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APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. 13556 C.M.S.

AN ORDINANCE AUTHORIZING: (A) THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, UP TO NINETY-NINE YEAR LEASE, AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND OAKLAND CIVIC, LLC, OR ITS AFFILIATE ("OAKLAND CIVIC") FOR THE HENRY J. KAISER CONVENTION CENTER LOCATED AT 10 TENTH STREET; (B) ESTABLISHMENT OF AN ANNUAL FUND TO BE FUNDED BY TENANT FROM ANNUAL NET PROJECT INCOME FOR USE BY A TO-BE-FORMED NONPROFIT CALVIN SIMMONS THEATRE OPERATOR ("THEATRE NONPROFIT") TO PROVIDE GRANTS RELATED TO USE OF THE CALVIN SIMMONS THEATRE; (C) A GRANT UP TO \$100,000 FOR SUBSURFACE HAZARDOUS MATERIALS REMEDIATION TO OAKLAND CIVIC, LLC; AND (D) A GRANT OF \$3,000,000 TO THE THEATRE NONPROFIT FOR THEATRE REHABILITATION COSTS

**WHEREAS**, the City of Oakland ("City") owns approximately 4.79 acres of property located at 10 Tenth Street, which is improved with the historic Henry J. Kaiser Convention Center (the "Property" or "Kaiser Auditorium"), which is prominently located at the southern end of Lake Merritt; and

**WHEREAS**, originally named the Oakland Civic Auditorium, the building houses the 1,899- seat Calvin Simmons Theatre (the "Theatre"), a large arena, three large event spaces, a full basement, ancillary office spaces, lobby areas and large hallways; and

**WHEREAS**, starting in the 1960s the Kaiser Auditorium's use slowly declined and in 2005 the City Council voted to close the building after years of unsuccessful attempts at finding an economically sustainable operating model for the facility; and

**WHEREAS**, pursuant to the requirements of the California Surplus Land Act, on May 15, 2014, the City issued a Notice of Offer and Intent to Convey the Property ("Notice") to potential developers and public agencies in Alameda County; and

**WHEREAS**, the City did not receive any responses to the Notice; and

**WHEREAS**, on September 22, 2014, the City released a Request for Proposals ("RFP") soliciting developer proposals to rehabilitate, lease and operate the Kaiser Center in return for a lease with the City with a term of up to ninety-nine years (the "Lease") and \$3,000,000 in grant funding (the "City Grant"); and

**WHEREAS**, the City received two responses to the RFP and, after extensive analysis, selected Orton Development, Inc. ("Orton") for the project; and

**WHEREAS**, the City Council adopted a Resolution in December 2014 to establish a general policy to lease rather than sell City property (Resolution No. 85324 C.M.S.); and

**WHEREAS**, on July 21, 2015, the City Council, pursuant to Resolution No. 85728 C.M.S., authorized an Exclusive Negotiating Agreement ("ENA") between the City and Orton for the purposes of developing a project proposal for City review and approval, completing California Environmental Quality Act ("CEQA") review, and negotiating the terms and conditions of a Lease Disposition and Development Agreement ("LDDA"), Lease and related documents; and

**WHEREAS**, Orton, through its affiliate, Oakland Civic, LLC (or its affiliates hereinafter referred to as "Oakland Civic" or "Tenant"), proposes to (1) rehabilitate and operate the Theatre through a nonprofit Theatre operator (the "Theatre Nonprofit") as a performing arts venue, (2) adaptively reuse the arena and basement of the building as commercial private office and restaurant space; (3) improve building accessibility, public spaces, parking, and landscaping, and (4) market the building to nonprofit and art organizations (collectively the "Project"); and

**WHEREAS**, the Project will result in the rehabilitation and operation of a vacant and blighted historic landmark that will activate the southern end of Lake Merritt, help complete an entertainment, education, and cultural hub in the Lake Merritt area; and generate tax benefits and local jobs; and

**WHEREAS**, the expenditure of excess bond proceeds (Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13)) is consistent with Resolution No. 84516 C.M.S., which approved a plan for spending excess tax allocation bond proceeds and allocation of such funds to projects and programs in the Central District Redevelopment Project Area, such as the Kaiser Auditorium; and

**WHEREAS**, a March 2019 appraisal conducted by Yovino & Young concluded that the as-is Fair Market Rental Value of the Property consists of equal annual payments of \$673,000 to the City over the term of the Lease, which, according to the appraiser, is equivalent to the annual nominal base rent of \$1 per year and the projected uneven 50% participation rental income payments to be received by the City during the term of the

Lease after Oakland Civic has been paid its developer fee, equity investment and earned return on its investment and taking into account below-market rental rates, when converted to a level annual payment; and

**WHEREAS**, the City staff and Orton have negotiated a proposed LDDA and Lease, which will set forth the terms and conditions under which the City will lease the Property to Oakland Civic and under which Oakland Civic will rehabilitate the building, construct improvements and operate the Property; and

**WHEREAS**, the City has prepared and placed on file a summary of the transaction contemplated by this Ordinance as required by California Government Code Sections 52201 and 53083 ("52201/53083 Report"), and the City has conducted a noticed public hearing on the transaction as required by Government Code Sections 52201 and 53083; and

**WHEREAS**, a public hearing of the City Council was held to hear public comments on the sale of the Property to the Oakland Civic or affiliated entity for the Project; and

**WHEREAS**, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

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

**SECTION 1.** The City Council hereby finds, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to lease the Property for the reasons described in the Agenda Report for this item, and hereby authorizes the lease of the Property to Oakland Civic pursuant to the terms of the documents described in Section 7 hereof.

**SECTION 2.** The City Council hereby finds and determines, based on the fair market rental value appraisal conducted by Yovino & Young that Property will be leased at its fair market rental value equivalent.

**SECTION 3.** The City Council authorizes the City Administrator to deposit participation rent payments in the General Purpose Fund (1010), Real Estate Services Organization (85321), Lease Revenue (44420), in a project to be created.

**SECTION 4.** The City Council authorizes the City Administrator to deposit an annual Project payment of \$25,000 from Oakland Civic pursuant to the LDDA in the General Purpose Fund (1010), CIP Central District (94889), in a project to be created.

**SECTION 5.** The City Council authorizes (a) the grant of \$3,000,000 to the to-be-formed Theatre Nonprofit for Theatre rehabilitation costs; (b) the City Administrator to execute and administer the terms of a Grant Agreement between the City and the to-be-

formed Theatre Nonprofit; and (c) to appropriate and deposit funds in escrow in an amount not to exceed \$3,000,000 funded from the Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13), in a new project to be created.

**SECTION 6.** The City Council authorizes (a) the grant of up to \$100,000 to Oakland Civic for subsurface hazardous materials remediation; (b) the City Administrator to execute and administer the terms of a Grant Agreement between the City and Oakland Civic; and (c) to appropriate an amount not to exceed \$100,000 funded from the Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13), in a new project to be created, to pay to Oakland Civic for subsurface hazardous materials remediation.

**SECTION 7.** The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) an LDDA, a Lease and related documents with Oakland Civic, for the lease and development of the Property, all of the foregoing documents to be in a form and content substantially in conformance with the Term Sheet attached as Exhibit A to this Ordinance; (2) such other additions, amendments or other modifications to any of 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 (3) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the lease and development of the Property 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 8.** The City Administrator, without returning to the City Council, shall determine satisfaction of conditions precedent to the lease of the Property to Oakland Civic.

**SECTION 9.** The City Council authorizes the establishment of an annual fund to be funded by the Tenant from annual net revenues pursuant to the Lease for use by the Theatre Nonprofit to provide financial assistance to eligible organizations for use of the Calvin Simmons Theatre in conformance with the Term Sheet.

**SECTION 10.** All 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 11.** The City Council finds and determines that the anticipated environmental effects of the Project have been evaluated in "The Oakland Civic Auditorium Rehabilitation – CEQA Analysis" (the "2019 CEQA Analysis") for the Project

and, as supported by substantial evidence in the record, no additional environmental analysis beyond the 2019 CEQA Analysis is necessary for lease of the Property and the development of the Project. The 2019 CEQA Analysis concluded 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.

**SECTION 12.** The City Administrator or his/her designee is hereby directed to file a notice of determination and a notice of exemption with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

**SECTION 13.** The record before this Council relating to this Ordinance includes, without limitation, the following:

- A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Planning Commission Report and all notices relating to this Ordinance and the LDDA; and
- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance, including without limitation the Planning Commission consideration of general plan conformity; and
- C. The 52201 Report and the 53083 Report; and
- D. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation, the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.

**SECTION 14.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively (a) the Project Implementation Division, 250 Frank Ogawa Plaza, 5<sup>th</sup> Floor, Oakland, California; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3<sup>rd</sup> Floor, Oakland, California; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1<sup>st</sup> Floor, Oakland, California.

**SECTION 15.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 16.** The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: **JUL 16 2019**

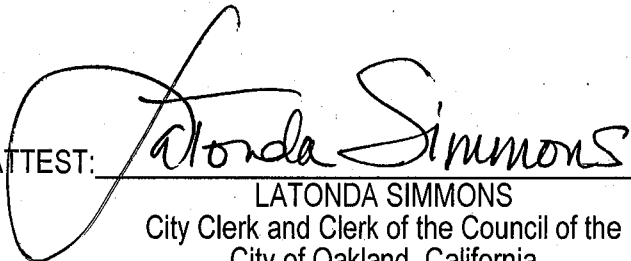
AYES – FURTUNATO BASS, GALLO, GIBSON McELHANEY KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN - 8

NOES – 0

ABSENT – 0

ABSTENTION - 0

ATTEST:

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

**Introduction Date**

**JUL 09 2019**

Date of Attestation: 7-29-2019

**Exhibit 1**

**Minimum Terms of Community Benefits Agreement  
Between Orton Development and the Coalition**

2019 JUL 11 PM 6:00

- 1) A Mechanism for providing potential tenants who are considered “equity targets” in the 10,000 square feet of 13,000 Minimum Target User Space to enter into long-term subleases in the project (up to the term of the master lease) as way of addressing “community ownership”;
- 2) Requirement to create a community advisory board to participate in the management of the Annual Fund for the Calvin Simmons Theatre, enforce the CBA, and other responsibilities to be determined;
- 3) Right of the Community Coalition for Equitable Development to create a nonprofit, called “Friends of the Simmons Theatre”, to develop a community access program for educational institutions;
- 4) Developer shall provide and make available at no cost:
  - a. A minimum of 25 Co-Working/Shared Working Memberships,
    - i. Such Memberships shall be assigned and or designated to Equity Targets at no cost, and
    - ii. Such Membership shall include access to all amenities and services available to paying Members such as access to meeting spaces;
- 5) Developer shall work with the Sogorea Te’ Land Trust to provide the Trust with use of the Theatre, acknowledge the location of the Theatre on Ohlone lands (through a plaque or announcements), and make a one-time grant (amount TBD);
- 6) Developer shall work with a community-incubated food industry project in the selection of food-serve businesses within the Project;
- 7) Developer shall consult with and meaningfully consider recommendations made by the Community Advisory Board pertaining the curation and commission or art displayed in the Project;
- 8) Require the Community Advisory Board to provide an annual report to Developer for submission to the City regarding the expenditures of the Annual Fund; and
- 9) Require the nonprofit created by (2) to provide an annual report to Developer for submission to the City regarding the community access program.
- 10) Developer shall make a one-time donation of \$100,000 to Friends of the Calvin Simmons Theatre (FOST) upon the opening of the Calvin Simmons Theatre.
- 11) Developer shall make a one-time contribution of \$75,000 to the Coalition’s Anti-Displacement Fund at the East Bay Community Fund.

**Exhibit 2**  
**Amendment of Proposed Term Sheet**  
**for**  
**Henry J. Kaiser Convention Center**  
**Lease Disposition and Development Agreement and Lease**

- a. Developer shall provide office space and make such space available for leasing/renting to “equity targets” as follows:
  - Up to 5,000 square feet of office space on the main arena floor of the project,
    - At a full service rate of \$2.80 per square foot, subject to agreed-upon “CPI” increases, and
    - Such tenancy shall include similar terms, services and equal access to amenities allotted to all other tenants;
- b. Developer shall provide office and programmatic space and make such space available for leasing/renting to “equity targets” as follows:
  - Up to 5,000 of square feet on the basement level of the project,
    - At a full service rate of \$2.00 per square feet, subject to agreed-upon “CPI” increases, and
    - Subject to item 1(d), said tenancies shall include similar terms, services and equal access amenities allotted to all other tenants;
- c. Developer shall ensure that all Licensing Fees for the use of the Theatre to be charged to individuals meeting the definition of “equity targets” meet the following requirements:
  - The rental rates will never surpass the lowest published tier licensing fees for the use of space within the Theatre, and
  - Up to 30 conference room hours per month shall be made available at no cost to “equity targets”;
- d. Developer shall provide an annual report to the City Council summarizing its community access program, including the implementation of items a-c above.
- e. Developer shall ensure compliance with the restriction that non-Target Users may not use the Theatre more than ~~165~~ 200 days in any year without City Administrator’s prior written approval; and
- f. Developer acknowledge that the lease of the 13,000 square feet of Minimum Target User Space includes the 10,000 square feet to be leased to “equity targets.”
- g. “Annual Fund” shall mean the first \$80,000 of Net Revenue as outlined in the Lease.



## NOTICE AND DIGEST

**AN ORDINANCE AUTHORIZING: (A) THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, UP TO NINETY-NINE YEAR LEASE, AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND OAKLAND CIVIC, LLC, OR ITS AFFILIATE ("OAKLAND CIVIC") FOR THE HENRY J. KAISER CONVENTION CENTER LOCATED AT 10 TENTH STREET; (B) ESTABLISHMENT OF AN ANNUAL FUND TO BE FUNDED BY TENANT FROM ANNUAL NET PROJECT INCOME FOR USE BY A TO-BE-FORMED NONPROFIT CALVIN SIMMONS THEATRE OPERATOR ("THEATRE NONPROFIT") TO PROVIDE GRANTS RELATED TO USE OF THE CALVIN SIMMONS THEATRE; (C) A GRANT UP TO \$100,000 FOR SUBSURFACE HAZARDOUS MATERIALS REMEDIATION TO OAKLAND CIVIC; AND (D) A GRANT OF \$3,000,000 TO THE THEATRE NONPROFIT FOR THEATRE REHABILITATION COSTS**

This Ordinance authorizes the leasing of approximately 4.79 acres of City-owned property located at 10 Tenth Street, which is improved with the historic Henry J. Kaiser Convention Center to Oakland Civic, LLC or its affiliates ("Oakland Civic") to (a) rehabilitate and operate the Calvin Simmons Theatre within the building through a nonprofit Theatre operator as a performing arts venue, (b) adaptively reuse the arena and basement of the building as commercial private office and restaurant space; (c) improve building accessibility, public spaces, parking, and landscaping, and (d) market the building to nonprofit and art organizations. This Ordinance authorizes the City Administrator to sign the Lease Disposition and Development Agreement and the Lease with Oakland Civic and make associated findings with respect to the California Environmental Quality Act and other matters.