

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMAN _____

Ralph R. Kuebler
 Deputy CITY ATTORNEY

ORDINANCE No. 8005 C. M. S.

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.

The Council of the City of Oakland does ordain as follows:

SECTION 1. DEFINITIONS.

As used in this franchise, the singular number includes the plural, and the plural number includes the singular. Unless it shall be apparent from the context that they have a different meaning the following words and phrases shall have the meaning herein specified.

(a) FRANCHISE PROPERTY

The words "franchise property" shall mean all property and facilities constructed, installed, operated or maintained in a public way or public place pursuant to any right or privilege granted by this franchise.

(b) GRANTEE

The word "Grantee" shall mean Kaiser Center 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.

(c) CITY

The word "City" shall mean the City of Oakland, a municipal corporation.

SECTION 2. NATURE OF GRANT.

Grantee is the owner of two blocks of real property in the City separated by 21st Street, a dedicated public street. Grantee, having already built one large building on one block in which several thousand persons are employed, is now desirous of building and has commenced building another large building on the other block in which several further thousands of persons will be employed. Due to the inter-relationship of the various companies who will occupy the buildings, the persons employed in each building will be required from time to time to travel from one building to the other and to move supplies and equipment from one building to the other. It is deemed to be in the best public interest to avoid traffic congestion on 21st Street by keeping as much as possible the movement of people, supplies and equipment between the two buildings off of said street. The City of Oakland hereby grants to Kaiser Center Properties, a partnership, in which Kaiser Industries Corporation, Kaiser

Aluminum & Chemical Corporation, Kaiser Cement & Gypsum Corporation, and Kaiser Steel Corporation are general partners, and Kaiser Center, Inc., a corporation, 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 the intersection of Valdez Street and Harrison Street, as hereinafter described, and in accordance with the terms and conditions contained in this ordinance, to-wit:

(a) DESCRIPTION

The real property to which this franchise applies shall be as follows:

BRIDGE.

All of that certain air space 15 feet in width lying across and above 21st Street beginning at a horizontal plane 21 feet, more or less, above the existing center line grade of 21st Street and extending upward 18 feet therefrom. The longitudinal center line of said space being a line drawn at right angles to said 21st Street at a point on the northerly line thereof located westerly 325.55 feet, more or less, from the western line of Harrison Street.

TUNNEL.

All of that certain underground space 21 feet wide and 11 feet high, more or less, lying below and across 21st Street, the longitudinal center line of said space being a line drawn at right angles to said 21st Street at a point on the northerly line thereof located westerly 227.88 feet, more or less, from the western line of Harrison Street.

The outside top of the tunnel proposed to be constructed in said space shall have a minimum cover of 1.85 feet at the existing center line grade of 21st Street.

The elevation of the outside bottom of the tunnel is contingent upon the actual elevation of the top of the existing 72-inch diameter storm conduit located in 21st Street and the design of the joint or clearance between the bottom of the tunnel and the storm conduit shall be subject to approval by the Director of Public Works of the City of Oakland.

(b) PROTECTION

The pedestrian bridge shall at all times be maintained with appropriate and effective protection against objects being thrown or allowed to fall therefrom.

(c) APPROVAL OF PLANS AND SPECIFICATIONS

The bridge and tunnel shall be constructed pursuant to plans and specifications approved by City.

(d) NON-EXCLUSIVE NATURE OF FRANCHISE

The granting of this franchise, or any of the terms or conditions contained herein, shall not be construed to

prevent the City from granting over the same location specified or elsewhere any identical, similar or other type of franchise to any person, firm or corporation so long as the further granting of any franchise does not materially interfere with the franchise granted herein.

(e) DURATION, REVOCATION AND TERMINATION

(i) This grant shall be for a period of seventy years from and after the effective date hereof.

(ii) If any term or condition of this franchise shall be or become invalid or unenforceable the City Council may by ordinance terminate the franchise, provided the City Council shall find and declare that the invalid or unenforceable term or condition constituted a consideration material to the grant of this franchise.

(f) USE

Grantee shall make the franchise property available during regular business hours to persons having legitimate business in the buildings to which the franchise property connects. Grantee shall not charge a toll or other monetary sum to any person lawfully using the franchise property.

SECTION 3. ENCUMBRANCES.

Grantee shall pay when due all lawful taxes, utility charges and encumbrances of any nature on the franchise property.

SECTION 4. JOINT USE OF FACILITIES.

If there be space available in the franchise property operated or maintained pursuant to this franchise, and not required by grantee for use in connection with said franchise, then grantee shall, free of charge, permit the City for the period of such availability, to use such space for the placing of facilities necessary or appropriate to the use of City.

SECTION 5. RESTORATION, MAINTENANCE AND CHANGES IN PUBLIC WAYS.

(a) This franchise does not relieve grantee of any requirement of the City Charter or of any ordinance, rule, regulation or specification of the City, including but not limited to any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets, public ways or public places.

(b) Except in the case of routine maintenance and repairs which can be accomplished without interfering with street traffic, before grantee shall engage in any work in the streets for the installation, construction, maintenance, repair, replacement, reconstruction, or removal of franchise property, written notice thereof shall be given to the Superintendent of Streets. Except in the case of emergency work necessary to avoid an immediate interruption of service, or for the immediate preservation of the public safety, such notice shall be given at least forty-eight (48) hours, exclusive of Saturdays and Sundays and holidays, prior to commencement of such work.

(c) The Superintendent of Streets shall have authority to regulate and restrict the time and manner of performing any work in the public streets to the extent necessary, in his opinion, to provide for the public safety and convenience.

(d) Grantee shall comply with all lawful ordinances now in force or hereafter adopted by the City in the exercise of its police powers or in aid of public travel applicable to the privileges, obligations and undertakings set forth in this franchise and for the term hereof. All work undertaken or performed and all franchise property constructed, maintained or used under this franchise, shall be of the standard and performed as required by law, and by any governmental authority having jurisdiction in the premises. The construction and installation of the franchise property shall be subject to City inspection and final approval of the City before the bridge and tunnel are put to use. Grantee shall pay for any City inspection costs not included in the construction permit fees.

(e) Grantee shall be responsible for damage or destruction of public and private facilities and installations resulting from construction, installation, maintenance or operation by grantee of its franchise property. With the prior approval of the Superintendent of Streets, public installations and facilities in or adjacent to the franchise property may be relocated by grantee as necessary or desirable for purpose of construction of the franchise bridge and tunnel, at grantee's expense.

SECTION 6. PUBLIC IMPROVEMENTS.

(a) The City, the State and any political subdivision or governmental agency or instrumentality may construct, reconstruct, improve, install, repair, maintain and remove any public improvements or facilities such as sewers, drains, water or gas pipes, electric or other lines or conduits, and the like in, under or above any street or portion thereof covered by this franchise. This subsection is intended for the benefit of the above named governmental agencies only.

(b) If the Superintendent of Streets shall give to grantee reasonable and at least twenty (20) days' written notice of the fact that work is to be done pursuant to any right reserved in subdivision (a) of this section, specifying the general nature of the work and the area in which the same is to be performed, then grantee shall as soon as practicable at

its own expense do all things necessary to support and protect its franchise property during the progress of such work, and to permit the maintenance, operation and use of such public improvement or of the street as so improved. If the location of grantee's franchise property in such streets or portion thereof increases the cost of such work described in paragraph (a) above, grantee shall be liable and pay for such increased cost caused by the location of such franchise property.

SECTION 7. INSTALLATION OF OTHER STREET UTILITIES.

The City reserves to itself, as against the grantee, the following rights:

(a) To permit others to construct, install, maintain, repair and renew property of any character in and upon the street covered by this franchise.

(b) To permit others to operate and use, for every lawful purpose, any property constructed, installed, maintained or renewed in the street covered by this franchise, other than property of grantee.

Provided, however, the City shall include in any authority granted to others pursuant to the rights reserved in (a) and (b) above reasonable provisions for the protection by and at the expense of such others of the franchise property of grantee, including, but not limited to, reasonable provisions as to the method and time of performance of work by such others on, under, over and adjacent to grantee's franchise property.

Grantee shall bear the expense of all repairs, reconstruction or support and protection of its franchise property made necessary by the use, operation, maintenance, repair or renewal of any property constructed or installed in the streets prior to the construction or installation therein of grantee's franchise property.

(c) The rights reserved to the City in and by this section are independent of, and in addition to, the rights of the City with respect to public improvements under Section 6 of this franchise.

SECTION 8. REMOVAL OF FACILITIES.

(a) Upon the cessation of the use of any of the hereinabove enumerated franchise property or the expiration or termination of this franchise, the grantee shall, unless requested not to do so by the City, remove all structures and other appurtenances and shall replace the paving in the streets and public places in good condition with the same kind of material as is used in the remaining width of 21st Street; all such work shall be done to the satisfaction of the Superintendent of Streets.

(b) For the purpose of this section, failure to use the franchise property for a period of six (6) months shall constitute abandonment of the franchise, except where such failure is due to strikes, acts of God, or other causes beyond the reasonable control of grantee.

(c) In the event grantee fails or refuses to remove its franchise properties from the streets as provided for in subsection (a) hereinabove, the City Council may declare a breach of the conditions of this franchise and grantee shall be liable and pay to the City the reasonable cost of doing the work required by said subsection (a).

SECTION 9. INDEMNIFICATION AND INSURANCE.

(a) Indemnification of City. Grantee does hereby indemnify, save and hold harmless City, its officers, officials and employees, against and from all claims, suits, actions brought by any person or persons for or on account of any bodily injuries or disease or illness or damage, or damage to property, and all judgments, decrees, costs and expenditures which City or such officers, officials or employees may suffer or which may be recovered from or obtained against them or any of them, for or by reason of or growing out of or resulting from the exercising by grantee of any or all rights or privileges granted by this franchise or by reason of any act or acts of grantee or its officers, agents or employees, in exercising this franchise.

(b) Before any work of construction or installation of franchise property is commenced by grantee or its contractor, agent or employees, grantee will provide City, its officers, officials and employees with comprehensive bodily injury and property damage liability insurance coverage, specifically including contractual liability covering liability assumed hereunder, arising out of the construction or installation of the franchise property, and its use, operation and maintenance after completion by grantee, its contractor, agents or employees. 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 insureds. The insurance shall cover any accident or occurrence resulting or arising from the operations of grantee, its agents and employees, in construction, use, operation or maintenance of the franchise property, and shall contain the following endorsement:

"Notwithstanding any other provision in this policy, the insurance afforded hereunder to the City of Oakland shall be primary as to any other insurance or reinsurance covering or available to the City of Oakland, and such other insurance or reinsurance shall not be required to contribute to any liability or loss until and unless the appropriate limit of liability afforded hereunder is exhausted."

A certificate evidencing such insurance coverage to the satisfaction of the City Attorney shall be filed with the City and accepted and approved by the City Attorney before any such work commences. Such certificate shall also provide that it may not be suspended, cancelled or terminated by the insuring company or the coverage reduced until after ten days' written notice of intention to do so has been served upon City. Such insurance shall be maintained in force and effect by grantee during the term of this franchise and any renewal thereof.

(c) Upon receipt by City of notice, as provided in Section (b) above, of suspension, termination, cancellation or

reduction of the required liability insurance, grantee shall immediately cease all construction, use and operation under this franchise until the required insurance is again provided to the satisfaction of the City Attorney.

SECTION 10. FORFEITURE.

If grantee shall fail, neglect or refuse to comply with any of the terms or conditions of this grant, and if such failure, neglect or refusal shall continue for more than sixty (60) days after written demand by the City or its City Manager for compliance therewith, then, and in that event, the City by its legislative body, in addition to all rights and remedies allowed by this franchise or by law, may thereupon declare a forfeiture of the franchise, right and privilege granted by this ordinance; provided, however, that if such failure of compliance or fulfillment shall be beyond the cause or control of grantee then no such forfeiture shall be declared until such failure shall have continued for a period of six (6) months after grantee has power to comply. Upon any such forfeiture all the franchise rights and privileges of grantee hereby shall thereupon be at an end.

No provision herein made for the purpose of securing the enforcement of the terms and conditions of this franchise shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedures outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 11. CONSIDERATION FOR FRANCHISE.

As a consideration for the granting of this franchise, grantee shall pay to the City Treasurer concurrently with the grantee's acceptance of this franchise and annually thereafter, the sum of \$270.00. The foregoing payments and the agreements and obligations of grantee hereunder are deemed by the City Council to be an adequate consideration for the privilege hereby granted.

SECTION 12. TRANSFER OR ASSIGNMENT RESTRICTED.

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.

SECTION 13. DELIVERY OF NOTICE.

Any notice or communication from grantee to City shall be delivered by grantee either by personal service upon the City Clerk, or by registered mail to the City Clerk, in the office of the City Clerk, City Hall, Oakland, California.

NOTICE AND DIGEST

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.

DIGEST: SECTION 1. **DEFINITIONS.** This section defines certain terms used therein.

SECTION 2. **NATURE OF GRANT.** Grants to the grantee, as being in the public interest to avoid traffic congestion on 21st Street, the franchise to construct, maintain and operate a tunnel and bridge under and over 21st Street between Harrison Street and Valdez Street in certain described areas. Requires adequate protection against objects being thrown or falling from bridge. Requires approval of plans and specifications by City.

The proposed franchise shall be non-exclusive and is for a term of 70 years; provides for termination under certain conditions; prohibits charging of a toll for use of franchise property.

SECTION 3. **ENCUMBRANCES.** Requires payment by grantee of all taxes and encumbrances on the franchise property.

SECTION 4. **JOINT USE OF FACILITIES.** Permits City to use franchise property under certain conditions.

SECTION 5. **RESTORATION, MAINTENANCE AND CHANGES IN PUBLIC WAYS.** Regulates work on the franchise property which interferes with street or utility use of public property. Imposes liability on grantee for damage or destruction of public and private facilities.

SECTION 6. **PUBLIC IMPROVEMENTS.** Requires grantee to pay any increased cost of public improvement occasioned by granting of franchise.

SECTION 7. **INSTALLATION OF OTHER STREET FACILITIES.** Permits use of street facilities by others.

SECTION 8. **REMOVAL OF FACILITIES.** Requires removal of structure and improvements when franchise terminated.

SECTION 9. **INDEMNIFICATION AND INSURANCE.** Requires grantee to indemnify City for injuries and requires grantee to provide insurance.

SECTION 10. **FORFEITURE.** Provides for forfeiture of franchise under certain conditions.

SECTION 11. **CONSIDERATION FOR FRANCHISE.** Requires payment of \$270.00 per year by grantee to City.

SECTION 12. **TRANSFER OR ASSIGNMENT RESTRICTED.** Restricts assignment of franchise without approval by City.

SECTION 13. **DELIVERY OF NOTICE.** Provides for place and manner for notices to be delivered.

SECTION 14. **EFFECTIVE DATE.** Franchise shall become effective upon final adoption of ordinance.

SECTION 15. **ACCEPTANCE OF FRANCHISE.** Requires grantee to accept terms and conditions of franchise within 10 days after effective date.

This ordinance was introduced at the regular Council meeting Tuesday evening July 15, 1969, passed to print by 9 ayes 0 noes. Hearing on final adoption is set for regular Council meeting in Council Chambers, City Hall, Oakland, California, Thursday, July 24, 1969, at 10:30 A.M.

Three full copies are available for use and examination by the public in the office of the City Clerk.

GLADYS H. MURPHY, City Clerk.

No. 4228—July 21—(1f)

Affidavit of Publication

IN THE MATTER OF

CITY OF OAKLAND

CITY CLERK

Affidavit of Publication of

NOTICE AND DIGEST

STATE OF CALIFORNIA.

County of ALAMEDA

ss.

P. L. MERRITT

\$ 55 ⁵⁰

of said County, being duly sworn, says:

That he is and was during all the time herein mentioned a citizen of the United States, over the age of twenty-one years, not a party to or interested in the matter or action herein set forth.

That he is now and at all times hereinafter mentioned, was the authorized representative of THE TRIBUNE PUBLISHING CO., a corporation, the publisher and printer of the OAKLAND TRIBUNE, which was during all the time hereinafter mentioned, and now is a newspaper of general circulation, as decreed in the Superior Court of the State of California in and for the County of Alameda, Judgment No. 237798, December 4, 1951, and as that term is defined by Section 6000 of the Government Code, and as provided by said Section, is printed and published in the City of Oakland, County of Alameda, State of California, for the dissemination of local and telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not devoted to the interests or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination or for any number of such classes, professions, trades, callings, races or denomination.

That said newspaper has been established, printed and published at regular intervals, in the said City of Oakland, County of Alameda, State of California, for more than two years preceding the date of the first publication of the notice herein mentioned; that said notice describes and expresses in general terms, the purport and character of the notice intended to be given.

That the notice AND DIGEST

of which the annexed is a printed copy, was published in said newspaper, 1 TIME

to-wit: from the 21ST day of JULY A. D. 19 69,
to and until the -- day of -- A. D. 19 --,
both days inclusive, and as often during said period as said newspaper was published, to-wit:— ON THE 21ST DAY OF JULY 1969

Subscribed and sworn to before me this 22ND day of JULY A. D. 19 69

[Signature]

OFFICIAL SEAL
RAYMOND A. CHRISTIANER
NOTARY PUBLIC - CALIFORNIA
ALAMEDA, COUNTY
My Commission Expires Oct. 3, 1972

ADV. 50 2M 11-68

LEASE
Than The Best
Payments



to Choose From
ROADWAY
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AN ORDINANCE...
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No.

Affidavit

MATTER OF

CITY OF OAKLAND

CITY CLERK

Affidavit of Publication

OF

NOTICE AND DIGEST

Filed *July 23*, 1969

Edward H. Murphy
Clerk

By *Robert J. ...*
Deputy