in the Tower Building are replaced, PERALTA shall establish a maintenance policy to check the closing speed of the Tower elevator doors on a monthly basis for the purposes of maintaining

such doors in compliance with the ADA and/or Title 24, whichever is more stringent.

Compliance Date: PERALTA represents that the administrative procedures have been issued and the correction of ADA padded doors and mechanisms has been completed. Substantial completion date for all door related work and retention of a maintenance contractor is February 28, 2018.

2. MASTER DOOR CONTRACT/PHYSICAL REMEDATION:

a. PERALTA shall hire an outside contractor to repair, replace as necessary and maintain the exterior and ADA padded doors. For the purposes of this Settlement Agreement, the project will be referred to as the "Master Door Contract." PERALTA represents that the contractor has been hired and has replaced and repaired ADA padded doors.

b. PERALTA agrees that the doors numbered G 171, G 190 and the door to the women's restroom in the cafeteria will be given priority for compliance within the schedule of work within the Master Door contract currently on-going. PERALTA represents that this task has been completed and the doors have been made compliant.

Compliance Date: As noted with substantial completion for the Master Door Contract February 28, 2018.

1. CIRCULATION SYSTEM REBALANCING/PHYSICAL REMEDIATION:

a. PERALTA has identified exterior and ADA padded doors on the Laney College Campus for the purposes of ADAAG/ Title 24 compliance. This will require correction of the circulation systems in a number of Laney College buildings.

Compliance Date: Laney College represents that this has been completed.

IV. LANEY COLLEGE DISABLED ACCESS SIGNAGE

1. PHYSICAL REMEDIATION

a. PERALTA represents that it has hired the GNU Group, Walnut Creek, an architectural signage firm to update disabled access signage and other signage on the Laney College Campus. PERALTA agrees to ensure that within the GNU Group contract will include placing a priority on disabled access signage for Building G.

Compliance Date: April 30, 2018.

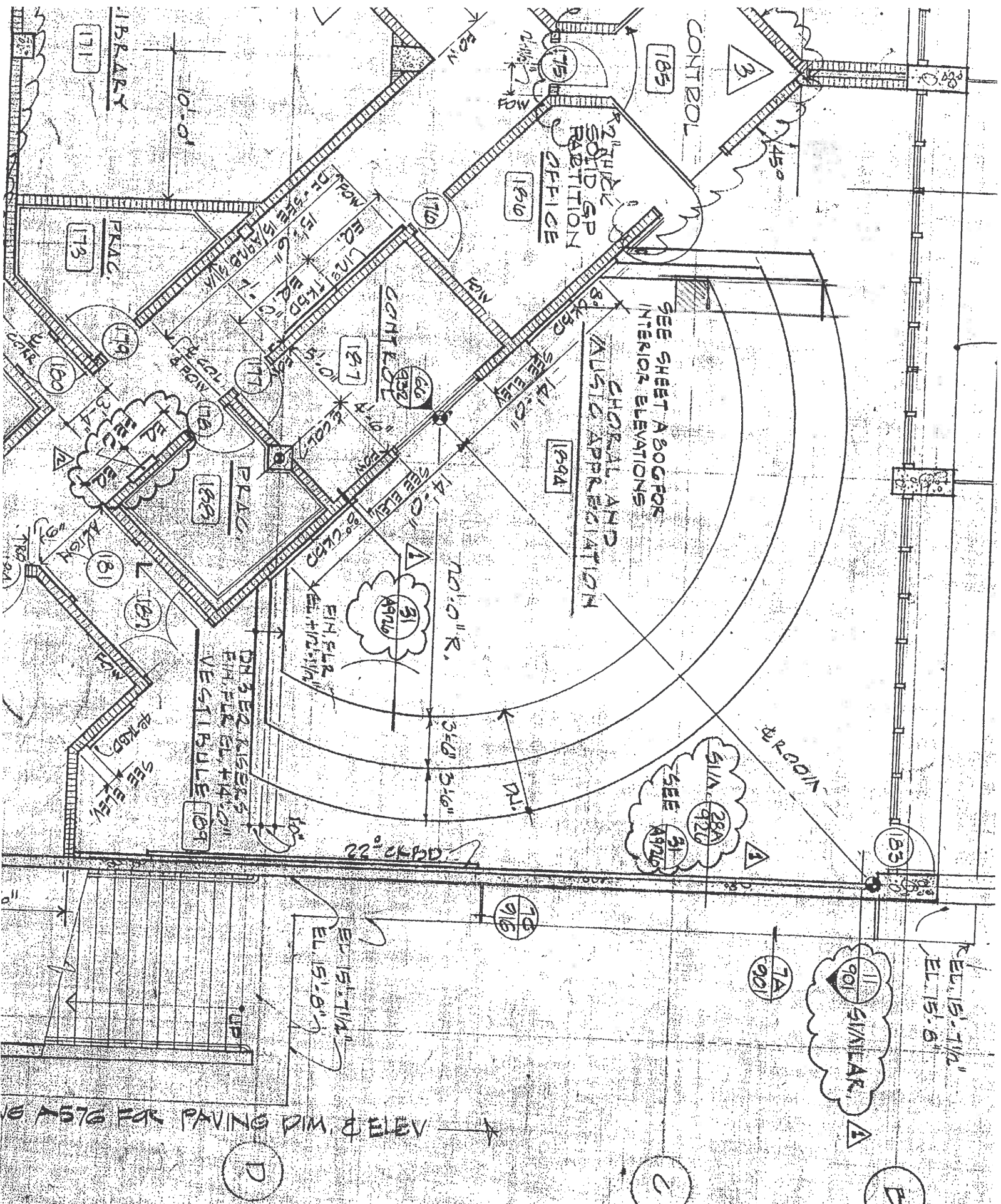
V. SWIMMING POOL CHAIR LIFT

1. ADMINISTRATIVE PROCEDURES

- a. PERALTA shall maintain the swimming pool lift in working order.
- b. It will establish a 6-month inspection and maintenance schedule and, in addition, perform maintenance and repairs immediately upon receiving notice of need and in no case later than one business day following the report; except in situations when relevant part are not readily available to remedy the repairs.
- c. PERALTA will track its inspection, maintenance and repair of the chair lift by adding a line to the written maintenance log, so that all inspections, maintenance and repairs are logged on a weekly basis.

Compliance Date: Laney College represents this has been completed

EXHIBIT 1



NO.	REV.	DATE	BY	APP.	CHE.	DRA.	BY:	APP.
1						M.L.		
2	PLA							
3	PLA							

APPROV
DATE
S T A
S T A

BY
S T A
DEPA
OFFIC

BY
S T A
DEPA
OFFIC

BY
S T A
DEPA
OFFIC

BY
S T A
DEPA
OFFIC

BY
S T A
DEPA
OFFIC

BY
S T A
DEPA
OFFIC

SEE A576 FOR PAVING DIM. & ELEV