



CITY OF OAKLAND

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OFFICE OF THE CITY CLERK  
OAKLAND

# SUPPLEMENTAL AGENDA REPORT

2012 SEP 20 PM 4:26

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Arturo M. Sanchez  
Deputy City Administrator

SUBJECT: Municipal Identification  
License Agreement

DATE: September 20, 2012

City Administrator  
Approval

Date

9/20/12

COUNCIL DISTRICT: City-Wide

## EXECUTIVE SUMMARY

Staff believes that the current real estate market would set the square foot rate for the plaza at a lower level than what currently exists based on the economy, recent Plaza activities and conditions which have stunted Plaza customer usage, and growing competition from other downtown businesses. However, the Council should be given an opportunity to consider this matter on its own merits and not mixed in within the context of the Municipal Identification discussion.

As a result staff is withdrawing its request for approval of a reduced rate lease with the municipal Identification Provider, SF Global. Staff will proceed to execute a lease at the pre-existing Council approved rates contained in Ordinance No. 12079 C.M.S. Staff will return to Council with a more detailed and robust report for the Finance Committee to consider regarding Plaza rates and policy.

City staff will enter and execute a lease with SF Global for 1000 square feet of office space to be located on the 6<sup>th</sup> Floor of the Dalziel Building, 250 Frank Ogawa Plaza, at the Council approved rate of \$1.50 a square foot. At \$1.50 a square foot for 1000 square feet the monthly rent will be \$1500 a month, for an annual total of \$18,000. Tenants will be responsible for tenant improvements, maintenance, and utilities, including telephone and internet service. Attached to this staff report please find Ordinance No. 12079 C.M.S and a copy of the lease agreement that will be executed between SF Global and the City of Oakland, pursuant to Ordinance No. 12079 C.M.S.

## DISCUSSION

As indicated in the September 13, 2012 Agenda Report, during discussions with Real Estate Division staff, it became apparent that the current tenants of the City Center Complex have been suffering business losses due to a varied number of factors from Occupy Oakland events to the economy. The Real Estate staff had indicated that they believe it would behoove the City to

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consider reducing the lease rates for current occupants by 30% as a way to retain existing tenants and a show of good faith and support. Staff understands that the Real Estate division staff would implement a similar rate to amend current leases if this is approved by Council. At this juncture staff will return later this fall with a comprehensive staff report that informs the Council to facilitate policy this discussion and an opportunity to more fully consider the impacts of this reduction and modification to the Plaza lease policy. Staff did not include the more robust discussion with its initial request because staff wanted to have the Municipal Identification discussions separately in order to allow Council to make informed independent decisions.

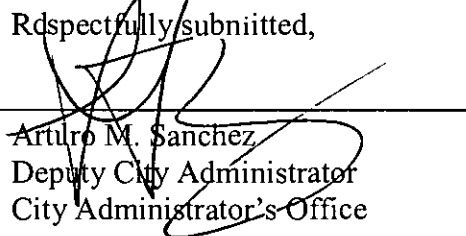
However in light of the larger significance, and the need to provide Council with a broader context and discussion, staff now believes it is best to return to the Finance Committee with a detailed report regarding the Plaza health, economics, and a plan to keep the Plaza economy sustainable.

### COST SUMMARY/IMPLICATIONS

There is no fiscal impact caused by the program, as the program is intended to be managed in a cost neutral/recovery manner by invoicing the provider, SF Global, for actual time spent by staff on a monthly basis. Any lease executed with SF Global will be executed at current market rates.

For questions regarding this report, please contact Arturo M. Sanchez, Deputy City Administrator at (510) 238-7542.

Respectfully submitted,



Arturo M. Sanchez  
Deputy City Administrator  
City Administrator's Office

#### Attachments – (2)

- Ordinance No. 12079 C.M.S.
- Draft Lease Agreement with SF Global

ORDINANCE NO. 12079 C. M. S.ORDINANCE AUTHORIZING THE CITY MANAGER TO  
NEGOTIATE AND EXECUTE TENANT LEASES IN THE  
CITY ADMINISTRATION BUILDING COMPLEX

WHEREAS, the City of Oakland owns certain property in the City Administration Building Complex currently known as the Lionel J. Wilson Building, the Dalziel Building, the Plaza Building, City Hall and the Frank H. Ogawa Plaza; and

WHEREAS, the City desires to lease certain portions of the Dalziel, Lionel J. Wilson and

Plaza Buildings to retail and office tenants and to rent space in City Hall and in the Frank H. Ogawa Plaza for short term use; and

WHEREAS, to provide for the timely negotiation and execution of tenant leases; now, therefore,

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

Section 1. The City Manager or his designee is hereby authorized to negotiate and execute tenant leases for space in the City Administration Building Complex.

Section 2. The City Manager may only execute leases that fall within the following parameters:

- A. Applicable leases for the Dalziel and Plaza Buildings shall be in compliance with the Wetmore/Pardee Relocation Agreement dated April 20, 1995.
- B. Minimum monthly triple net rent for non-Wetmore/Pardee Relocation Agreement retail tenants in the Dalziel Building shall be not less than \$1.25 per square foot, excluding any rent credits for tenant improvements.
- C. Minimum monthly triple net rent for retail tenants in the Lionel J. Wilson Building shall be not less than \$1.25 per square foot, excluding any rent credits for tenant improvements.
- D. Minimum monthly gross rent for office tenants in the Dalziel Building shall be not less than \$1.50 per square foot excluding any rent credits for tenant improvements and a credit for possessory interest.
- E. Maximum tenant allowances for the Lionel J. Wilson Building retail and Dalziel retail and office spaces shall be \$25.00 per square foot.
- F. Minimum lease term shall be three years for retail and office space, unless the City Manager determines that it would be in the best interest of the City of Oakland to execute month-to-month leases for certain spaces.

Section 3. All leases executed by the City Manager shall be approved by the Office of the City Attorney as to form and legality and a copy will be placed on file in the Office of the City Clerk.

*Introduced = 7-21-98*

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 28 1998, 19    

PASSED BY THE FOLLOWING VOTE:

AYES--BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES, and PRESIDENT HARRIS *-9*

NOES-- *None*

ABSENT-- *None*

ABSTENTION-- *None*

ATTEST



CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement" or "License") is entered into as of September \_\_\_\_, 2012, by and between: The CITY OF OAKALND, a municipal corporation (hereinafter referred to as "Licensor"), and SF Global, LLC, a California limited liability company (hereinafter referred to as "Licensee").

### RECITALS:

A. **WHEREAS**, Licensor has possession of a the approximately square feet of 6<sup>th</sup> floor commercial office space, in a portion of the Dalziel Building situated upon certain real property located in the City of Oakland at 250 Frank H. Ogawa Plaza in the City of Oakland, County of Alameda, State of California (the "Licensor's Property"), shown on Exhibit "A."

B. **WHEREAS**, Licensee located at \_\_\_\_\_, wishes to obtain a license to use the approximately 1,000 square feet of commercial office space, on the 6<sup>th</sup> floor of 250 Frank H. Ogawa Plaza (Dalziel Building), Oakland, CA 94612 (the "Premises") for operation of a municipal identification program.

C. **WHEREAS**, Licensor and Licensee wish to enter into an agreement for the use of the Premises by Licensee, its agents, customers, and contractors;

**NOW THEREFORE**, the parties agree as follows:

### 1. GRANT OF LICENSE.

1.1 Licensor hereby grants to Licensee a revocable license for exclusive use of the Premises, subject to the agreements, conditions and provisions set forth in this Agreement. Licensee acknowledges that it will be accepting the Premises in its "As-Is" condition.

## 2. LICENSE PERIOD

2.1 The term of this Agreement shall commence on **October 1, 2012** at 6:00 am (the "License Commencement Date") and shall continue thereafter until **March 31, 2014** at 6:00 pm (the "Termination Date"), continuing thereafter on a month to month basis, unless sooner terminated as hereinafter provided. Licensor may terminate this Agreement by giving written notice to Licensee at least one hundred eighty (180) days prior to the intended termination date. Licensee may terminate the Agreement by giving written notice to licensor at least thirty (30) days prior to the intended termination date, provided that Licensee is not in breach of the terms of this Agreement.

2.2 On the License Commencement Date, Licensee shall take possession of the Premises.

## 3. LICENSE PAYMENT

3.1 The License Payment shall be **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** per month. License Payment shall be delivered to: **City of Oakland, Real Estate Services Division, 250 Frank Ogawa Plaza, Fourth Floor, Oakland, CA 94612, Attn: John Monetta**. The first License payment shall be due fourteen (14) calendar days after completion of tenant improvements. License payments shall be due monthly, on the first day of each month.

3.2 Licensee acknowledges that the Licensor incurs collection and administrative costs associated with pursuing delinquent license payments. Licensee and Licensor hereby agree that if the license payment for any month is not received by the Licensor by 5:00 p.m. on the fifth (5th) day of the month, Licensee shall pay a late charge of **TWENTY-FIVE DOLLARS (\$25.00)**. If the late charge is not paid in a timely fashion, the amount owed will be added to the succeeding month's license payment.

4. **USE AND TIME OF USE**

4.1 Unless otherwise agreed to by Licensor in writing, the Premises may be used only by Licensee and Licensee's agents, customers, and contractors for normal and customary activities and functions consistent with a municipal identification program.

4.2 Permitted times of use will be Monday through Sunday from 6am to 6am.

5. Intentionally Deleted

6. **ALTERATIONS AND ADDITIONS**

6.1 Licensee shall not, without Licensor's prior written consent, make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding \$5,000 per year in total costs during the term of this Lease. In any event, Licensee shall make no change or alteration to the exterior of the Premises without Licensor's prior written consent. Licensor may require that Licensee remove any or all of said alterations, improvements, additions or Utility Installations and require Licensee to provide Licensor, at Licensee's sole cost and expense, with a payment and completion bond in an amount equal to one and one-half times the estimated cost of removal of such improvements, to insure Licensor against any liability for mechanics' and materialmen's liens and to insure completion of the work. Should Licensee make any alterations, improvements, additions or Utility Installations without the prior approval of Licensor, Licensor may require that Licensee remove same.

6.2 Requests for any alterations, improvements, additions or Utility Installations in, on, or about the Premises that Licensee shall desire to make and which require the consent of the Licensor shall be presented to Licensor in written form, with proposed detailed plans. If Licensor shall give its consent, the consent shall be deemed conditioned upon Licensee acquiring necessary permits from appropriate governmental agencies, the furnishing of a copy thereof to Licensor prior to the commencement of the work, and the compliance by Licensee with all conditions of said permits.

6.3 Should Licensor consent to alterations of the Premises, Licensee shall submit to

Licensors all plans and specifications which shall be subject to the Licensor's prior written approval, which shall not be unreasonably withheld or delayed. All approved plans and specifications shall be in compliance with all laws, rules, permits and authorizations from all pertinent governmental authorities and quasi-governmental authorities, including, but not limited to, those required under the ADA.

6.4 Unless Licensor requires their removal, as set forth in paragraph 6.1, all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Licensee), made on the Premises, shall become the property of Licensor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this paragraph, Licensee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Licensee and may be removed by Licensee.

## **7. PREMISES AREA MAINTENANCE COSTS, REPAIR AND UTILITIES**

7.1 Licensor represents that upon the Rent Commencement Date, the Premises comply with all applicable City codes and other applicable laws including ADA and State accessibility codes. Licensee shall maintain the Premises, all improvements constructed by Licensee and Licensee's furniture, fixtures, equipment and personal property installed by Licensee in the Premises in good and clean condition, and working order.

7.2 Licensee shall at all times during the license term, at Licensee's sole expense maintain the Premises in clean and safe condition for the use contemplated in this Agreement.

## **8. SIGNS**

8.1 Licensee shall have the right to install signs, at her/his sole cost, subject to the Licensor's review and approval, provided that said signs conform to requirements of the City of Oakland ("Exhibit B").



**9. TAXES**

9.1 Licensee shall pay its assessed Possessory Interest Tax to Alameda County on an annual basis. The Licensor is not responsible for determining how this possessory interest is calculated by Alameda County.

**10. REMOVAL OF ALTERATIONS**

10.1 At the termination of the license, Licensee will be required to immediately remove all Tenant Improvements and other property of Licensee from the Premises and restore the Premises to substantially the same condition as prior to occupancy.

**11. SUBLETTING AND ASSIGNMENT**

11.1 Licensee may not sublet or assign its rights under the License without Licensor's prior written approval, which shall be in the sole discretion of Licensor.

**12. DEFAULTS BY LICENSE OR LICENSOR**

12.1 Licensee shall be deemed in default if Licensee fails to cure any monetary obligation within five (5) days after written notice from Licensor, and Licensee shall be deemed in default of a non-monetary obligation after five (5) days written notice from Licensor, except that, if the non-monetary obligation is such that it takes longer than thirty (30) days to cure, Licensee shall not be deemed in default if Licensee commences the cure within such thirty (30) day period and completes the cure within fifteen (15) days thereafter.

**13. HAZARDOUS MATERIALS**

13.1 Prior to the Rent Commencement Date, Licensee shall have the right to make any tests and/or studies Licensee deems necessary with respect to any hazardous materials in, on or about the

Premises. If found, Licensee shall meet with the Licensor to determine if such hazardous material poses a health and safety issue that may require its removal or remediation. Licensor shall provide Licensee with copies of any hazardous material tests it or any other party has conducted on the Premises or Building, in its possession. Licensor shall not have any obligation to remove or remediate hazardous materials and shall retain the right to immediately terminate this license if continued use of the Premises by Licensee requires such removal or remediation. Licensor shall not be responsible for any costs incurred by Licensee prior to such termination or as the result of such termination.

**14. LICENSEE'S BROKER COMMISSION**

**14.1** In the event a license is executed between Licensor and Licensee as to the Premises, Licensor is not responsible for payment of any commission to any person. Any payment of a commission is the sole responsibility of Licensee.

**15. RELOCATION**

**15.1** Licensee understands and acknowledges that, as an occupant, that this Agreement or any future license agreement creates no rights under federal, state or local law to receive relocation benefits or any advisory assistance upon termination of any future license agreement. Licensee hereby waives and releases the Licensor from any claims for relocation benefits or assistance upon termination of any current or future license agreement under federal, state, or local relocation law.

**16. INDEMNIFICATION**

**16.1** Licensee shall protect, defend, indemnify and hold harmless the Licensor, its respective Councilmembers, officers, employees, contractors and agents from any and all actions, causes of action, claims, losses, expenses (including reasonable attorney's fees and costs), or liability or claims for damages on account of damage of property or injury to or death of persons, including Licensee or Licensee's employees,

patrons, agents, customers, business invitees and/or any other persons, or damage to property of any kind whatsoever and to whomsoever belonging, including Licensee or Licensee's employees and patrons, agents, customers, business invitees and/or any other persons, from any cause resulting from the operations, construction by Licensee, and/or use of any City area by Licensee or Licensee's employees, patrons, agents, customers, business invitees and/or any other persons, except to the extent caused by Licensor's negligence or willful misconduct.

**17. DUTY TO REPAIR OR RECONSTRUCT THE PREMISES**

17.1 In the event of a casualty such as fire, flood or earth quake, Licensor shall be under no obligation to repair or reconstruct the Premises or the improvements to the Premises.

**18. AUTHORITY**

18.1 All individuals executing this Agreement on behalf of the parties to this Agreement represent and warrant that they are authorized to execute and deliver this License on behalf of their respective party to this Agreement and that this License is binding upon said party to this Agreement.

**19. MISCELLANEOUS**

19.1 Expenses of Enforcement. If there are any legal or arbitration proceedings between Licensor and Licensee to enforce any provision of this Agreement or to protect or establish any right or remedy of either Licensor or Licensee hereunder, the unsuccessful party shall pay to the prevailing party all reasonable and customary costs and expenses, including reasonable attorney's fees (including, without limitation, the reasonable value of any in-house counsel services) incurred by such prevailing party in such proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such proceeding or appeal, such costs, expenses, and attorney's fees (including the reasonable value of in-house counsel services) shall be determined by the court or arbitration panel handling the proceeding and shall be included in

19.4 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto, or by a third person, to create the relationship of principal and agent or of partnership or of joint venture or of trustee and beneficiary or of any association between Licensor and

remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such party shall not impair such party's standing to exercise any other right or remedy.

19.9            Exhibits. All Exhibits attached hereto and referred to herein are hereby incorporated by reference as fully as if set forth herein.

19.10           Force Maieure. Each party shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by any of the following (sometimes called "Force Majeure" in this Agreement): fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, transportation, strikes, lockouts, action of labor unions, laws, orders or moratoriums of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party. In the event of a "force majeure," either Party may terminate this license within twenty-four (24) hours after delivering notice to the other party as provided in Sec. 19.7.

19.11           Further Assurances. Licensor and Licensee shall execute, on request, all other documents and instruments as the other party shall reasonably request, which are reasonably required to carry out obligations imposed under, and affect the purposes of, this Agreement.

19.12           Counterparts: Facsimile. This Agreement may be executed by facsimile and/or in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

## 20.    **INSURANCE REQUIREMENTS**

20.1            Licensee at its sole cost and expense, shall insure its activities in connection with this Lease and obtain, keep in force and maintain insurance as follows:

(a) Comprehensive or Commercial Form General Liability Insurance (contractual liability and fire legal liability included) with minimum limits as follows:

1. Each Occurrence  
One Million Dollars (\$1,000,000)
2. Products/Completed Operations Aggregate  
One Million Dollars (\$1,000,000)
3. General Aggregate  
Two Million Dollars (\$2,000,000)

However, if such insurance is written on a claims-made form, following termination of this Agreement coverage shall survive for a period of not less than three years. Coverage shall provide for a retroactive date of placement coinciding with the License Commencement Date of this Agreement.

(b) Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of Licensee and Licensor against other insurable risks relating to performance.

The insurance and the overages referred to under (a) of this paragraph shall be endorsed to include the Licensor as an additional insured. Such a provision, however, shall apply only in proportion to and to the extent of the negligent acts or omissions of Licensee, its officers, agents, employees; or any other person or persons under Licensee's direct supervision and control. Licensor, upon the execution of this License Agreement, shall furnish Licensor with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further make provisions for thirty (30) day advance written notice to Licensor of any modification, change or cancellation of any of the above insurance coverage(s).

The coverage(s) required herein shall not limit the liability of Licensor, its officers, agents, or employees.

**21. COMMON AREA MAINTENANCE (CAM) REPAIR AND UTILITIES**

21.1 Licensee shall maintain the interior of the Premises, all Licensee Improvements constructed by Licensee and Licensee's furniture, fixtures, equipment and personal property installed by Licensee in the Premises.

21.2 Licensee shall at all times during the license term, at Licensee's sole expense, maintain the Premises in clean and safe condition for the use contemplated in this Agreement.

21.3 The Licensor shall provide and maintain services to the Premises to include the roof, building exterior and foundations, structural portions of the Building and the Premises, rain-gutters, flashings, downspouts, utility services currently present (except telecommunications), sidewalk and maintenance repair, sidewalk sweeping, exterior common area signage and tenant directories, exterior common area electrical lighting facilities, painting and decorating, exterior window washing and window frame maintenance and repair services, outdoor landscaping, storm drainage systems, police or security services, exterior trash and debris removal, exterior common area cleaning, utility services and management services unless such maintenance and repair are caused in part or in whole by the act, neglect, fault or omission of any duty by Licensee, its agents, officers, employees, contractors, servants, invitees or guests, in which case Licensee shall pay to City the reasonable costs for such maintenance or repairs.

{Signatures on Following Page}

IN WITNESS WHEREOF the parties hereto have caused this License Agreement to be executed as of the date first set forth above.

**LICENSEE:**

**SF GLOBAL, LLC**, a California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LICENSOR:**

**CITY OF OAKLAND**

By: \_\_\_\_\_

Its: \_\_\_\_\_