

OAKLAND CITY COUNCIL

ORDINANCE NO. ~~13633~~ **13633** C.M.S.

AN ORDINANCE THAT AUTHORIZES THE CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (LDDA) BETWEEN THE CITY OF OAKLAND (CITY) AND OAKLAND CIVIC, LLC (OAKLAND CIVIC), AND RELATED DOCUMENTS, FOR RENOVATION AND REHABILITATION OF CITY-OWNED PROPERTY LOCATED AT 10 TENTH STREET, COMMONLY KNOWN AS THE HENRY J. KAISER CONVENTION CENTER (PROPERTY), THAT

(A) (I) MODIFIES CERTAIN CLOSING REQUIREMENTS, INCLUDING ELIMINATING NON-BINDING LETTERS OF INTENT PRE-LEASE REQUIREMENT AND SURETY BONDS AND INCREASING REQUIRED GUARANTOR MINIMUM NET WORTH FROM 25 PERCENT TO 50 PERCENT, AND (II) ADDS NOTICE AND CURE RIGHTS FOR TAX CREDIT INVESTORS; AND

(B) MAKES AMENDMENTS TO THE FORM OF THE LEASE ATTACHED AS EXHIBIT C TO THE LDDA TO:

- (1) REVISE AND INSERT DEFINITIONS OF SPONSORSHIP/ DONATION AGREEMENTS AND NAMING RIGHTS, AS APPLICABLE, AND SPECIFY WHEN PROCEEDS OF SUCH AGREEMENTS WILL BE CONSIDERED AS GROSS INCOME FOR CALCULATION OF RENT PARTICIPATION;
- (2) DOCUMENT RIGHTS OF OAKLAND CIVIC AND CALVIN SIMMONS THEATRE (CST) TO ENTER INTO AN EVENT USE/SPONSORSHIP AGREEMENT WITH THE KAISER FOUNDATION HEALTH PLAN, INC. (KAISER FOUNDATION) FOR A TERM OF UP TO 20 YEARS, FOR A MAXIMUM PAYMENT OF \$1.5 MILLION TO BE USED FOR RENOVATION OF THE THEATRE CONSISTENT WITH THE LDDA AND LEASE, AND RELATED DOCUMENTS, AND (B) AUTHORIZE THE CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND ENTER

INTO A RECOGNITION AGREEMENT WITH KAISER FOUNDATION FOR SUCH EVENT USE/SPONSORSHIP AGREEMENT, SUBJECT TO CERTAIN TERMINATION RIGHTS AND CITY PROTECTIONS;

- (3) DOCUMENT OAKLAND CIVIC'S CONSENT TO THE CITY ENTERING INTO A NAMING RIGHTS AGREEMENT AND RELATED DOCUMENTS WITH KAISER FOUNDATION FOR THE PROPERTY; AND**
- (4) MAKE MINOR REVISIONS TO (A) ADD NOTICE AND CURE RIGHTS FOR TAX CREDIT INVESTORS; AND (B) CORRESPOND WITH THE AGREED-UPON COMMUNITY BENEFITS AGREEMENT BETWEEN OAKLAND CIVIC, CST AND BLACK ARTS MOVEMENT AND BUSINESS DISTRICT COMMUNITY DEVELOPMENT CORPORATION**

WHEREAS, the City owns approximately 4.79 acres of property located at 10 Tenth Street, which is improved with the historic Henry J. Kaiser Convention Center ("Property"); and

WHEREAS, pursuant to City Council Ordinance No. 13556 C.M.S., adopted on July 16, 2019, the City and Oakland Civic, LLC ("Oakland Civic") entered into a Lease Disposition and Development Agreement ("LDDA") for the renovation and rehabilitation of the Property ("Project"), which was amended by a First Administrative Amendment dated as of September 25, 2020; and

WHEREAS, the parties desire to amend certain terms of the LDDA including (A) to modify certain closing requirements, including eliminating non-binding letters of intent from third-party tenants, increasing required guarantor minimum net worth from 25 percent to 50 percent, eliminating the surety bond requirement; and (B) to add notice and cure rights for tax credit investors; and (C) make amendments to the form of the Lease attached as Exhibit C to the LDDA as set forth herein; and

WHEREAS, the City has determined that (A) eliminating the non-binding letter of intent pre-lease requirement will preserve committed Project financing and thereby allow the Project to proceed, thereby removing the City's responsibility to cover the costs to secure and maintain the historic building; (B) eliminating the surety bond requirement will save Project costs, while the City will have additional assurance that the Project will be completed by increasing the net worth requirement of the guarantor of the completion guaranty from 25 percent to 50 percent of total Project Costs (excluding developer equity); (C) adding notice and cure rights for tax credit investors is necessary to facilitate the tax credits investments, which are an essential funding source for the Project; (D) modifying the Lease to document the rights of Oakland Civic and CST to enter into the Sponsorship Agreement with Kaiser Foundation and to authorize the City to entering into a Recognition Agreement with Kaiser Foundation for the Sponsorship Agreement is necessary in order to permit Oakland Civic to secure such funding from Kaiser and other entities; (E) documenting Oakland Civic's consent to the City entering into a Naming

Rights Agreement and related documents with Kaiser Foundation for the Property is necessary in order to enforce the terms of the Naming Rights Agreement with Kaiser; and (F) modifying the terms of the Lease is necessary to conform Lease terms to the terms of the agreed-upon Community Benefits Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby finds that it is in the best interests of the City to execute a Second Amendment to the LDDA for the following reasons: (A) eliminating the non-binding pre-lease letter of intent requirement will preserve committed Project financing and thereby allow the Project to proceed, thereby removing the City's responsibility to cover the costs to secure and maintain the historic building; (B) eliminating the surety bond requirement will save Project costs, while the City will have additional assurance that the Project will be completed by increasing the net worth requirement of the guarantor of the completion guaranty from 25 percent to 50 percent of total Project Costs (excluding developer equity); (C) adding notice and cure rights for tax credit investors is necessary to facilitate the tax credits investments, which are an essential funding source for the Project; (D) modifying the Lease to document the rights of Oakland Civic and CST to enter into the Sponsorship Agreement with Kaiser Foundation and to authorize the City to entering into a Recognition Agreement with Kaiser Foundation for the Sponsorship Agreement is necessary in order to permit Oakland Civic to secure such funding from Kaiser and other entities; (E) documenting Oakland Civic's consent to the City entering into a Naming Rights Agreement and related documents with Kaiser Foundation for the Property is necessary in order to enforce the terms of the Naming Rights Agreement with Kaiser; and (F) modifying the terms of the Lease is necessary to conform Lease terms to the terms of the agreed-upon Community Benefits Agreement.

SECTION 2. The City Council hereby authorizes the City Administrator or his/her designee, to negotiate and execute a Second Amendment to the LDDA to: (A) modify certain closing requirements, including eliminating non-binding letters of intent pre-lease requirements, increasing the required guarantor minimum net worth from 25 percent to 50 percent, and eliminating the surety bond requirement; and (B) add notice and cure rights for tax credit investors; and (C) amend the form of Lease attached as Exhibit C to the LDDA to:

(i) revise and insert definitions of sponsorship/donation agreements and naming rights, as applicable, and specify when proceeds of such agreements will be considered as gross income for calculation of rent participation;

(ii) Document rights of Oakland Civic and/or Calvin Simmons Theatre ("CST") to enter into an event use/sponsorship agreement with Kaiser Foundation Health Plan, Inc. ("Kaiser Foundation") for a term of up to 20 years, for a maximum payment of \$1.5 million to be used for renovation of the Theatre consistent with the LDDA and the Lease, and related documents, and (B) authorize the City Administrator or his/her designee to negotiate and enter into a Recognition Agreement with Kaiser Foundation for such event use/sponsorship agreement, subject to certain termination rights and City protections;

(iii) Document Oakland Civic's consent to the City entering into a naming rights agreement and related documents with Kaiser Foundation for the Property; and

(iv) Make minor revisions to (A) add notice and cure rights for tax credit investors; and (B) correspond with the agreed-upon community benefits agreement between Oakland Civic, CST and Black Arts Movement and Business District Community Development Corporation.

SECTION 3. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute (a) such other additions, amendments or other modifications to the foregoing documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (b) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the leasing and development of the Project in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 4. The Second Amendment to the LDDA and all other agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 5. After independent review and consideration, the City Council finds and determines that (a) this action complies with CEQA based on the evaluation of the anticipated environmental effects of the Project in "The Oakland Civic Auditorium Rehabilitation - CEQA Analysis" (the "2019 CEQA Analysis") for the Project; (b) no substantial changes have occurred with respect to the circumstances under which the 2019 CEQA Analysis was done or that no new information, which was not known and could not have been known at the time such analysis was completed, has become available; and (c) as supported by substantial evidence in the record, no additional environmental analysis beyond the 2019 CEQA Analysis is necessary for entering into the Second Amendment to the LDDA based on the conclusions of the 2019 CEQA Analysis that the Project satisfies each of the following CEQA Guidelines (A) Section 15164 - CEQA Analysis Addendum, (B) Section 15183 - Projects consistent with a Community Plan, General Plan or Zoning, and (C) Section 15168 - Prior Program Environmental Impact Reports; and be it further

SECTION 6. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 8. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

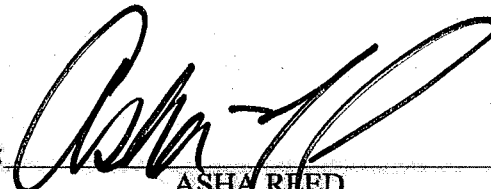
AYES – FURTUNATO BASS, GALLO, ~~DISSON~~ ~~MC ELHANEY~~, KALB, REID, TAYLOR,
THAO ~~AND PRESIDENT KAPLAN~~ - 6

NOES – 0

ABSENT – 1 McElhaney

ABSTENTION – 1 Kaplan

ATTEST:



ASHA REED

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

Introduction Date

DEC 01 2020

Date of Attestation:

December 15, 2020

NOTICE AND DIGEST

AN ORDINANCE THAT AUTHORIZES THE CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (LDDA) BETWEEN THE CITY OF OAKLAND (CITY) AND OAKLAND CIVIC, LLC (OAKLAND CIVIC), AND RELATED DOCUMENTS, FOR RENOVATION AND REHABILITATION OF CITY-OWNED PROPERTY LOCATED AT 10 TENTH STREET, COMMONLY KNOWN AS THE HENRY J. KAISER CONVENTION CENTER (PROPERTY), THAT

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This Ordinance authorizes the City Administrator or designee to negotiate and execute a Second Amendment to the Lease Disposition And Development Agreement, dated as of December 30, 2019, which was amended by a First Administrative Amendment dated as of September 26, 2020, between the City of Oakland and Oakland Civic, LLC, and related documents, for renovation and rehabilitation of the Property that:

- (A) (I) Modifies certain closing requirements, including eliminating non-binding letters of intent pre-lease requirements and surety bonds and increasing required guarantor minimum net worth from 25 percent to 50 percent, and (II) adds notice and cure rights for tax credit investors; and
- (B) Makes amendments to the form of the Lease attached as Exhibit C to the Lease Disposition And Development Agreement To:
- i. Revise And insert definitions Of Sponsorship/Donation Agreements and naming rights, as applicable, and specify when proceeds of such Agreements will be considered as gross income for calculation of rent participation;
 - ii. (i) Document Rights Of Oakland Civic and Calvin Simmons Theatre (CST) to enter into an event use/sponsorship agreement with Kaiser Foundation Health Plan, Inc. (Kaiser Foundation) for a term of up to 20 years, for a maximum payment of \$1.5 million to be used for renovation of the Theatre consistent with the LDDA and the Lease, and related documents, and (ii) authorize the City Administrator or designee to negotiate and enter into a Recognition Agreement with Kaiser Foundation for such event use/sponsorship agreement, subject to certain termination rights and City protections;
 - iii. Document Oakland Civic's consent to the City entering into a naming rights agreement and related documents with Kaiser Foundation for the Property; and
 - iv. Make minor revisions to (A) add notice and cure rights for tax credit investors, and (B) correspond with the agreed upon community benefits agreement between Oakland Civic, CST and Black Arts Movement and Business District Community Development Corporation