



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Economic and
Workforce Development
Department

SUBJECT: Henry J. Kaiser Convention Center -
Lease Disposition and Development
Agreement (LDDA) Second
Amendment

DATE: November 19, 2020

City Administrator Approval 

Date: November 19, 2020

RECOMMENDATION

Staff Recommends That The Council Adopt The Following Pieces Of Legislation For The Real Property Located At 10 Tenth Street And Commonly Known As The Henry J. Kaiser Convention Center (“Property” or “Kaiser Convention Center”):

- (1) An Ordinance That Authorizes The City Administrator Or Designee To Negotiate And Execute A Second Amendment To The Lease Disposition And Development Agreement Between The City Of Oakland (“City”) And Oakland Civic, LLC (“Oakland Civic”) (“LDDA”), And Related Documents, For Renovation And Rehabilitation Of The Property That:
 - (A) (I) Modifies Certain Closing Requirements, Including Eliminating Non-Binding Letters of Intent Pre-Lease Requirements And Surety Bonds And Increasing Required Guarantor Minimum Net Worth From 25 Percent To 50 Percent, And (II) Adds Notice and Cure Rights for Tax Credit Investors; And
 - (B) Makes Amendments To The Form Of The Lease Attached As Exhibit C To The LDDA To:
 - (I) Revise And Insert Definitions Of Sponsorship/Donation Agreements And Naming Rights, As Applicable, And Specify When Proceeds Of Such Agreements Will Be Considered As Gross Income For Calculation Of Rent Participation;
 - (II) (A) Document Rights Of Oakland Civic And Calvin Simmons Theatre (“CST”) To Enter Into An Event Use/Sponsorship Agreement With Kaiser Foundation

- Health Plan, Inc. (“Kaiser Foundation”) For A Term Of Up To 20 Years, For A Maximum Payment Of \$1.5 Million To Be Used For Renovation Of The Theatre Consistent With The LDDA And The Lease, And Related Documents, And (B) Authorize The City Administrator Or Designee To Negotiate and Enter Into A Recognition Agreement With Kaiser Foundation For Such Sponsorship Agreement, Subject To Certain Termination Rights And City Protections;**
- (III) Document Oakland Civic’s Consent To The City Entering Into A Naming Rights Agreement And Related Documents With Kaiser Foundation For The Property; And**
- (IV) Make Minor Revisions To (A) Add Notice and Cure Rights for Tax Credit Investors; and (B) Correspond With The Agreed-Upon Community Benefits Agreement Between Oakland Civic, CST And Black Arts Movement And Business District Community Development Corporation;**
- (2) A Resolution Authorizing The City Administrator Or Designee To Negotiate And Enter Into A Naming Rights Agreement And Related Documents With Kaiser Foundation, Granting Kaiser Foundation The Right To Name The Property And Install Certain Exterior And Interior Signage For A Term Of Up To 99 Years, Subject To Certain Termination Rights, For A Lump Sum Payment Of \$12 Million, Commencing At Lease Execution;**
- (3) A Resolution Awarding A Grant To CST, Or A Related Entity or Affiliate, For A Term of 30 Months To Be Used For The Renovation Of The Calvin Simmons Theatre And Related Improvements, Consistent With The LDDA Between the City And Oakland Civic, In An Amount Not To Exceed \$12 Million, Disbursable By The City To CST In Progress Payments Subject To Certain Restrictions And Receipt Of Funds Pursuant To The Terms Of A Naming Rights Agreement For The Property.**

EXECUTIVE SUMMARY

Staff seeks City Council authorization to negotiate and execute a Second Amendment (Second Amendment) to a Lease Disposition and Development Agreement (LDDA), and related documents, between the City and Oakland Civic, an affiliate of Orton Development, Inc. (Orton or the Developer), for the renovation of the Kaiser Convention Center (Property). Staff also seeks authorization to negotiate and execute a Naming Rights Agreement (the Naming Agreement) with Kaiser Foundation for up to 99 years for a payment of \$12 million, and to grant these funds (the Grant Agreement), upon receipt from Kaiser Foundation, to Calvin Simmons Theatre (CST), the non-profit operator of the Calvin Simmons Theatre (Theatre) to provide additional funding to complete the renovation of the Theatre and related Property improvements.

The Second Amendment and related Recognition, Naming and Grant Agreements will enable the Developer to secure necessary financing, which has become more challenging during the COVID-19 pandemic. Once the financing is secured, the Developer can sign the Lease in December 2020 and take possession of the Property to begin the much-needed restoration of this historic City asset.

BACKGROUND / LEGISLATIVE HISTORY

On December 30, 2019, pursuant to City Council Ordinance No. 13556 C.M.S., adopted on July 16, 2019, the City and Oakland Civic executed an LDDA for the renovation of the historic Kaiser Convention Center. The LDDA includes certain conditions that Oakland Civic must satisfy before the City will enter into an up to 99-year Lease for the Property.

On September 25, 2020, the City and Oakland Civic executed a First Administrative Amendment to the LDDA extending Oakland Civic's due diligence completion date from September 26th to December 25th, 2020. Oakland Civic received an additional 90 days to determine Project feasibility because the Kaiser Convention Center was inaccessible at certain times in the spring and summer due to the COVID-19 pandemic and several burglaries at the building.

Since execution of the LDDA in December 2019, Oakland Civic has made progress towards starting Project construction and now plans to sign the Lease with the City in December of this year, one year prior to the scheduled transfer date. Oakland Civic is working with historic and new market tax credit investors that must close the transaction for tax purposes this year.

ANALYSIS AND POLICY ALTERNATIVES

Pursuant to the terms of the LDDA, Oakland Civic must satisfy certain requirements before the execution of the Lease with the City for the Property. While the LDDA grants Oakland Civic up to 24 months from the effective date of the LDDA to sign the Lease and start Project construction, Oakland Civic has expressed a strong desire to take possession of the building before December 31st of this year in order to secure available tax credit investor financing that must be committed by the end of 2020. Oakland Civic is also reducing Project costs to maintain feasibility. In pursuit of these goals, Oakland Civic has requested that the City change certain conditions related to tenant letters of intent (LOIs) to lease space in the building, surety bonds, the net worth of the guarantor and the Community Benefits Agreement (CBA), and to recognize Oakland Civic's and/or CST's right to enter into sponsorship and donor financing in order to raise private funds for the renovation of the Kaiser Convention Center.

The proposed Second Amendment to the LDDA modifies certain requirements that must be satisfied before the execution of the Lease with the City for the development and operation of the Project. These changes include: (1) eliminating a requirement for Oakland Civic to provide non-binding LOIs from third-party tenants for the Project, (2) increasing the required minimum net worth of the guarantor providing a project completion guaranty and eliminating performance and payment bond requirements, (3) adding notice and cure rights for tax credit investors, and (4) making minor revisions to the form of the Lease.

Furthermore, staff is seeking authorization to enter into a Naming Agreement and related documents with Kaiser Foundation, granting Kaiser Foundation the right to name the Property and install certain exterior and interior signage for a term of up to 99 years, subject to certain termination rights, for a payment of \$12 million, and to enter into a Grant Agreement with CST, the nonprofit operator of the Theatre, to provide additional funding to complete the renovation of the Theatre and related Property improvements.

1. Eliminating the Letters of Intent Requirement

The COVID-19 pandemic has affected Oakland Civic's ability to provide non-binding LOIs as a condition of conveying the Property through the Lease. The pandemic has caused economic hardship for Oakland Civic's target market of arts and nonprofit organizations since many of these groups had to close operations per local government mandates. Many owners of these organizations are not looking for new office space until a clearer picture about the post-pandemic office landscape emerges. While Oakland Civic is confident of the long-term market demand for the Project, they are not able to obtain non-binding LOIs for 31,000 square feet out of a total of 76,000 square feet of leasable area in the arena and basement currently required by the LDDA prior to the closing date. The renovation of the Kaiser Convention Center is anticipated to take approximately 24 months and Oakland Civic believes that this period will provide sufficient time for the federal and state government to provide arts and nonprofit organizations with the necessary guidance and tools to reopen and recommence their search for new office space. Furthermore, Oakland Civic and its debt and equity partners are prepared to move forward with renovation of the Project without LOIs. Therefore, Oakland Civic has requested that the LDDA be amended to delete the requirement related to non-binding LOIs. While the elimination of the pre-leasing requirement presents the City with some uncertainty about the marketability of the Project, Oakland Civic maintains that it has continued to receive interest from prospective tenants.

Given the non-binding nature of the required letters, staff recommends that the requirement be eliminated. If Oakland Civic is unable to lease the Property during and even immediately after completing construction, Oakland Civic will still be in charge of maintaining a fully renovated building. If the request to delete the requirement is not granted, Oakland Civic must continue to market the project until it can secure the LOIs. This delay will jeopardize project financing and continue to leave the City in charge of securing and maintaining the building.

2. Increase Net Worth of Guarantor and Eliminate Bond Requirements

The LDDA requires Oakland Civic to provide a Completion Guaranty (Guaranty) from a financially strong guarantor and performance and payment bonds to ensure completion of the Project in the event Oakland Civic, the general contractor or its subcontractors can no longer perform according to the terms of their respective contracts. Seeking savings to reduce project costs, Oakland Civic has requested that the City eliminate the surety bond requirement and, in return, has offered an increase in the net worth requirement of the guarantor of the Guaranty.

The Guaranty is an enforceable pledge by a third party with adequate resources to complete the Project per the LDDA terms, if Oakland Civic is unable to meet its obligations. The guarantor, often a developer's parent company, must have significant assets and the financial wherewithal to complete the Project in its entirety. The LDDA currently requires that the guarantor providing the Guaranty, which is J.R. Orton III, has a net worth of at least 25 percent of the estimated Project costs, excluding any developer equity.

Surety bonds, also known as performance and payment bonds, are purchased by a developer to ensure that all subcontractors and suppliers on the job are paid, and the job is completed in the event the general contractor cannot meet its contractual obligations. If called upon, surety bonds do not directly benefit the City because failure to pay workers and suppliers is a liability against the developer and the contractor, not the City. However, the combination of the Guaranty and the performance and payment bonds may offer a double layer of security for the City, often likened to "belt and suspenders", assuring a means to complete the Project if the general contractor and developer fail.

Oakland Civic has provided an estimated cost of the bonding requirement of \$460,000 and has requested that the surety bond requirement be eliminated to save costs in exchange for a significant increase in the minimum net worth of the guarantor providing the Guaranty – from 25 percent of the estimated Project costs (less Developer equity) to 50 percent. If approved, the net worth requirement for the guarantor will increase from \$7.75 million to \$15.5 million, which adds assurance that the guarantor has the financial strength to complete the Project if Oakland Civic defaults on its obligations.

Eliminating the bond requirement will remove an extra level of assurance that contractors and suppliers get paid, perhaps avoiding events that could lead to delays or foreclosure on the Project by the lender. However, if foreclosure were to happen, the City would call on the Guarantor to complete the Project. While eliminating the surety bonds removes a safeguard that would provide the City with additional protection to ensure Project completion, staff believes that the Guaranty posted by J.R. Orton III is sufficient for this purpose.

The City has waived surety bonds for the residential tower developed by Boston Properties on Parcel B of the MacArthur Bay Area Rapid Transit (BART) Transit Village and for the Alexan Webster, another residential mixed-use building that was developed by Trammell Crow Residential. Both projects were completed.

Staff recommends that the net worth of the Guarantor be increased, and that the bonding requirement be eliminated to save Project costs.

3. Notice And Cure Rights For Tax Credit Investors

The Project financing structure includes the syndication of New Markets and Historic Tax Credits, which was contemplated in the LDDA and the Lease. The current form of the Lease only includes notice and cure rights for lenders, but not for tax credit investors. As a result, to facilitate such financing, the LDDA and the Lease need to be amended to add notice and cure rights for tax credit investors to permit such entities to cure any default of Oakland Civic under the terms of the Lease in order to preserve their investments in the Project. Staff recommends

approval of this addition to facilitate the tax credits investments, which are an essential funding source for the Project.

4. Minor Lease Modifications

Sponsorship Agreement and Recognition Agreement

Oakland Civic and CST plan to enter into sponsorship/donation agreements with third parties, including Kaiser Foundation, to attract additional funding for the renovation of the Theatre and the Property. Such agreements will be limited to events (both indoor, such as conferences or Theatre performances, and outdoor, such as farmer's markets), and naming interior spaces to recognize sponsors or donors.

Under the LDDA terms, while Oakland Civic may rename components of the interior of the building to recognize sponsors or donors, it cannot change the name of the Theatre. Moreover, any sponsorship funds or donations received by Oakland Civic or its affiliate that are not applied to the renovation or the building, including the Theatre, or to Theatre operations, will be considered as gross income and be subject to the participation rent provisions of the Lease.

CST has already secured a sponsorship agreement (Sponsorship Agreement) with Kaiser Foundation for a maximum payment of \$1.5 million for a term of up to 20 years for the renovation of the Theatre. Therefore, the Lease must be amended to clarify a reference to naming rights in the participation rent provisions of the Lease by adding a definition of Sponsorship Agreement and replacing the reference to naming rights with Sponsorship Agreement. Generally, the Sponsorship Agreement between CST and Kaiser Foundation permits Kaiser Foundation to sponsor events, such as health and fitness programs for project tenants, at the Property, negotiate with food service providers to include "Kaiser Healthy Picks" menu items, sponsor a weekly Farmer's Market and other community health events on the Plaza.

The Lease must be modified further to document the rights of Oakland Civic and/or CST to enter into the Sponsorship Agreement with Kaiser Foundation and to authorize the City to entering into a Recognition Agreement with Kaiser Foundation for the Sponsorship Agreement. The Recognition Agreement with Kaiser Foundation would generally recognize Kaiser Foundation's rights under the Sponsorship Agreement for the 20-year term, unless Oakland Civic defaulted on the Lease and the Project could not be transferred to another qualified entity.

Staff recommends that the City modify and clarify the Lease in this regard.

The Community Benefits Agreement (CBA) Terms

Per the LDDA, Oakland Civic must submit a fully executed and legally binding CBA prior to execution of the Lease. Oakland Civic conducted extensive negotiations with representatives of the Black Arts Movement Business District Community Development Corporation (BAMBD CDC), a member of the Community Coalition for Equitable Development, resulting in a CBA that meets the minimum terms set forth in the LDDA. The negotiated CBA terms require two minor revisions to the provisions of the form of the Lease attached as Exhibit C to the LDDA pertaining to the CBA. One change requires that the City must consider, instead of may consider, whether

to enter into a nondisturbance agreement with Oakland Civic's subtenants if their subleased premises are less than 5,000 square feet, and the other change increases the composition of the responsible community advisory board for performing duties designated by the CBA and for overseeing the Project's fulfillment of community benefits commitments required by the CBA, including administration of an annual fund designated to provide subsidies for local arts and nonprofit organizations.

Staff recommends implementing these changes to conform to the CBA.

5. Naming Rights and Grant to Calvin Simmons Theatre (CST)

To raise additional funds for the renovation of the Property, the City and Kaiser Foundation will enter into a Naming Agreement, granting Kaiser Foundation the right to name the Property and install certain exterior and interior signage for a term of up to 99 years, subject to certain termination rights, for a payment of \$12 million, payable at execution. A term sheet for the Naming Agreement is attached as **Attachment A**. The City will use the \$12 million proceeds and award a 30-month grant to CST and place it in escrow for reimbursement of costs related to the renovation and furnishing of the Theatre, the terrace, the promenade, the initial installation of the signs permitted under the Naming Agreement, and the Theatre's pro rata share set forth in the reimbursement request of building infrastructure improvements such as sheer walls, heating, ventilation and air conditioning (HVAC) and electrical systems. Grant proceeds will only be disbursed upon receipt by the City of the payment from Kaiser Foundation for the naming rights.

The Naming Agreement will grant Kaiser Foundation the exclusive right and license to name the Property for 99 years in the following locations: (i) on the two Marquee signs to be erected on the top of the building on the Tenth Street side and the side of the building facing Lake Merritt; (ii) at the outdoor Lakeview Plaza and Promenade and the north facing Lakeview Terrace deck, and (iii) on the Tenth Street façade in the location of the existing "Henry J. Kaiser Convention Center" sign. All new signs installed must include "Henry J. Kaiser," "HJK" or "Kaiser," and any one of the following: Center, Arts Center, Convention Center, Performing Arts Center, Events Center, Theatre, Theatre Complex, Community Center or Conference Center.

The Plaza name must include "Henry J. Kaiser," "HJK," "Kaiser" or "Thrive," and any one of the following: "Plaza" or "Promenade". All signs must be in compliance with applicable laws. Kaiser Foundation will be responsible for all costs associated with the design, production and installation of the signage, while Oakland Civic and/or CST will maintain the signage.

Policy Alternatives

Instead of approving the Second Amendment, an alternative policy direction would be for the City Council to only grant a few of requested changes to the LDDA. For example, the City could agree to reduce the bonding requirement and to the increase in the net worth of the guarantor, but not waive the LOIs. This direction would delay or even prevent renovation of the Project since Oakland Civic would not be able to satisfy the pre-conveyance conditions of the LDDA.

The City Council could also choose not to authorize the Naming Rights Agreement with Kaiser Foundation or reduce the proposed grant to Oakland Civic. Each one of those alternative actions would create a financing gap for the Project and likely prevent the Project from proceeding.

FISCAL IMPACT

The payment by Kaiser Foundation in an amount of \$12 million, pursuant to the terms of the Naming Agreement, shall be deposited into the Miscellaneous Capital Projects Fund (5999), Central District Redevelopment Organization (85245), Other Revenue: Other Income Account (48727), in a Project to be determined, Downtown Redevelopment Program (SC13). The funds for the Grant to CST in an amount of \$12 million will be appropriated from the Miscellaneous Capital Projects Fund (5999), Central District Redevelopment Organization (85245), in the same new project to be determined, Downtown Redevelopment Program (SC13) and deposited in escrow.

PUBLIC OUTREACH / INTEREST

No public outreach or coordination is required for this legislation amending an existing agreement, other than the required posting on the City's website.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The Project will reactivate a vacant, historically significant building that will generate long-term tax revenues and rent for the City.

Environmental: Reusing existing historic buildings in built-out cities is one of the most powerful sustainable building strategies available. The Project will incorporate green building and energy efficient components and will increase the amount of new public open space and permeable surfaces around the building. The location of the Project in proximity to major public transportation nodes will likely encourage Project visitors and workers to use Bay Area Rapid Transit (BART) and Alameda-Contra Costa (AC) Transit. Oakland Civic will seek Leadership in Energy and Environmental Design (LEED) Silver certification for the renovation and operation of the building.

Race & Equity: The Developer will comply with the City's local employment and business programs, pay prevailing wages during construction and living wages for staff operating the building upon completion of the rehabilitation work. Oakland Civic has had extensive negotiations with representatives of the BAMBD CDC, resulting in a CBA that reflects community input and meets the minimum terms set forth in the LDDA. The CBA, which must be executed prior to the signing of the Lease, advances community benefit objectives by creating long-term affordable space for artists and nonprofit organizations from communities and neighborhoods surrounding the Project, which allows for long-term economic equity and opportunity. Agreement was reached on the following main objectives:

- Ensuring long-term affordability of rentable space in the building
- Subsidizing Theatre production and office space costs
- Providing financial assistance to facilitate community presence and participation in Theatre and event space programming, and
- Establishing community presence on a seven-member Community Advisory Board responsible for performing duties designated by the CBA and for overseeing the Project's fulfillment of community benefits commitments required by the CBA, including administration of an annual fund designated to provide subsidies for local arts and nonprofit organizations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Staff recommends that the City Council find and determine that (a) this action complies with CEQA based on the evaluation of the anticipated environmental effects of the Project in "The Oakland Civic Auditorium Rehabilitation - CEQA Analysis" (the 2019 CEQA Analysis) for the Project; (b) no substantial changes have occurred with respect to the circumstances under which the 2019 CEQA Analysis was done or that no new information, which was not known and could not have been known at the time such analysis was completed, has become available; and (c) as supported by substantial evidence in the record, no additional environmental analysis beyond the 2019 CEQA Analysis is necessary for the recommended action based on the conclusions of the 2019 CEQA Analysis that the Project satisfies each of the following CEQA Guidelines (A) Section 15164 - CEQA Analysis Addendum, (B) Section 15183 - Projects consistent with a Community Plan, General Plan or Zoning, and (C) Section 15168 - Prior Program Environmental Impact Reports.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The Council Adopt The Following Pieces Of Legislation For The Real Property Located At 10 Tenth Street And Commonly Known As The Kaiser Convention Center ("Property" or "Kaiser Civic Center"):

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- (1) An Ordinance That Authorizes The City Administrator Or Designee To Negotiate And Execute A Second Amendment To The Lease Disposition And Development Agreement, Between The City Of Oakland And Oakland Civic, LLC, And Related Documents, For Renovation And Rehabilitation Of The Property That:
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 - (B) Makes Amendments To The Form Of The Lease Attached As Exhibit C To The Lease Disposition And Development Agreement To:
 - (I) Revise And Insert Definitions Of Sponsorship/Donation Agreements And Naming Rights, As Applicable, And Specify When Proceeds Of Such Agreements Will Be Considered As Gross Income For Calculation Of Rent Participation;
 - (II) (A) Document Rights Of Oakland Civic And Calvin Simmons Theatre (CST) To Enter Into An Event Use/Sponsorship Agreement With Kaiser Foundation Health Plan, Inc. (Kaiser Foundation) For A Term Of Up To 20 Years, For A Maximum Payment Of \$1.5 Million To Be Used For Renovation Of The Theatre Consistent With The LDDA And The Lease, And Related Documents, And (B) Authorize The City Administrator Or Designee To Negotiate and Enter Into A Recognition Agreement With Kaiser Foundation For Such Sponsorship Agreement, Subject To Certain Termination Rights And City Protections;
 - (III) Document Oakland Civic's Consent To The City Entering Into A Naming Rights Agreement And Related Documents With Kaiser Foundation For The Property; And
 - (IV) Make Minor Revisions To (A) Add Notice and Cure Rights for Tax Credit Investors, And (B) Correspond With The Agreed Upon Community Benefits Agreement Between Oakland Civic, CST And Black Arts Movement And Business District Community Development Corporation;
 - (2) A Resolution Authorizing The City Administrator Or Designee To Negotiate And Enter Into A Naming Rights Agreement And Related Documents With Kaiser Foundation, Granting Kaiser Foundation The Right To Name The Property And Install Certain Exterior And Interior Signage For A Term Of Up To 99 Years, Subject To Certain Termination Rights, For A Lump Sum Payment Of \$12 Million, Commencing At Lease Execution;

- (3) A Resolution Awarding A Grant To CST, Or A Related Entity or Affiliate, For A Term of 30 Months To Be Used For The Renovation Of The Calvin Simmons Theatre And Related Improvements, Consistent With The LDDA Between the City and Oakland Civic, In An Amount Of \$12 Million, Disbursable By The City To CST In Progress Payments Subject To Certain Restrictions And Receipt Of Funds Pursuant To The Terms Of A Naming Rights Agreement For The Property.

Respectfully submitted,



ALEXA JEFFRESS
Director, Economic and
Workforce Development Department

Prepared by:
Jens Hillmer
Development Area Manager, Economic and
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Attachments (1):

Attachment A – Naming Rights Agreement Term Sheet