



City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE TO:

(1) CONSENT TO THE TRANSFER OF THE FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21ST STREET, PURSUANT TO ORDINANCE NO. 8005, C. M.S. DATED JULY 24, 1969, AS AMENDED BY ORDINANCE NO. 12733 C.M.S. DATED MARCH 7, 2006, TO CIM-OAKLAND 1 KAISER PLAZA LP AND BA2 300 LAKESIDE LLC; AND

(2) AMEND SAID ORDINANCE TO:

(A) INCREASE THE AMOUNT OF THE LIABILITY INSURANCE FROM \$1,000,000 TO \$2,000,000 FOR PROPERTY DAMAGE AND BODILY INJURY;

(B) INCREASE THE ANNUAL FRANCHISE CONSIDERATION FROM \$1,500 TO \$2,500 PER YEAR;

(C) AUTHORIZE THE COUNCIL TO TERMINATE THE FRANCHISE IF GRANTEE FAILS TO COMPLY WITH ANY TERM OR CONDITION OF THE FRANCHISE

(D) CLARIFY THAT GRANTEE DISCLAIMS ANY RIGHT, TITLE, OR INTEREST IN OR TO ANY PORTION OF THE PUBLIC RIGHT-OF-WAY

WHEREAS, in 1969, Kaiser Center Properties and Kaiser Center Properties Inc. were the original owners of two blocks of real property consisting of Assessor's Parcel Number: 008-653-019-03 (also known as "One Kaiser Plaza" or the "Ordway Building") and Assessor's Parcel Number: 008-652-001-05 (also known as "The Kaiser Center") separated by 21st Street in the City of Oakland; and

WHEREAS, the City of Oakland originally granted to Kaiser Center Properties and Kaiser Center Properties 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 between the Ordway Building and The Kaiser Center across and under 21st Street between Valdez Street and Harrison Street for an annual franchise consideration of \$270 per year pursuant to Ordinance No. 8005 C.M.S. (“Original Ordinance”) dated July 24, 1969, a copy is attached hereto and incorporated herein as **Exhibit A**; and

WHEREAS, the term of the franchise under the Original Ordinance is for 70 years commencing July 24, 1969 and ending July 23, 2039, and the remaining term is more than 18 years; and

WHEREAS, the Franchise Property is defined under the Original Ordinance to “...mean all property and facilities constructed, installed, operated or maintained in public way or public place pursuant to any right or privilege granted by this franchise” and, therefore, presently applies to the existing pedestrian bridge lying across and above 21st Street and the existing tunnel presently used as storage space lying below and across 21st Street; and

WHEREAS, pursuant to Ordinance No. 12733 C.S.M. dated March 7, 2006 (“Second Ordinance”), a copy of which is attached hereto and incorporated herein as **Exhibit B**, the City consented to the transfer of the franchise to Prentiss Properties Acquisition Partners L.P. as the owner of One Kaiser Plaza (APN 008-653-019-03) and SIC-Lakeside Drive LLC as the owner of The Kaiser Center (APN 008-652-001-05) and all prior transfers, and amended the Original Ordinance to increase the amount of required aggregate liability insurance from \$1,000,000 to \$25,000,000 and increase the annual franchise consideration from \$270 to \$1,500 per year; and

WHEREAS, the Second Ordinance requires an annual payment of \$1,500 to the City as consideration for the granting of the franchise, which shall be adjusted every five years until the end of the remaining term of the franchise; and

WHEREAS, CIM-Oakland 1 Kaiser Plaza, an affiliate of the CIM Group, Inc. (“CIM”) is the current owner of One Kaiser Plaza (APN 008-653-019-03) after Prentiss Properties Acquisition Partners L.P. sold and transferred its interest in One Kaiser Plaza to Brandywine Ordway LLC on December 29, 2005 and Brandywine Ordway LLC sold and transferred its interest to CIM (see Deeds within Chain of Title from CIM attached hereto and incorporated herein as **Exhibit C**) on October 8, 2008, which occurred without obtaining the City’s prior written consent to the transfer of the Franchise Property; and

WHEREAS, BA2 300 Lakeside LLC (“BA2”), a subsidiary of TMG Partners, is the current owner of The Kaiser Center (APN 008-652-001-05) after SIC-Lakeside Drive LLC sold and transferred its interest to BA2 on October 29, 2020 (see Grant Deed attached hereto and incorporated herein as **Exhibit D**), which occurred without obtaining the City’s prior written consent to the transfer of the Franchise Property; and

WHEREAS, Grantee would pay \$5,677 in processing cost to the City as required by the Master Fee Schedule; and

WHEREAS, BA2 and CIM have procured adequate required liability insurance for The Kaiser Center and One Kaiser Plaza (see Certificate of Insurance attached hereto and incorporated herein as **Exhibit E** and **Exhibit F**, respectively); and

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 Original Ordinance. In accordance with Section 12 of the Original Ordinance, the City hereby consents to the transfer of the franchise to all of the named grantees listed in Exhibit C Deeds within Chain of Title for One Kaiser Plaza and Exhibit D Deeds within Chain of Title for The Kaiser Center subject to the terms and conditions of this Ordinance, the Second Ordinance, and the Original Ordinance, and provides 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, the Second Ordinance, and the Original 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, the Second Ordinance, and the Original 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, the Second Ordinance, and the Original 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 Franchise Ordinance to Increase Limits of Liability Insurance Coverage. Section 9(b) of the Original Ordinance, as amended by the Second Ordinance, states in part that "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)." This sentence shall be amended and shall be restated as follows:

"Such insurance shall provide limits in the sum of not less than \$2,000,000 for damage to property and \$2,000,000 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) or its successor index 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 Franchise Ordinance to Increase Annual Franchise Consideration. Section 11 of the Original Ordinance, as amended by the Second Ordinance, states in part that the annual consideration for the franchise is \$1,500 per year. This sentence shall be amended and shall be restated as follows:

“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 \$2,500 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) or its successor index published by the U.S. Department of Labor Statistics. The five-year period shall commence on the effective date of this Ordinance and shall continue thereafter until the end of the remaining term of this franchise.”

SECTION 4. Delivery of Notice. Section 13 of the Original Ordinance, as amended by the Second Ordinance, shall be amended as follows:

“Any notice or communication from City to CIM and BA2 shall be delivered by City either by personal service or by certified or registered mail to:

CIM-OAKLAND 1 KAISER PLAZA LP
c/o The CIM Group, Inc.
1 Kaiser Plaza, Suite 301
Oakland, CA 94612
Attn: Don Rogers
E-mail: drogers@cimgroup.com

BA2 300 LAKESIDE LLC, a Delaware limited liability company
c/o TMG Partners R.E., LLC
100 Bush Street, Suite 2600
San Francisco, CA 94104
Attn: Matt Field
E-mail: mfield@tmgpartners.com

SECTION 5. Revocability. Section 2(e)(ii) of the Original Ordinance shall be amended as follows:

“(ii) If Grantee fails to comply with any term or condition of this franchise or any term or condition of this franchise shall be or become invalid or unenforceable, the City Council may by ordinance terminate the franchise at its discretion.

Grantee does hereby disclaim any right, title, or interest in or to any portion of the public right-of-way, including the sidewalk and street, and agree that the use and occupancy by the Grantee of the public right-of-way is temporary and does not constitute an abandonment, whether expressed or implied, by the City of Oakland of any of its rights associated with the statutory and customary purpose and use of and operations in the public right-of-way.”

SECTION 6. City Engineer. All references to “Superintendent of Streets” in the Original Ordinance shall be replaced with “City Engineer.”

SECTION 7. Payment of Processing Costs and Other Payments. Within ten (10) calendar days after the effective date of this Ordinance, the City shall be paid the processing costs of \$5,677 which will be placed in the General Purpose Fund (1010), Real Estate Organization 85231), Other Revenue: Administrative Fees Account (48726), Real Estate Surplus Property Project (1000235), Real Estate Program (PS32). The annual franchise consideration of \$2,500 shall be placed in the General Purpose Fund (1010), Treasury Operations Unit Organization (08721), Miscellaneous Franchise Taxes Account (41619), DP080 Administrative Project (1000007), 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 8. Effect of the Existing Ordinance. Except as set forth in this Ordinance, the Second Ordinance and the Original 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 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 9. Acceptance of Terms and Conditions. Within ten (10) calendar days after the effective date of this Ordinance and upon confirmation that the physical condition of the tunnel and bridge is in good repair and safe and slightly condition at Franchisee's expense and to the satisfaction of the City, CIM and BA2 shall file with the City Clerk and the City Real Estate Division a written instrument in a form acceptable to the City Attorney confirming the unconditional and irrevocable acceptance of the terms and conditions of this Ordinance, the Second Ordinance and the Original Ordinance. If BA2 and CIM fail to file the requested written instrument in a timely manner or the City is unable to confirm the physical condition of the tunnel and bridge, the consent to the transfer of the Franchise granted under this Ordinance and pursuant to the Original Ordinance and Second Ordinance shall be void and the City shall be entitled to exercise all rights and remedies under the Original Ordinance.

SECTION 10. 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 11. 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 - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT
FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

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

Table of Exhibits

| Exhibit | Description |
|----------------|---|
| A | Ordinance No. 8005 C.M.S. dated July 24, 1969 |
| B | Ordinance No. 12733 C.M.S. dated March 7, 2006 |
| C | Deeds within Chain of Title to One Kaiser Plaza (APN 008-653-019-03) from May 1998 through October 2021 |
| D | Deeds within Chain of Title to The Kaiser Center (APN 008-652-001-05) from March 2003 through October 2021 |
| E | Certificate of Insurance to CIM-Oakland 1 Kaiser Plaza LP for One Kaiser Plaza |
| F | Acord Certificate of Insurance to BA2 300 Lakeside LLC for The Kaiser Center |

NOTICE AND DIGEST

AN ORDINANCE TO (1) CONSENT TO THE TRANSFER OF THE FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21ST STREET, PURSUANT TO ORDINANCE NO. 8005, C. M.S. DATED JULY 24, 1969, AS AMENDED BY ORDINANCE NO. 12733 C.M.S. DATED MARCH 7, 2006, TO CIM-OAKLAND 1 KAISER PLAZA LP AND BA2 300 LAKESIDE LLC; AND (2) AMEND SAID ORDINANCE TO: (A) INCREASE THE AMOUNT OF THE LIABILITY INSURANCE FROM \$1,000,000 TO \$2,000,000 FOR PROPERTY DAMAGE AND BODILY INJURY; (B) INCREASE THE ANNUAL FRANCHISE CONSIDERATION FROM \$1,500 TO \$2,500 PER YEAR; (C) AUTHORIZE THE COUNCIL TO TERMINATE THE FRANCHISE IF GRANTEE FAILS TO COMPLY WITH ANY TERM OR CONDITION OF THE FRANCHISE; AND (D) CLARIFY THAT GRANTEE DISCLAIMS ANY RIGHT, TITLE, OR INTEREST IN OR TO ANY PORTION OF THE PUBLIC RIGHT-OF-WAY