

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE TO CONSENT TO THE TRANSFER OF THE FRANCHISE FROM BA2 300 LAKESIDE LLC TO PACIFIC GAS & ELECTRIC COMPANY (PG&E) TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21ST STREET, PURSUANT TO ORDINANCE NO. 8005 C.M.S., AS AMENDED BY ORDINANCE NOS. 12733 C.M.S. AND 13659 C.M.S.; AND MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

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 Two Hundred Seventy Dollars (\$270) per year pursuant to Ordinance No. 8005 C.M.S. ("Original Ordinance") dated July 24, 1969; and

WHEREAS, the term of the franchise under the Original Ordinance is for seventy (70) years commencing July 24, 1969 and ending July 23, 2039, and the remaining term is approximately fifteen (15) 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 Section 12 of the Original Ordinance, “Grantee shall not sell, transfer or assign this franchise or any of the rights or privileges granted hereby without the prior written consent of City by ordinance, nor shall this franchise or rights or privileges be sold, transferred or assigned except by a duly executed instrument, in writing filed in the office of the City Clerk of City; and provided further that nothing in this franchise shall be construed to grant to grantee any right to sell, transfer or assign this franchise or any of the rights or privileges hereby granted except in the manner aforesaid. Nothing herein shall be construed to prevent grantee from including this franchise in a mortgage or deed of trust without such express consent;” and

WHEREAS, pursuant to Ordinance No. 12733 C. M.S. dated March 7, 2006 (“Second Ordinance”), the City consented to the transfer of the franchise to Prentiss Properties Acquisition Partners L.P. as the owner of One Kaiser Plaza and SIC-Lakeside Drive LLC as the owner of The Kaiser Center and all prior transfers, and amended the Original Ordinance to increase the amount of required aggregate liability insurance from One Million Dollars (\$1,000,000) to Twenty-Five Million Dollars (\$25,000,000) and increased the annual franchise consideration from Two Hundred Seventy Dollars (\$270) to One Thousand Five Hundred Dollars (\$1,500) per year; and

WHEREAS, the Second Ordinance required an annual payment of One Thousand Five Hundred Dollars (\$1,500) to the City as consideration for the granting of the franchise, which shall be adjusted every five (5) years until the end of the remaining term of the franchise; and

WHEREAS, pursuant to Ordinance No. 13659 C.M.S. dated July 20, 2021 (“Third Ordinance”), the City consented to the transfer of the Franchise Property to CIM-Oakland 1 Kaiser Plaza, an affiliate of the CIM Group, Inc. (“CIM”), the current owner of One Kaiser Plaza 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 on October 8, 2008; and

WHEREAS, pursuant to the Third Ordinance, the City consented to the transfer of the Franchise Property to BA2 300 Lakeside LLC (“BA2”), a subsidiary of TMG Partners and the current owner of The Kaiser Center after SIC-Lakeside Drive LLC sold and transferred its interest to BA2 on October 29, 2020; and

WHEREAS, BA2 proposes to sell its real property ownership interest in The Kaiser Center to Pacific Gas & Electricity (PG&E) on or before June 3, 2025; and

WHEREAS, PG&E as Grantee would pay to the City processing costs for a franchise application or renewal in the amount of Five Thousand Six Hundred Seventy-Seven Dollars (\$5,677) as required by the Master Fee Schedule; and

WHEREAS, PG&E is self-insured and shall provide the City with adequate required liability insurance for the Franchise Property prior to or concurrently with the property transfer from BA2 to PG&E; and

WHEREAS, the tunnel and bridge traversing 21st Street are already in place and are not expected to be removed for the remaining term of the franchise and are not anticipated to have impacts on the environment and are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities); 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 from BA2 to PG&E subject to the terms and conditions of this Ordinance, the Third Ordinance, the Second Ordinance, and the Original Ordinance, and provides further that PG&E as the proposed new owner of The Kaiser Center and CIM as the current owner of One Kaiser Plaza shall be jointly and severally liable for the Franchise Property under this Ordinance, the Third Ordinance, the Second Ordinance, and the Original Ordinance, pending transfer of ownership of The Kaiser Center from BA2 to PG&E. 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. 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 Five Thousand Six Hundred Seventy-Seven Dollars (\$5,677) which shall be accepted in the General Purpose Fund (1010), Real Estate Organization (85231), Other Revenue: Administrative Fees Account (48726), DP850 Administrative Project (1000019), Real Estate Program (PS32). The annual franchise consideration of Two Thousand Five Hundred Dollars (\$2,500) to be adjusted every five (5) years shall be accepted in the General Purpose Fund (1010), Real Estate Organization (85231), Franchise: Miscellaneous Revenue Account (41619), DP850 Administrative Project (1000019), Real Estate Program (PS32). 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 3. Effect of the Existing Ordinance. Except as set forth in this Ordinance, the Third 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 4. Acceptance of Terms and Conditions. Within ten (10) calendar days after the effective date of this Ordinance or the effective transfer of ownership of The Kaiser Center from BA2 to PG&E, whichever is later, PG&E 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 Third Ordinance, the Second Ordinance and the Original Ordinance. If PG&E fails 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, Second Ordinance, and Third Ordinance shall be void and the City shall be entitled to exercise all rights and remedies under the Original Ordinance.

SECTION 5. Environmental. The City Council has independently reviewed and considered this environmental determination, and the City Council, and the City Council finds and determines that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities). The City Administrator or designee is hereby directed to file a Notice of Exemption with the appropriate agencies.

SECTION 6. 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 7. 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 - BROWN, FIFE, HOUSTON, KAPLAN, RAMACHANDRAN, UNGER, AND
PRESIDENT PRO TEMPORE GALLO

NOES –

ABSENT – COUNCIL PRESIDENT JENKINS (serving as Mayor pursuant to Charter Section 303)

ABSTENTION –

ATTEST: _____

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

NOTICE AND DIGEST

AN ORDINANCE TO CONSENT TO THE TRANSFER OF THE FRANCHISE FROM BA2 300 LAKESIDE LLC TO PACIFIC GAS & ELECTRIC COMPANY (PG&E) TO CONSTRUCT, MAINTAIN AND OPERATE A BRIDGE AND TUNNEL AT 21ST STREET, PURSUANT TO ORDINANCE NO. 8005 C.M.S., AS AMENDED BY ORDINANCE NOS. 12733 C.M.S. AND 13659 C.M.S.; AND MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Ordinance provides the City's consent to the transfer of a franchise to construct, maintain, and operate a bridge and tunnel at 21st Street between Valdez Street and Harrison Street from BA2 300 Lakeside LLC as the current property owner of The Kaiser Center (Assessor Parcel Number 008-652-001-05) to Pacific Gas & Electricity Company (PG&E) as the proposed new owner. This Ordinance amends the original Ordinance No. 8005 C.M.S., as amended by Ordinance Nos. 12733 C.M.S. and 13659 C.M.S., and makes appropriate California Environmental Quality Act findings.