



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE (1) AUTHORIZING A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND SCHOOL FOR THE ARTS (OSA) FOR THE APPROXIMATELY 45,121 SQUARE FOOT VACANT CITY-OWNED PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR IMPROVEMENT AND USE AS AN OUTDOOR RECREATION AREA FOR A 3-YEAR TERM WITH THREE 1-YEAR OPTIONS TO RENEW AT A RATE OF FIVE HUNDRED DOLLARS (\$500) PER MONTH; (2) MAKING FINDINGS THAT THE LICENSE FOR BELOW FAIR MARKET VALUE IS IN THE BEST INTEREST OF THE CITY; AND (3) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City of Oakland (City) owns an approximately 1 acre or 45,121 square foot vacant property (Assessor Parcel Number 8-716-58), otherwise known as Lot 4, located at 1911 Telegraph Avenue (Property) in Oakland’s Uptown neighborhood, across the street from the historic, City-owned Fox Oakland Theater; and

WHEREAS, on July 21, 2020 the City Council adopted Resolution No. 88233 declaring the Property as “surplus land” pursuant to the Surplus Land Act (SLA), Government Code Section 54220(b)(1), and authorized the City Administrator to issue a Notice of Availability to solicit development proposals for the Property; and

WHEREAS, on October 6, 2021, the City issued a Notice of Availability (NOA) for the Property pursuant to the SLA; and

WHEREAS, the City received five development proposals in response to the NOA, City staff negotiated with respondents and plan to bring a recommendation for an Exclusive Negotiating Agreement to City Council for consideration later this year; and

WHEREAS, the Property is not expected to be ready for development any earlier than 2027 and, absent an interim use the Property, would remain vacant until such time; and

WHEREAS, Oakland School for the Arts (OSA) is a public charter school founded in 2002 serving over 800 students in grades 6-12 tuition-free. OSA serves students across the Bay Area and 72 percent of students are residents of the City; and

WHEREAS, outdoor space is essential to the operation of a school and to supporting the health and wellbeing of students but OSA is located in a dense urban area without any dedicated outside space; and

WHEREAS, OSA proposes to invest approximately Seven Hundred and Twenty-Two Thousand Dollars (\$722,000) in tenant improvements on the Property, including basketball courts and a stage, in order to create a safe, secure and supervised outdoor space for physical education classes, recreation, and outdoor performances; and

WHEREAS, in Section 219(6) of the Charter, licenses or leases of City-owned real property by the City for longer than one year must be authorized by an ordinance enacted by the City Council pursuant to Oakland Municipal Code Section (OMC) 2.42.100; and

WHEREAS, pursuant to OMC Section 2.42.110, real property must be licensed or leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market rental value, unless the City Council has made a finding and determination that the license or lease of the property for less than its fair market rental value is in the best interests of the City; and

WHEREAS, in the case of licensees or lessees who provide in-kind services in lieu of cash rent, the value of such in-kind services to the City or the community at large may be considered in making the required Council finding and determination. In-kind services include benefits or values the provider renders to the City or the community at large as a result of the tenancy in lieu of payment of cash, including, but not be limited to, property security and maintenance, social and cultural benefits to the community, or other appropriate services; and

WHEREAS, OSA is a critical contributor to both Oakland's arts and culture sector and to the vitality and economic health of the Uptown neighborhood; and

WHEREAS, many students arrive at OSA from under-resourced schools and all are admitted 100 percent grade-blind, which means students who need academic and artistic support enroll alongside students who face fewer challenges to their educational success; and

WHEREAS, the demographics of OSA's student body are as follows: 23 percent Black, 22 percent multi-ethnic, 11 percent Latinx, 34 percent white, 6 percent Asian, and 1 percent Pacific Islander, and 3 percent declined to state. Additionally, the student body is 65 percent female, 34 percent male, and 1 percent non-binary, and approximately 40 percent of OSA students identify as LGBTQIA+; and

WHEREAS, the property is currently vacant and unutilized, and OSA's proposed use will provide daily activation of the Property, increase the vibrancy of the Uptown neighborhood, and contribute to an increased sense of safety in the neighborhood; and

WHEREAS, the City desires to enter into a license agreement for OSA's use of the Property in accordance with these terms; and

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

SECTION 1. The City Administrator is hereby authorized to negotiate and execute a license agreement for OSA's use of the Property at a rate of Five Hundred Dollars (\$500) per month or Six Thousand Dollars (\$6,000) per year for improvement and use as an outdoor recreation area for a 3-year term with three 1-year options to renew.

SECTION 2. That funds collected from the tenant shall be placed in the General Purpose Fund (1010), Real Estate Organization (85231), Miscellaneous Land Rental Revenue Account (44219), DP850 Administrative Project (1000019), Real Estate Program (PS32).

SECTION 3. The City Council finds and determines that the license of the Property to OSA for less than its fair market rental value is in the best interests of the City, because OSA proposes to invest approximately Seven Hundred and Twenty-Two Thousand Dollars (\$722,000) in tenant improvements on the Property, which would support OSA's ongoing tenancy at the Fox Oakland Theater, activate, secure and maintain the Property, and enhance the vibrancy and sense of safety in the neighborhood.

SECTION 4. The City Council hereby authorizes the City Administrator, without returning to City Council, to negotiate and execute (a) such other additions, amendments or other modifications to the foregoing document 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 and consummate the transactions in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 5. The license agreement and any other documents necessary for the licensing of the property shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

SECTION 6. The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines that this action complies with the California Environmental Quality Act (CEQA) because this action on the part of the City is exempt from CEQA pursuant to Sections 15303 (small structures) and 15304 (minor alterations of land; temporary uses). The City Administrator or their designee is hereby directed to fill a notice of exemption with the appropriate agencies.

SECTION 7. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 8. 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 9. 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, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE (1) AUTHORIZING A LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND SCHOOL FOR THE ARTS (OSA) FOR THE APPROXIMATELY 45,121 SQUARE FOOT VACANT CITY-OWNED PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR IMPROVEMENT AND USE AS AN OUTDOOR RECREATION AREA FOR A 3-YEAR TERM WITH THREE 1-YEAR OPTIONS TO RENEW AT A RATE OF FIVE HUNDRED DOLLARS PER MONTH; (2) MAKING FINDINGS THAT THE LICENSE FOR BELOW FAIR MARKET VALUE IS IN THE BEST INTEREST OF THE CITY; AND (3) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

An Ordinance authorizing the City Administrator to negotiate and execute a license agreement with the Oakland School for the Arts, a California nonprofit public charter school, for the licensing of an approximately 45,121 square foot property located at 1911 Telegraph Avenue, also known as Lot 4, at a rate of Five Hundred Dollars (\$500) per month for a 3-year term with three 1-year options to renew for improvements and use as an outdoor recreation area.