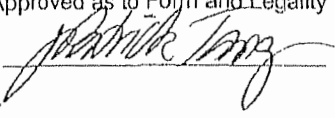


FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

2006 FEB -1 PM 3:27

OAKLAND CITY COUNCIL



Ordinance No. 12733 C.M.S.

AN ORDINANCE TO (1) CONSENT TO THE TRANSFER OF THE FRANCHISE PURSUANT TO ORDINANCE 8005 C.M.S. DATED JULY 24, 1969 GRANTING A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21ST STREET (THE KAISER CENTER) IN THE CITY OF OAKLAND TO PRENTISS PROPERTIES ACQUISITION PARTNERS L.P. AND SIC-LAKESIDE DRIVE, LLC, AND (2) AMEND SAID ORDINANCE TO INCREASE THE AMOUNT OF THE LIABILITY INSURANCE TO \$25,000,000 AND THE ANNUAL FRANCHISE CONSIDERATION TO \$1,500

WHEREAS, the City of Oakland granted to Kaiser Center Properties and Kaiser Center, Inc. a franchise to construct, install, operate, maintain, repair and renew an enclosed pedestrian bridge and tunnel for the purpose of transporting people and material across and under that certain street in the City known as 21st Street, between Valdez Street and Harrison Street pursuant to Ordinance No. 8005 C.M.S. ("Existing Ordinance") dated July 24, 1969 entitled "An Ordinance granting a franchise to Kaiser Center Properties and Kaiser Center, Inc., to construct, maintain and operate a tunnel and bridge for the transportation of people and material under and over certain designated areas in 21st Street in the City of Oakland" (a copy is attached hereto and incorporated herein as Exhibit A); and,

WHEREAS, Kaiser Center Properties and Kaiser Center, Inc. were the owners of the two blocks of real property separated by 21st Street and the franchise applies to the existing bridge lying across and above 21st Street and the existing tunnel lying below and across 21st Street which are "franchise property" as defined under the Existing Ordinance to "... mean all property and facilities constructed, installed, operated or maintain in public way or public place pursuant to any right or privilege granted by this franchise;" and,

WHEREAS, Kaiser Center Properties and Kaiser Center, Inc. have subsequently sold and transferred their interest in these two blocks of real property consisting of Assessor's Parcel Number: 008-653-019-03 (also known as "One Kaiser Plaza") and Assessor's Parcel Number: 008-652-001-05 (also known as "The Kaiser Center"), and after intervening transfers and sales which have occurred without obtaining the City's prior written consent to the transfer of the franchise property, Prentiss Properties Acquisition Partners L.P. ("Prentiss") is the current owner of One Kaiser Plaza (see Deeds within Chain of Title from Prentiss attached hereto and incorporated herein as Exhibit B), and SIC-Lakeside Drive, LLC ("SIC") is the current owner of The Kaiser Center (see Deeds within Chain of Title from SIC attached hereto and incorporated herein as Exhibit C); and,

WHEREAS, the term of the franchise under the Existing Ordinance is for 70 years commencing July 24, 1969 and ending July 23, 2039, the remaining term is more than 33 years; and,

WHEREAS, the Existing Ordinance requires an aggregate liability of not less than \$1,000,000 for each accident or occurrence, the current excess liability (umbrella form) affecting the bridge is in the aggregate amount of \$25,000,000 (see Marsh Certificate of Insurance to Prentiss dated August 10, 2005 attached as Exhibit D) and the current excess/umbrella liability affecting the tunnel storage space is in the aggregate amount of \$10,000,000 (see Accord Certificate of Liability Insurance to Swig also known as SIC dated August 9, 2005 attached as Exhibit E); and,

WHEREAS, the Existing Ordinance requires an annual payment of \$270 to the City as consideration for the granting of the franchise; and,

WHEREAS, City's staff time and cost to process the transfer of the franchise is \$1,359, **now, therefore:**

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. CONSENT TO TRANSFER OF THE FRANCHISE PURSUANT TO THE EXISTING ORDINANCE

Section 1. (b) of the Existing Ordinance states, "The word "Grantee" shall mean Kaiser Properties, a partnership, and Kaiser Center, Inc., a California Corporation, and any person, firm, or corporation to which this franchise may hereafter be lawfully transferred as herein provided." In addition to Kaiser Properties and Kaiser Center, Inc., the word "Grantee" also includes any person, firm, or corporation to which this franchise may hereafter be lawfully transferred as provided in the Existing Ordinance. In accordance with Section 12 of the Existing Ordinance, the City hereby consents to the transfer of the franchise to all of the named grantees listed in the Exhibit B Deeds within Chain of Title from Prentiss and the Exhibit C Deeds within Chain of Title from SIC subject to the terms and conditions of this Ordinance and the Existing Ordinance and provided further that each and every named grantee in the chain of title to the franchise property shall be jointly and severally liable under this Ordinance and the Existing Ordinance. Nothing in this Ordinance shall constitute a waiver of the City's right to enforce any provision or release any person, firm, or corporation from any liability under this Ordinance and Existing Ordinance. When the name of any person, firm, or corporation appears in the chain of title, the owner of the franchise property shall be subject to the terms and conditions of this Ordinance and the Existing Ordinance. The City's consent to the transfer of the franchise under this Ordinance shall not be construed as consent to any subsequent or further transfer of the franchise.

SECTION 2. AMEND THE EXISTING ORDINANCE TO INCREASE LIMITS OF LIABILITY INSURANCE COVERAGE

Section 9. (b) of the Existing Ordinance states in part that "Such insurance shall provide limits in the sum of not less than \$500,000 for injury to property and \$500,000 for bodily injury, with an aggregate liability of not less than \$1,000,000 for each accident or occurrence, and shall name the City, its officers, officials and employees as additional insured." This sentence shall be amended and shall be restated as follows:

Such insurance shall provide limits in the sum of not less than \$1,000,000 for damage to property and \$1,000,000 for bodily injury, with an aggregate liability of not less than \$25,000,000 for each accident or occurrence, and shall name the City, its officers, officials and employees as named insured (rather than additional insured). Such limits shall be adjusted every five years based on the relative increases (and no decreases) in the Consumer Price Index – All Urban Consumer (San Francisco-Oakland-San Jose, CA) published by the U.S. Department of Labor Statistics calculated from the effective date of this Ordinance and continuing thereafter for the remaining term of this franchise ending July 23, 2039.

SECTION 3. AMEND THE EXISTING ORDINANCE TO INCREASE ANNUAL FRANCHISE CONSIDERATION

Section 11 of the Existing Ordinance states in part that “As a consideration for the granting of this franchise, grantee shall pay to the City Treasurer concurrently with grantee’s acceptance of this franchise and annually thereafter, the sum of \$270.” The annual consideration for the granting of the franchise shall increase from \$270 to \$1,500 per year and shall be subject to adjustments every five years based on the relative increases (and no decreases) in the Consumer Price Index. - All Urban Consumer (San Francisco-Oakland-San Jose, CA) published by the U.S. Department of Labor Statistics. The five year period shall commence on the effective date of this Ordinance and shall be adjusted every five years calculated from the effective date of this Ordinance and shall continue thereafter until the end of the remaining term of this franchise.

SECTION 4. NOTICE

Section 13 of the Existing Ordinance shall be amended as follows:

Any notice or communication from City to Prentiss and Swig shall be delivered by City either by personal service or by certified or registered mail to:

Prentiss Properties Acquisition Partners L.P.
One Kaiser Plaza
Oakland, CA 94612

SIC-Lakeside Drive, LLC
Kaiser Center, 300 Lakeside Drive, Suite 130,
Oakland, CA, 94612

SECTION 5. PAYMENT OF PROCESSING COSTS AND OTHER PAYMENTS

Within ten calendar days after the effective date of this Ordinance, the City shall be paid the processing costs of \$1,359 which will be placed in the General Purpose Fund (#1010), Real Estate Org (#88639), Miscellaneous Land Rentals (#44219), Real Estate Surplus Property Project (#P47010), Real Estate Program (#PS32). The annual franchise consideration of \$1,500 which shall be placed in the General Purpose Fund (1010), Treasury Operations Unit (#08721), Miscellaneous Franchise Taxes (#41619) Non- Project (0000000), Financial Management Program (#IP59). Thereafter, the annual franchise consideration shall be paid to the City on the same day and month for each year of the remaining term of the franchise.

SECTION 6. EFFECT OF THE EXISTING ORDINANCE

Except as set forth in this Ordinance, the Existing Ordinance shall remain in full force and effect and nothing contained in this Ordinance shall in any way decrease the scope of liability on the part of any grantee of the franchise property described in Exhibit B and Exhibit C or in any way increase the City's scope of liability involving the City's granting of the franchise or consenting to the transfer of the franchise.

SECTION 7. EFFECTIVE DATE

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

SECTION 8. ACCEPTANCE OF TERMS AND CONDITIONS

Within ten calendar days after the effective date of this Ordinance, Prentiss and SIC shall file with the City Clerk a written instrument in form acceptable to the City Attorney confirming the unconditional and irrevocable acceptance of the terms and conditions of this Ordinance and the Existing Ordinance. If Prentiss and SIC shall fail to file the requested written instrument in a timely manner, the consent to the transfer of the franchise granted under this Ordinance pursuant to the Existing Ordinance shall be void and the City shall be entitled to exercise all rights and remedies under the Existing Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR - 7 2006, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE — 4

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid,
DeLaFuente - 2

ATTEST:

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