

CITY OF OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, Economic and
Workforce Development
Department

SUBJECT: Henry J. Kaiser Convention Center -
Lease Disposition and Development
Agreement and Lease

DATE: June 3, 2019

City Administrator Approval

Date:

6/13/19

RECOMMENDATION

Staff Recommends That The City Council Approve An Ordinance Authorizing: (A) The City Administrator To Negotiate And Execute A Lease Disposition And Development Agreement, A Lease Of Up To Ninety-Nine Years, And Related Documents Between The City Of Oakland And Oakland Civic, LLC, Or Its Affiliate For The Henry J. Kaiser Convention Center, Located At 10 Tenth Street; (B) Establishment Of An Annual Fund To Be Funded By Tenant From Annual Base Rent For Use By A To-Be-Formed Nonprofit Calvin Simmons Theatre Operator ("Theatre Nonprofit"); (C) A Grant Up To \$100,000 For Subsurface Hazardous Materials Contamination To Oakland Civic, LLC; And (D) A Grant Of \$3,000,000 To A To-Be-Formed Nonprofit Calvin Simmons Theatre Operator For Theatre Rehabilitation Costs.

EXECUTIVE SUMMARY

Staff seeks City Council approval to execute a Lease Disposition and Development Agreement ("LDDA") and a lease of up to 99 years (the "Lease") between the City and Oakland Civic LLC ("Oakland Civic" or the "Developer"), an affiliate of Orton Development, Inc. ("Orton") for the renovation of the historic "Oakland Civic Auditorium" (the "Project"), also known as the Henry J. Kaiser Convention Center (the "Property" or "Kaiser Auditorium").

The property opened in 1914 as a multi-purpose arena and theater and is an Oakland-designated historic landmark. It has been closed since in 2005, when it was running operating losses of up to \$600,000 per year, and is now falling into increasing disrepair.

Following a competitive Request for Proposals ("RFP") process in 2015, the City Council selected Orton to finance, rehabilitate, adaptively reuse, and operate the Kaiser Auditorium under a long-term Lease with the City. Since then, the City and the Developer have been

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negotiating terms of an LDDA and Lease, and the Developer has undertaken the project entitlement and environmental review process with the Department of Planning and Building, and the historic process with the State Office of Historic Preservation ("**SHPO**") and the National Park Service ("**NPS**").

As proposed, Oakland Civic will rehabilitate and reopen this significant historic landmark, creating a home for art and nonprofit organizations and allow the public in the building for the first time in almost 14 years. In connection with the Oakland Museum of California ("**OMCA**"), the project will help create an arts and cultural hub at the foot of the revitalized Lake Merritt, just two blocks from BART. The Calvin Simmons Theatre (the "**Theatre**") within the building will be revived as a performing arts center, and will offer subsidized rents for eligible local nonprofit performing arts groups through an endowment funded from Project revenue. The balance of the Property, consisting of the former arena and basement, will be adaptively reused to create 76,000 square feet of office space, with a focus on attracting art and nonprofit organizations as tenants. A portion of that space, 13,000 square feet, will be reserved especially for local performance and arts groups, educational users and other nonprofit organizations. The project will also include a new café and restaurant open to the public, improved public open spaces, including a new "front porch" or deck on the face of the building for public gathering, and better and more inviting physical connections between the building, Laney College, OMCA and Lake Merritt.

The Project will create an estimated 270 construction jobs of which at least 50 percent must be filled by local contractors and Oakland residents in compliance with the City's Local Business and Employment Programs (the "**City Programs**") and 260 permanent jobs. The Developer will also comply with the Oakland Living Wage Ordinance and prevailing wage laws, and will negotiate a Project Labor Agreement ("**PLA**") with the Building and Construction Trades Council of Alameda County.

The total estimated costs of the project will be \$64.5 million. Under the LDDA and Lease, the Developer will fund approximately \$10 to \$20 million of the Project costs with its own equity and finance the remainder through traditional financing and tax credits, including New Markets Tax Credits ("**NMTCs**") and Historic Rehabilitation Tax Credits ("**HRTC**s"). The Developer will rehabilitate the Kaiser Auditorium in accordance with the Secretary of Interior's Standards for Rehabilitation ("**Secretary's Standards**"). The City will commit \$3 million in former redevelopment funds to help fund the rehabilitation of the Calvin Simmons Theatre (the "**Theatre**"). The City will also provide a grant of up to \$100,000 towards the actual cost of subsurface hazardous materials remediation, if necessary. Rent to the City will consist of a 50 percent share of all net cash flow from the Project after repayment of debt, Developer fee, equity investment and earned return, which is currently expected to take up to 17 years to fully repay at projected sub-Class B Office rents.

Staff recommends City Council approval of the LDDA and Lease and the City grants. In a separate action, staff is seeking City Council approval of an allocation of NMTCs from Oakland Renaissance New Market Tax Credits ("**ORNMTTC**") Following approval of the LDDA and Lease, the Developer will be able to move forward with construction drawings, building permit applications and securing Project financing.

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BACKGROUND / LEGISLATIVE HISTORY

1. Building History and Description

The Kaiser Auditorium is located at 10 Tenth Street at the southern end of Lake Merritt. The building is part of a cluster of active significant and historic civic buildings including the OMCA, the Main Public Library, the Alameda County Courthouse and Laney College. It opened in 1914 as a multi-purpose arena and theater, and is an Oakland-designated historic landmark that has been rated "A" (Highest Importance) by the Oakland Cultural Heritage Survey.

The Kaiser Auditorium houses the 1,899-seat Theatre, which occupies approximately one third of the building at the western end, and a large arena with the capacity to accommodate up to 8,000 people in the remaining space at the eastern end. The Kaiser Auditorium also includes three large event rooms (the "**Ballroom**", the "**Gold Room**" and the "**Olympic Room**") next to the Theatre, a full basement, ancillary office spaces, lobby areas and large hallways. The Kaiser Auditorium has two major driveways on each side and an off-street surface parking lot with 174 spaces.

For decades, the Kaiser Auditorium served as the premier convention and event center in Oakland hosting many well-known vaudeville acts, sporting events, circuses and music concerts. Starting in the late 1960s, the Kaiser Auditorium's use slowly declined as it competed with new venues like the Oakland Coliseum and Arena, the Paramount Theatre and a new convention center, the George P. Scotlan Memorial Convention Center, located in Downtown Oakland. The building was refurbished and seismically strengthened in 1985 to function as an annex of the George P. Scotlan Memorial Convention Center with the new name Henry J. Kaiser Convention Center honoring the prominent Oakland industrialist.

In 2005, the City Council voted to close the building after years of unsuccessful attempts to find an economically sustainable operating model for the facility. Between 2000 and 2005, the Kaiser Auditorium was running operating losses that ranged from approximately \$400,000 to more than \$600,000 per year. The building was mothballed in January of 2006 and has largely been unused since then.

The Kaiser Auditorium is not suitable for occupancy in its current state. The vacant 105-year-old building is losing its functionality and falling into increasing disrepair from repeated vandalism, theft, weather damage, and the passage of time. As the Kaiser Auditorium continues to remain closed, it is at increased risk of further damage and deterioration, and any effort to restore and adaptively reuse the building will be increasingly extensive and costly.

Since the closure of the building, the City made three attempts to reuse or sell the Kaiser Auditorium. In 2006, the City placed a bond measure on the local ballot to fund a conversion of the building into the City's new main public library, but the measure did not pass. In 2010, Peralta Community College District considered purchasing the facility for \$10 million, but ultimately declined to move forward because of high renovation costs and the incompatibility of Peralta's proposed building program with the Secretary's Standards. In 2012, the City released a Request for Qualifications to hire a commercial broker to market the building to potential developers or tenants, but did not move forward with a contract.

The rehabilitation and adaptive reuse of the Kaiser Auditorium was identified as an important project in the Lake Merritt Station Area Plan (the "**Station Area Plan**"), approved by the City Council in late 2014. The Station Area Plan revised the zoning of the building to allow a broader range of uses in the building, including commercial, office, retail and light and custom manufacturing to help support a feasible adaptive reuse of the building. The Plan defined several key objectives for the Kaiser Auditorium, including:

- Preserving and reactivating the building.
- Activating the southern end of Lake Merritt.
- Helping to complete an entertainment, education and cultural hub in the area.
- Establishing the building as an additional destination in the Plan area.

2. Developer Solicitation/RFP Process

On September 22, 2014, in furtherance of the Station Area Plan, the City released an RFP calling for a developer to finance, rehabilitate, and operate the building under a long-term lease with the City. The RFP process was open and competitive, and the RFP noticed was sent to more than 500 developers, brokers, and architects throughout the country.

A major objective of the RFP was to solicit proposals responsive to the vision articulated in the Station Area Plan. The RFP anticipated that some combination of public and private uses, consistent with the Station Area Plan, would be necessary to address the City's goal of maintaining regular public access to the building while also ensuring a financially feasible and sustainable project over the long term. The RFP suggested that the adaptive reuse of the building could include some combination of the following uses, although it noted that this list was not exhaustive and that the City would be open to additional creative proposals and ideas:

- Cultural uses such as performance space for music, theater, dance; film screenings; museum; exhibition spaces or other arts-related uses that invite the public into the building and create synergies with the nearby OMCA and Laney College.
- Entertainment uses such as sports facilities or live music concerts.
- Conference and event space.
- Light industrial uses such as a brewery, maker spaces, artist studios or other production uses that can offer the public access on a regular basis.
- Restaurants or retail uses that activate the building and grounds.
- Office, research and development, technology, design and other private commercial uses.

The RFP also asked for community benefits on top of the historic restoration of the building itself, and provided examples, such as a requirement that the Calvin Simmons Theater be restored, developer compliance with the City Programs, prevailing wage laws and the Oakland Living Wage Ordinance, commitment to labor peace and opportunities for job training and mentoring, job creation for a range of training and education levels, and provision of high-quality public facilities, open spaces and other amenities. The RFP did not specify that the project had to serve nonprofit and/or arts organizations.

3. Developer Selection and Negotiations

The City received two developer responses to the RFP from: (1) Orton; and (2) a joint venture team of Creative Development Partners, based in Oakland; Harbinger Development, based in Boston; and Equinox-SynergyEB5, based in San Francisco.

Following a lengthy assessment of each proposal and team, including a review of both proposals by an evaluation panel, staff recommended that the City Council authorize an Exclusive Negotiation Agreement (“**ENA**”) with Orton. This recommendation was based on Orton’s significant track record of successfully working on large-scale historic rehabilitation projects, its demonstrated access to significant on-hand capital, and the overall feasibility of its approach to the Project.

On July 21, 2015, the City Council voted 7-0 (with one excused absence) to adopt Resolution No. 85728 C.M.S., authorizing an ENA with Orton. The ENA provided an exclusive right to Orton to negotiate with the City during the ENA period. Although the ENA expired in January of 2017, Orton diligently continued to evaluate the feasibility of this complex project, secured planning and historic preservation approvals, and has continued negotiations with City staff as directed by the City Council on the terms and conditions of the LDDA and Lease. Orton also prepared several conceptual redesigns of the building interior in response to comments from the City’s Landmark’s Preservation Advisory Board (“**LPAB**”), SHPO and the NPS, and ultimately received Planning Commission approval on April 3, 2019. However, this was appealed on April 15 and the City Council is scheduled to consider that appeal at its regular meeting of June 18, 2019.

4. Kaiser Auditorium Historic Status

The Kaiser Auditorium is a Designated City of Oakland Historic Landmark and is listed on the California Register of Historic Resources. The Developer plans to use HRTCs as one of the funding sources for the Project and must ensure that the Property will be registered as a National Historic Landmark and rehabilitated in accordance with the Secretary’s Standards. In 2017, Orton submitted Historic Rehabilitation Certification Applications Part 1 and 2 to the SHPO and NPS. SHPO and NPS rejected the original design for the arena, which added significant leasable building area to the Project by constructing a three-level glass and steel structure inside the space. In May 2018, Orton submitted a revised and simplified design for further review. On June 13, 2018, and on July 26, 2018, respectively, the SHPO and NPS granted conditional approval of the Project design, subject to reviewing and approving additional details during design and construction of the Project.

PROJECT DESCRIPTION

1. Building Rehabilitation Scope

Oakland Civic will reopen the Theatre as a performing arts venue and adaptively reuse the arena and basement of the building as commercial private office space. There will also be a restaurant or café at the ground level of the Theatre facing Lake Merritt. The Project includes

significant site work to improve building accessibility, public spaces, parking, and landscaping. The planned rehabilitation consists of major interior and exterior building renovation, including full replacement of all life safety and base building systems (mechanical, electrical and plumbing), roof repair and skylight restoration, limited seismic upgrades, hazardous materials remediation and tenant improvements. Most of the building's fixtures and furniture (such as the audience chairs and production systems in the Theatre) are outdated or non-functional and will be replaced. The Developer will seek Leadership in Energy and Environmental Design ("LEED") Silver certification for the renovation and operation of the building. The estimated project costs are currently projected at \$64.5 million.

2. Key Business Terms and Community Benefits

Orton will establish a single-purpose entity, Oakland Civic, to develop and operate the Project. In addition to defining the Developer's obligation to rehabilitate, renovate and operate the building, the Term Sheet includes the following key terms and public benefits. The Term Sheet is included as **Attachment A**, and a summary of the Project's community benefits is included as **Attachment B**.

LDDA and Lease Term

- The City and Oakland Civic will enter into a LDDA with a 2-year term and one 1-year administrative extension option (and an additional extension of up to one year due to force majeure).
- The Lease will have an initial term of 34 years with six 10-year extension options and one 5-year extension option for an aggregate term of up to 99 years.

City/ORNMTC Financial Assistance

- The City will provide a \$3 million grant to the nonprofit Theatre operator to be used towards the rehabilitation cost of the Theatre.
- The City will grant up to \$100,000 to Oakland Civic for potential subsurface contamination remediation, if necessary.
- ORNMTC, a City affiliate, will be asked to consider and make an allocation of NMTCs in an amount of up to \$20 million (for net third-party investor equity of up to \$5 million).

City Rent

- The City will receive long-term participation rent equal to 50 percent of net cash flow after the Developer has been paid its developer fee, equity investment and earned return on its investment. The City will also share in any sales proceeds resulting from a transfer of the Lease to a qualified third-party subject to certain conditions.

Pre-Lease Conditions

- Before signing the Lease with the City, which is anticipated to occur in late 2019/early 2020, Oakland Civic must submit evidence that these key conditions have been met:
 - Commitments for debt, equity, new market and historic tax credit financing equal to the total development cost (as updated) for the Project are secured;
 - All regulatory approvals have been obtained and building permits are ready to be issued;
 - A City-approved construction contract for the rehabilitation work is in place;

- Non-binding letters of intent from third-party tenants for 31,000 square feet (approximately 40 percent) of rentable area in the arena and basement have been obtained;
- A description of the specific financial and legal structure of the proposed Theatre nonprofit operating entity, and a business and a management plan for the operation of the Theatre has been approved by the City;
- Oakland Civic has provided performance and payment bonds for the construction of the Project; and
- Eddie Orton, Orton's President, has provided a completion guaranty for the Project with a requirement that Mr. Orton has financial assets as of the closing date equal to or greater than 25 percent of the total Project costs, not including any investment in the Developer or equity in the Project.

Developer Equity and Returns

- Developer will earn an annual return of 15 percent simple interest on the first \$10 million of its equity, and 9 percent simple interest on any additional equity investment up to \$10 million, for a total investment of up to \$20 million. Interest is earned on equity until it is repaid and will accumulate until paid, but will not compound. Based on current projections, it may take up to 17 years for the Developer to realize full return of its equity with simple interest, after which the Developer and the City will participate 50/50 in cash flow.
- Subject to certain conditions, the Developer will be required to make good-faith efforts to refinance its permanent debt beginning in the 16th year of the Lease to repay its equity and any unpaid earned return to the extent possible. Any excess proceeds from refinancing must first be used to pay down outstanding unpaid Developer Equity.

Theatre Rental and Office Space Leasing for Art Groups and Other Nonprofits

- The Theatre will reopen as a performing arts venue and will be available to local education, nonprofit and art groups for a minimum of two hundred (200) days in any calendar year at affordable rates.
- Approximately 13,000 square feet (or 17 percent) of the office space in the former arena and the basement will be made available to local education, nonprofit and art groups, of which 3,000 square feet (23 percent) will be made available to local arts organizations at below Class B rental rates.

Funding Support for Art Groups and Other Nonprofits

- Each year during the term of the Lease, Oakland Civic will place the first \$75,000 (adjusted for cumulative inflation of up to 20 percent every ten years) of the previous year's net Project income in an endowment (the "**Annual Fund**"), which will be used to subsidize use of the Theatre by arts groups and other nonprofits.

Local Jobs: City's Local Business and Employment Programs

- Developer will comply with the City Programs, including a 50 percent local hire requirements and small local contracting, pay prevailing wages during construction, and pay living wages for staff operating the building upon completion of the rehabilitation work.

Project Labor Agreement

- Developer will use good faith efforts to negotiate a PLA for the Project, which must explicitly facilitate compliance with the City Programs.

Public Access and Open Space

- The Theatre will be open to the public during all regular performances and events.
- The Developer will develop a program to permit the public to request and schedule access to tour/view the arena. The scheduled access program will be based on a minimum of four hours (e.g. 9:00am – 1:00pm) on three days a month (e.g. 1st, 10th and 15th) for each month of the year.
- There will be a restaurant/café open to the public on the ground floor of the Theatre, which will open to a new deck and gathering space facing Lake Merritt.
- The site will be improved to create a more inviting pedestrian space, with new landscaping, materials and furnishings, and will better connect to the Oakland Museum, Laney College and Lake Merritt. The developer will make improvements to 10th Street, to better connect the site to the Lake Merritt BART Station.

Historic Standards

- Developer will rehabilitate the Kaiser Auditorium in accordance with the Secretary's Standards and place the building on the National Register of Historic Places.

3. Further Discussion of Community Access and Costs: Target Users

The Developer is marketing space in the former arena and the basement to local arts, education and other nonprofit organizations (the "**Target Users**"), and plans to have a nonprofit organization affiliated with Orton operate the Theatre as a performing arts center, hosting live performances and providing event and practice space, with subsidized rents for local nonprofit and art groups.

The Calvin Simmons Theatre

Pursuant to the LDDA, as a pre-lease condition, the Developer must propose, for City approval, a nonprofit entity to manage, operate and program the theater and event rooms (the "**Theatre Operator**"). The Theatre Operator will be required to rent the Theatre to performing arts groups and other nonprofits for a minimum of 200 calendar days each year. Ancillary spaces around the Theatre, such as the ballrooms, will also be offered to this type of organization for rehearsal space, events, smaller performances, and meeting space. The Theatre and the event rooms will be available for rent by the public for private or community events during the remainder of each calendar year.

During the LDDA period, the Developer will make a proposal for the establishment and administration by the Theatre Operator of the Annual Fund, an endowment funded each year from the first \$75,000 (as adjusted for inflation) of the previous year's net Project revenues that will provide financial support to local art groups and nonprofits to support their use of the Theater. Grants from the endowment will support grantees' use of the Theatre itself, the Gold Room and the Ballroom, artist fees, production expenses or marketing expenses. The Developer proposes that the grants will be awarded by a panel of three individuals, one

appointed by the City Administrator, one appointed by the Theatre Operator and one jointly selected by the City Administrator and the Theatre Operator with experience working with local performance/arts groups. An alternative model also being considered is for the City's Cultural Affairs Division to administer this funding selection process as part of its grant programs.

The Developer anticipates that facility rental fees for Target Users will be up to 50 percent lower than those of commercial (for-profit) users. Toward this goal, Orton is negotiating with the International Alliance of Theatrical Stage Employees ("IATSE") to find ways to reduce the cost of technical and front-of-house personnel cost that would otherwise be charged to local education, nonprofit and art groups. The Developer has proposed staffing the Theatre shows using a combination of performance group employees, union and non-union technicians, and student apprentices from Laney College. This staffing flexibility could result in lower rental rates for local arts nonprofits, while creating job opportunities for IATSE members during for-profit and certain Target User events. The Developer and IATSE staff have not yet reached agreement on staffing Theatre productions.

Ticket prices for events at the Theatre will be set by the sponsor. Non-Target Users will be required to donate at least 10 tickets per show for free or at a discounted price to increase access to performances for the nonprofit, education and arts communities.

The Arena and Basement

At least 13,000 leasable square feet in the arena and basement or 17 percent of the leasable area (76,000 square feet) are designated for nonprofit, education and arts organizations (the "**Minimum Target User Office Space**"), of which up to 50 percent may be in the basement. The design for the Minimum Target User Office Space will allow for shared resources that may include conference rooms, equipment, kitchens, co-working spaces, and reception areas. These shared resources, along with the availability of event, rehearsal, office, and storage space under the same roof, are intended to create operational and economic efficiencies, and contribute to affordable rents for the nonprofit, education and arts organizations housed within these building areas.

At least 3,000 square feet (or 23 percent) of the leasable square footage in the Minimum Target User Office Space (the "**Local-Reserved Space**") will be reserved for local arts organizations at below Class B Office rents. The Local-Reserved Space may "float" from one portion of the Minimum Target User Office Space to another, with prior notice to the City, as the parties anticipate that the exact mix of tenants and uses may evolve over time. The Lease will include a provision that prohibits the Developer from leasing the Minimum Target User Office Space (or any portion thereof) to a non-Target User without the City Administrator's prior written consent.

The Developer is proposing monthly full service rents between \$3.50 and \$4.00 per square foot (\$42 - \$48/year) for the former arena space, and \$2.50 per square foot per month (\$30/year) for the basement. These rental rates are 11 percent to 45 percent lower than current full service asking rents for Class B Office space in downtown Oakland (2019 Q1: Class B - \$4.54/sf or \$54.50/year), which are too high for many nonprofit and arts organizations.

ANALYSIS AND POLICY ALTERNATIVES

The reactivation of the shuttered Kaiser Auditorium has been of pivotal importance to the City since its closure in 2005. However, past City efforts have shown the need for major public or private investment to achieve this goal. Orton's proposal to renovate and adaptively reuse the building as a performing arts venue and private commercial space presents an economically viable approach toward meeting the City's objective without requiring substantial local financial assistance during construction and operation of the Project.

This section provides an evaluation of the proposed development program for the Kaiser Auditorium, assesses the cost risks associated with rehabilitation of the facility, and analyzes the cash flow potential and other benefits for the City.

1. The Development Program and Marketability

The Developer is proposing a development program for the Kaiser Auditorium that includes the renovation of the Theatre and related spaces for reuse as a performing arts venue, the adaptive reuse of the former arena and basement of the building as private, commercial rental spaces, and all site work to improve building access, public spaces, parking, and landscaping.

The Calvin Simmons Theatre

The proposed reopening of the Theatre will add a 1,500-seat performing arts venue comparable to similarly-sized event facilities in the Bay Area, including the Regency Ballroom in San Francisco (1,400 capacity), the Fillmore (1,150 capacity) and the University of California Theatre Taube Family Music Hall in Berkeley (1,400 capacity). While these venues present a competitive market environment, the Theatre renovation will result in a unique, state-of-the-art concert hall with exceptional acoustics that will be well positioned to attract regular music and theater performances.

The Arena and Basement - Analysis

During the ENA period, the City Council required Orton to assess the feasibility of retaining the arena's prior use as an event space. Orton's feasibility assessment concluded that it is not feasible from a market or financial perspective to retain the arena's former use. The City then hired a third-party consultant, Willdan Financial Services ("**Willdan**"), to peer review Orton's study. Steve Spickard, a nationally-recognized economic expert in event venues including convention centers, sports facilities, concert halls, and amphitheaters, completed the study under the contract with Willdan. The consultant evaluated a range of potential uses for the arena, including convention center space, exhibition/trade floors, sports arena, and live entertainment/special event venue, and reached the same conclusion as Orton. Both the Orton and Willdan reports were presented to the Community and Economic Development Committee at its regular meeting of October 25, 2016.

According to the Willdan report, the first three event uses for the arena - conventions, exhibitions and sporting events - did not pass a "market feasibility" test due to the building's size and lack of basic space and infrastructure necessary to support such uses, and the abundance

of other more appropriate venues nearby, including the City's George P. Scotlan Memorial Convention Center. However, the arena's potential use as a live entertainment/special event venue, similar to how it was operated before the building was closed in 2005, did pass the market feasibility test. In other words, the operation of a fully modernized arena for entertainment would not lose money. However, Willdan concluded that rehabilitation of the arena for this type of event use is not financially feasible because the costs required to update the building for use as an entertainment venue would be so high that the earned income from concerts and other special events would be insufficient to support operations, debt service and investment returns.

Rather than retain the arena as a live entertainment/special event venue, Orton proposes to adaptively reuse the arena and basement for lease as private, commercial office space. Rents from these spaces will generate a larger share of total Project revenue than the Theatre and therefore help cover the full cost of the building renovation and support the ongoing operation of the Property.

There is generally strong market interest for unconventional or "creative" office space as proposed for the Kaiser Auditorium. This type of office space can often be found in older Class C and B office, retail, warehouse or industrial buildings that have been rehabilitated and retrofitted to modern standards, with modern finishes, large open floor plans, high ceilings, and abundant light. Square's lease of Uptown Station, a retail-to-office space adaptive reuse project, presents a recent local example of this trend. Orton's plans to generally market and lease the arena and basement to local education, nonprofit and art groups, and to restrict 17 percent of the total office space to such Target Users for the term of the Lease presents an attractive and cost-effective option for this group of potential tenants, especially given the Kaiser Auditorium's proximity to Lake Merritt and the Lake Merritt BART Station.

2. Development Costs and Sources of Funds

The Developer continues to refine Project cost estimates and currently anticipates total Project costs of \$64.5 million. A Sources and Uses statement for the Project is shown in Table 1.

Table 1 – Sources and Uses

Source of Funds	Amount (in millions)	% of Total
Debt Financing	\$35.50	55.00%
Developer Equity	\$10.70	18.10%
Historic Tax Credits	\$7.60	12.70%
New Market Tax Credits	\$7.20	7.30%
City Grant for CST	\$3.00	5.50%
Income from Operations	\$0.50	1.40%
Total	\$64.50	100.00%
Use of Funds	Amount	% of Total
Construction	\$43.90	68.10%
Soft Costs	\$8.90	13.80%

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Tenant Improvements	\$10.00	15.50%
Financing	\$1.70	2.60%
Total	\$64.50	100.00%

Most historic rehabilitation and adaptive reuse projects must rely on a variety of public gap funding sources to become economically feasible since the building rehabilitation costs cannot be fully supported by private equity and debt alone. The same is true for the Kaiser Auditorium. For example, the current \$20 million renovation and tenant improvement cost estimates for the Theatre require significant public financing support, including the City's \$3 million grant to the Theatre Operator, and equity from investors through HRTCs and NMTCs.

The New Markets Tax Credit Program and Oakland Renaissance NMTC, Inc.

In a separate action, staff is recommending that ORNMTC, a City affiliate, award an allocation of up to \$20 million of NMTCs to the Kaiser Auditorium and/or to another eligible project, which will generate up to \$5 million in net equity investment. Orton is seeking additional allocations of NMTCs from other Community Development Entities for total projected third-party equity of \$7.3 million in NMTCs.

ORNMTC's allocation agreement for the 2016 NMTC allocation requires ORNMTC to close on its of allocation by December 31, 2019, to remain in compliance and avoid risking the expiration and recapture of the allocation and potential barring of ORNMTC from future NMTC applications. Closing on an allocation typically requires an escrow period of up to 12 weeks, which would require Project approval before September 2019.

Moreover, ORNMTC would like to apply for another NMTC allocation upon release of the 2019 Notice of Allocation Availability, which is anticipated for late summer or early fall 2019. To have a competitive 2019 application, ORNMTC must close on its allocation prior to the NMTC application due date. Given the typical 12-week period to close on NMTC funding, the Project would need to be approved by July 2019 for ORNMTC to be competitive in the next round.

Central District Redevelopment Funds to Support the Calvin Simmons Theatre

The RFP contemplated City financial support in the form of a \$3 million City Grant to the Project. The \$3 million to fund the City Grant was designated from Central District Redevelopment funds. The grant will be made to the Theatre Operator, which, in turn, will use grant proceeds to reimburse Oakland Civic for a portion of the hard costs related to the rehabilitation of the Theatre. Staff is recommending that the Council authorize this grant as a part of this action.

Development Risk

As is the case with most historic rehabilitation projects, the adaptive reuse of the Kaiser Auditorium bears significant development risks associated with unanticipated cost increases due to unforeseen site conditions discovered during Project design and/or construction.

Another factor that contributes to project cost increases is the ongoing boom in the Bay Area's construction industry. High demand for construction services continue to drive up prices for

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labor and materials, which may result in final pricing for the Project that exceeds current cost projections, once contractors are bidding on the work and contracts for each construction trade are bought out. Similarly, interest rates for debt financing may rise over time and exceed the rates for construction and permanent financing currently projected by the Developer. Per the Term Sheet, the Developer will have the option to terminate the LDDA within the first 9 months of the LDDA term if due diligence investigations during this period reveal any building deficiencies that cannot be addressed without rendering the Project economically infeasible.

Several factors will mitigate potential project cost increases. First, Orton has proven expertise in rehabilitating historic structures and identifying cost-effective solutions to address structural and other code issues, and minimize soft costs. Second, Orton is required to carry a hard cost contingency of 15 percent in its construction budget and a soft cost contingency of 8 percent. Third, the City and Orton negotiated a maximum Developer investment of \$20 million. Currently, Orton estimates an initial equity contribution of \$10.7 million, which may increase if rising costs require additional Developer Equity.

3. Analysis of Business Terms

Developer's Equity Investment and City Participation Rent

Per the Term Sheet, the Developer will earn an annual return of 15 percent simple interest on the first \$10 million of its equity (the "**Base Equity**"), and another 9 percent simple interest on any additional equity investment up to an additional \$10 million (the "**Additional Equity**"). Net revenue from the Project will be distributed in the following order: (i) first, to make debt service payments; (ii) second, to pay \$75,000 into the Annual Fund; (iii) third, to pay down any outstanding Developer fee until paid; (iv) fourth, to pay down the amount of outstanding Developer return on equity until paid; (v) fifth, to pay down the amount of outstanding Developer equity until paid; and (vi) sixth, to pay to the City long-term participation rent equal to 50 percent of net cash flow with Orton receiving the other 50 percent share of cash flow. Currently, Orton is projecting an equity investment of \$10.7 million during the construction phase of the Project, which would be reduced to \$8.3 million once the building is placed in service and the construction loan is refinanced with a permanent mortgage.

Subject to certain conditions, Oakland Civic is required to make good-faith efforts to refinance its permanent debt beginning in the 16th year of the Lease to repay its equity and any unpaid return to the extent possible, after which the City and the Developer as Tenant will share equally in the net revenues generated by the Project. Refinancing proceeds would be applied (i) first to pay off any remaining loan balance, (ii) next to pay down outstanding Developer Equity (for the initial refinancing to \$10 million or, at Developer's discretion, less), which shall first be applied to repay Developer's Additional Equity Contribution then to repay Developer's Base Equity contribution, and, (iii) then to pay Developer any unpaid returns on its equity investment. Repayment of Base and Additional Equity will reduce Developer returns going forward.

The City will also share equally in any sale proceeds of Developer's leasehold interest to a third party if such sale is financed with debt that is secured by Developer's leasehold interest after the Developer's first mortgage on the Property has been repaid. Any such transfer of the

Leasehold interest would require the prior consent of the City Administrator, subject to certain conditions of approval, including financial capacity and experience of the proposed transferee.

The Fair Market Rental Value of the Property

The City hired Yovino and Young to determine the fair market rental value of the Lease. The appraiser determined that the proposed transaction reflects the highest and best use of the Property and that the 50 percent participation rent from net revenues represents a fair market rental value for the City.

The appraiser concluded that the proposed Project is the highest and best use of the Property because of the extensive developer solicitation process undertaken by the City, the fact that the City only received two proposals, and the lengthy negotiations over business terms between the parties that resulted in further Project refinements. Since the appraiser concluded that Orton's proposed Project is the highest and best use of the Property, the appraiser considers the fair market rental value below (converted to level annual payments) as the Property's fair market rental value. The appraiser analyzed Orton's operating cash flow statement for the Project and converted the future annual uneven participation rent payments to the City over the 99-year term of the Lease into a current value of \$10,276,767 stated in today's dollars. The appraiser then amortized this current value of the City's future rent payments over the 99-year Lease term at an interest rate of 7 percent to arrive at level annual payments to the City. This approach yielded an annual fair market rental value of \$673,000, or \$56,000 per month.

It is currently projected that Orton will be repaid its equity investment and interest thereon in year 17 (or 2037) of the Lease. In the following year, the City will receive its first 50 percent rental payment from net Project revenues, which is estimated to be in an amount of \$1.37 million.

4. Community Benefits

The Project will provide significant community benefits, which are discussed in more detail in **Attachment B**, and include the following:

- Rehabilitation and reopening of a historically significant civic building;
- Theater rental and office space leasing for local education, nonprofit and art groups;
- Funding support for local education, nonprofit and art groups;
- Increased public access to the building;
- Employment opportunities for Oakland businesses and residents;
- Project Labor Agreement; and
- Compliance with Health and Environmental building requirements consistent with the Public Lands Resolution, including retention of trees, renewable energy and solar, use of low-volatile organic compound containing paint and indoor air quality.

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FISCAL IMPACT

All rental payments from the Developer to the City will be deposited in the General Purpose Fund (1010), Real Estate Services Organization (85231), Lease Revenue (44420), in a project to be created.

Developer will make an annual non-refundable Project payment in the amount of \$25,000 during the term of the LDDA until execution of the Lease, which shall be deposited in the General Purpose Fund (1010), Real Estate Services Organization (85231), Other Revenue and Receipts Account (48700) in an expense account in project to be created.

The City Grant in an amount not to exceed \$3 million will be placed in escrow prior to execution of the Lease and will be funded out of Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13).

An Environmental Remediation Grant up to \$100,000 will be funded out of Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13).

The Developer will pay all costs or expenses and other amounts necessary for the close of escrow, including, but not limited to escrow fees; recording fees, and transfer taxes, if any, and the cost of title insurance and necessary surveys.

The City will receive 50 percent of cash flow after the Developer has been repaid its investment and simple interest return thereon. An appraiser analyzed the projected uneven participation rent payments to the City over a 99-year Lease term into a value stated in today's dollars. This net present value was then amortized over the 99-year Lease term at a rate of 7 percent to arrive at level annual payments to the City. This approach yielded an annual fair market rental value of \$673,000, or \$56,000 per month. The City's actual beginning annual revenue generated from 50 percent of cash flow after the Developer has been repaid in approximately 17 years is projected to be \$1.37 million.

Currently, the Project is projected to generate possessory interest taxes of approximately \$157,000, sales tax from the restaurant estimated at \$26,000 annually, parking tax of approximately \$149,000 annually, business taxes on rental income estimated at \$49,000 annually, and \$776,000 in transportation, capital improvement, public art, and jobs/housing impact fees, as detailed in **Attachment C**.

PUBLIC OUTREACH / INTEREST

Community Outreach

In 2016, per the terms of the ENA, Orton spent over 180 hours hosting or attending more than 50 community outreach events. These events included public meetings at OMCA as part of the museum's popular Friday night programming, intimate discussions with interested community

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members, and focus groups with small groups of citizens and performing arts groups, as well as with community coalition groups such as the Coalition of Advocates for Lake Merritt (“CALM”), the Oakland Heritage Alliance, and the Measure DD Community Coalition, among others. The purpose of these events was to engage the community in the design process and receive specific feedback and ideas to inform the Project. In July 2018, Orton returned to the Measure DD Community Coalition for an update and further review of the proposed development. Orton also provided building tours for many key stakeholders, such as local performing arts groups, representatives from neighboring properties such as OMCA, Laney College, and Oakland Unified School District, and local brokers and developers, as well as conducting a publicly-noticed building tour for members of the City’s Landmarks Preservation Advisory Board (“LPAB”) and the public. Major meeting dates included January 14, 2016, February 19, 2016, March 14, 2016, and June 17, 2016.

Landmarks Preservation Advisory Board and Planning Commission Review

While negotiations between the City and Orton continued during 2017 and the first half of 2018, Orton also presented the Project to the City’s LPAB for public review and comment beginning in 2016, again in February and March of 2018, and most recently in February of 2019. The Project was discussed at the Oakland City Planning Commission’s Design Review Committee meeting of January 30, 2019, and on March 6, 2019. On March 2, 2019, Councilmember Nikki Fortunato Bas sponsored a well-attended community forum on the status of the development.

On April 3, 2019, the Planning Commission affirmed staff’s environmental determination and approved the Project, including a Conditional Use Permit and Design Review. On April 15, 2019, the City received an appeal of the Planning Commission approval from the Community Coalition for Equitable Development, A Coalition of Neighborhood Stakeholders. That appeal is under review by the Planning Department and is scheduled to be heard by City Council on June 18, 2019.

COORDINATION

The following City departments were consulted during the preparation of this report:

- Office of the City Attorney
- Budget Bureau
- Planning & Building Department

SUSTAINABLE OPPORTUNITIES

Economic: The Project will reactivate a vacant, historically significant building that will generate long-term tax revenues to the City as detailed in **Attachment C**. The Project is projected to generate 270 construction jobs with total annual wages of approximately \$18.7 million, as well as 260 permanent jobs and annual wages of approximately \$20.3 million.

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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 BART and AC Transit. Orton will seek Leadership in Energy and Environmental Design ("LEED") Silver certification for the renovation and operation of the building.

Social Equity: The Developer will rent the Theatre to local, nonprofit performing arts groups at subsidized rents. The Developer will comply with the City Programs, pay prevailing wages during construction and living wages for staff operating the building upon completion of the rehabilitation work. The Developer will use good faith efforts to negotiate a PLA for the Project, which must explicitly facilitate the City Programs which require that 50 percent of the construction jobs and 50 percent of the construction contractors and suppliers for the Project are local businesses.

California Environmental Quality Act (CEQA)

A detailed California Environmental Quality Act ("CEQA") Addendum entitled "The Oakland Civic Auditorium Rehabilitation - CEQA Analysis" (the "**2019 CEQA Analysis**"), dated February 2019, was prepared for the Project. The 2019 CEQA Analysis concluded that the Project satisfies each of the following CEQA Guidelines (A) Section 15164 of the State CEQA Guidelines - CEQA Analysis Addendum, (B) Section 15183 of the State CEQA Guidelines - Projects consistent with a Community Plan, General Plan or Zoning, and (C) Section 15168 of the State CEQA Guidelines - Prior Program Environmental Impact Reports. The City Council finds and determines that the anticipated environmental effects of the Project have been evaluated in the 2019 CEQA Analysis, and, as supported by substantial evidence in the record, no additional environmental analysis beyond the 2019 CEQA Analysis is necessary for lease of the Property and the development of the Project.

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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve an Ordinance authorizing: (A) the City Administrator to negotiate and execute a Lease Disposition and Development Agreement, a Lease of up to ninety-nine years, and related documents between the City of Oakland and Oakland Civic, LLC, or its affiliate for the Henry J. Kaiser Convention Center, located at 10 Tenth Street; (B) establishment of an annual fund to be funded by Tenant from annual base rent for use by a to-be-formed nonprofit Calvin Simmons Theatre Operator; (C) a grant up to \$100,000 for subsurface hazardous materials contamination to Oakland Civic, LLC; and (D) a grant of \$3,000,000 to a to-be-formed nonprofit Calvin Simmons Theatre Operator for theatre rehabilitation costs.

Respectfully submitted,



MARK SAWICKI
Director, Economic and
Workforce Development Department

Reviewed by:
Alexa Jeffress
Real Estate Managing Director, Economic and
Workforce Development Department

Prepared by:
Jens Hillmer
Development Manager, Economic and
Workforce Development Department

Attachments (3):

Attachment A – Term Sheet

Attachment B – Summary of Community Benefits

Attachment C – Fiscal Impact

Attachment A

Lease Disposition and Development Agreement Term Sheet Henry J. Kaiser Convention Center

<p>1. Proposed Project/Uses</p>	<p><u>A. Overview.</u></p> <p>The Developer proposes to redevelop the Henry J. Kaiser Convention Center (the “Property”) into a mixed-use project that may include performing arts, cultural, public access, office, food & beverage, retail and other uses consistent with the Lake Merritt Station Area Plan and as specified below (the “Project”).</p> <p>Developer will ensure the Property is registered as a National Historic Landmark and rehabilitated to the Secretary of the Interior’s standards for historic preservation (the “Secretary’s Standards”).</p> <p>The Project will have two distinct components: Project A will consist of the restoration of the Calvin Simmons Performing Arts Theatre and its ancillary spaces (the “Theatre”), and Project B will consist of the rehabilitation of all other areas of the Property including the former arena space, proposed outdoor podium, basement, and exterior improvements such as landscaping. The design of the Initial Improvements and final square footages of the Project components will be subject to approval of the Historic Rehabilitation Certification Application Part 2 by the California State Historic Preservation Officer (“SHPO”) and the National Park Service (“NPS”) prior to closing (the “Pre-Closing Historic Approvals”). The parties acknowledge that the Pre-Closing Historic Approvals will be subject to certain conditions imposed by SHPO or NPS that are to be addressed in subsequent submittals.</p>
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B. Project Breakdown by Component.

PROJECT A: Calvin Simmons Theatre--cultural and arts center.

The Theatre will be rehabilitated and reopened as a performing arts venue. Upper floors (including ballrooms) may be used as arts office, rehearsal spaces, community and other meeting rooms, food and beverage, retail and uses related to the operation of the Theatre and affiliated arts entities. The Developer will establish a Calvin Simmons Theatre Board/non-profit organization to manage and operate the Theatre (the "**Theatre Non-Profit**"). Changes to the Theatre will meet the Secretary's Standards and will likely include modified seating for an improved viewing experience, among other changes. The Developer will operate and manage the Theatre at no cost to the City, except as specifically described below.

PROJECT B: Arena and Basement

1. Arena.

The Arena will include all or a portion of the Minimum Target User Office Space (as defined in Section 3 of Attachment B) and may include other office space (either general use or for additional Target Users as defined in Section 2 of Attachment B) food & beverage/restaurant uses, retail uses, as well as other uses consistent with the adopted Lake Merritt Station Area Plan and related zoning. The Arena may include a large anchor office or retail tenant and may include smaller retail along the north (Lake Merritt-facing) side of the Arena.

	<p>The Developer will comply with the leasing requirements for the Minimum Target User Office Space regarding leasing to Target User tenants as described in the HJK Community Benefits term sheet attached hereto as Attachment A.</p> <p>The LDDA / Lease (as defined in Section 2) will identify certain uses that will require prior review and approval by City staff in their sole discretion. These uses will include, but not be limited to, fast food and discount store uses.</p> <p>2. <u>Basement.</u></p> <p>The building's basement will house office space for general use and up to 50% of the Minimum Target User Office Space and light industrial uses (if feasible) and/or other uses such as ancillary space for arena office, music studios, makers' spaces, and storage space for Theatre tenants and/or other Project tenants. If there are office uses in the basement, unless specifically requested by the applicable office tenant(s), the cold shell office spaces and common areas in the basement applicable to such office uses will be consistent in quality with the cold shell office spaces and common areas in the Arena (subject to applicable limitations on floor height and natural light) and the office users in the basement will have equivalent access to common amenities and services available to other Project office tenants.</p>
<p>2 Agreements to be Negotiated</p>	<p>The parties intend to negotiate the form of a Lease Disposition and Development Agreement ("LDDA") and a long-term lease (the "Lease"). The basic terms of these proposed agreements are set forth in Sections 3 and 4 below.</p>

3. LDDA TERMS	
3.1 Parties	The City of Oakland (as the “ City ”) and Oakland Civic, LLC, an affiliate of Orton Development, Inc. (via Eddie Orton’s common control of both entities) (as the “ Developer ”).
3.2 Project Payment	The Developer will deliver a payment in the amount of \$25,000 to the City on execution of the LDDA (the “ Project Payment ”). The Developer shall make additional Project Payments to the City in the same amount annually on the anniversary of the execution date of the LDDA, until such date as the Lease becomes effective.
3.3 Term	<p>A. <u>LDDA Commencement Date.</u> The term of the LDDA will commence upon the parties’ mutual execution of the LDDA (the “LDDA Commencement Date”).</p> <p>B. <u>LDDA Expiration Date.</u> The LDDA would expire on recordation of the certificate of completion following completion of construction of the Initial Improvements (the “LDDA Expiration Date”). The LDDA Expiration Date would be subject to extension for up to one (1) year at the City Administrator’s sole and absolute discretion and for up to one (1) year for force majeure events, including delays by the City in processing Developer’s government approvals that exceed the City’s normal processing time for a project of this type and complexity (i.e., up to six months with overtime plan check services or nine months without overtime plan check).</p>
3.4 Conditions Precedent to Closing on the Lease	A. <u>City Conditions Precedent:</u> Developer will be required to satisfy the City’s standard conditions of closing, as well as the following conditions precedent, prior to the dates that will be set forth in the Schedule of

	<p>Performance, as conditions precedent to City's obligation to close escrow for the Lease:</p> <ol style="list-style-type: none"><li data-bbox="673 310 1268 642">1. Developer shall have obtained all discretionary land use approvals from the City for the development of the Project, including satisfaction of environmental review pursuant to the California Environmental Quality Act ("CEQA") (collectively, the "Discretionary Approvals").<li data-bbox="673 688 1268 978">2. Developer shall have obtained all regulatory approvals and permits for development of the Project, apart from any required subsequent approvals from SHPO and NPS, including satisfaction of any additional CEQA review (the "Regulatory Permits").<li data-bbox="673 1024 1294 1822">3. Developer shall submit a description of the specific financial structure and legal structure of the proposed nonprofit operating entity for the Theatre. Developer shall also submit a business plan and a management plan for the operation of the Theatre in a form that reasonably satisfies the City that the operation of the Theatre is feasible. This shall include a written description of the specific and general roles, responsibilities, and obligations of Developer and any other entity participating in the legal entity established by Developer or established separately for purposes of operating the Theatre. The business plan shall also include an annual itemized operating budget for the Theatre, including
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	<p>projections of revenues and operating expenses.</p> <p>4. Developer shall have provided the City with an itemized budget (including all hard and soft costs) for the development of the Initial Improvements (defined below showing all construction-related and non-construction-related costs including the funding sources for each item, which budget shall be based on the Design Development Documents, or if available at the Developer's discretion, the Final Construction Documents and the General Contract, and include a contingency of fifteen percent (15%) (the "Budget"). The Budget shall also include all construction and non-construction related costs for tenant improvements, including the funding sources for said tenant improvements. As used herein, the term "Initial Improvements" means: (a) the site improvements; and (b) with respect to vertical improvements:</p> <ul style="list-style-type: none">(i) the structural components (foundation, structural walls and roof),(ii) building facades,(iii) primary components for building systems (HVAC components, electrical transformer and water heater be included but interior ducting/wiring/plumbing will not be included)(iv) elevators, and(v) a cold shell condition (interior face of structural walls in an unfinished condition and no interior (non-
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	<p>structural) walls, flooring materials, lighting, plumbing, HVAC or finished ceilings) for all interior spaces except the Theatre, which will include full interior/tenant improvements ready for operation and occupancy.</p> <p>5. Developer shall have provided an itemized operating budget and 10-year cash flow statement demonstrating project financial feasibility. The operating budget must include a full rent schedule, and reasonable replacement and operating reserves. Operating expenses shall include all customary and reasonable operating expenses, and include Common Area Maintenance charges. If the lease structure is a NNN lease, in which the tenant or lessee is responsible for paying a portion or all operating and common expenses related to the leased property in addition to base rent, then the Developer shall itemize said NNN items that will be the responsibility of the tenant/lessee.</p> <p>6. Developer shall have identified the committed funds/sources equal to 100% of the Budget (which funds/sources may include, without limitation, Historic Rehabilitation/New Market Tax Credit financing, equity, debt secured by Developer's leasehold interest and the City Theatre Contribution (defined below). Funds from equity contributions will be evidenced by the corporate documents requiring the applicable equity partner(s) to fund any remaining equity</p>
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	<p>contribution upon the execution of the Lease and recordation of the Memorandum of Lease (“Lease Closing”). Funds from secured debt will be evidenced by a binding loan agreement evidencing the availability of requisite funds. The tax credit and loan agreements may be subject to commercially reasonable conditions related to the initial funding, which include, without limitation, Lease Closing and prior expenditure of Developer equity. Developer shall have the right, but not the obligation, to satisfy this condition with Developer equity and subsequently replace all or a portion of such equity with tax credits or debt evidenced by the applicable binding agreement.</p> <p>7. Developer shall have provided the City with a financial statement for Developer compiled by an outside, independent accountant in a form reasonably acceptable to the City evidencing sources of capital sufficient to fund the Developer equity identified in Item (6) above.</p> <p>8. Developer shall have provided the City with the following with respect to Developer’s obligation to complete the Initial Improvements: (a) a completion guaranty in the form attached to the LDDA and (b) performance and payment surety bonds, which bonds shall be in an amount equal to 100% of the hard costs to complete the Initial Improvements (as evidenced by the approved Budget). The guarantor</p>
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	<p>under the completion guaranty will be Eddie Orton (subject to the City's verification that Mr. Orton has financial assets as of the Closing Date equal to or greater than 25% of the total estimated project costs, not including any investment in the Developer or the Project) or, at City's sole and absolute discretion, another credit worthy Developer affiliate: (i) not organized or operated for a primary purpose of serving as a guarantor under the LDDA and (ii) with a net worth equal to or greater than 25% of the total cost budget, not including any investment in the Developer or the Project.</p> <ol style="list-style-type: none">9. Developer shall have provided evidence of required insurance for the pre-construction period of the Lease.10. There is no third-party litigation challenging the Project or the City's authority to enter into the Lease.11. Developer has provided the City with the Lessee formation documents and evidence that such entity has a current City business license.12. Developer shall have submitted and secured City approval (in its proprietary capacity) of the Design Development Plans for the Initial Improvements prior to the deadline stated in the Schedule of Performance. Design Development Plans shall be based on the schematic design plans for the Project and define and describe all important aspects of the Project so that
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	<p>all that remains is the formal documentation step of construction contract documents. Design Development Drawings shall include, without limitation, the following components (to the extent the same apply to the finished condition of the Theatre or the cold shell condition of the balance of the Initial Improvements):</p>
	<p>A site plan, floor plans, a roof plan, exterior elevations, interior design, building sections, reflected ceiling plan, enlarged floor plans and sections (as applicable), structural drawings, mechanical drawings, plumbing drawings, HVAC drawings, electrical drawings, specification outline, technical specifications, tabulation of areas, an updated itemized statement of probable construction costs (appropriate amounts for contingency and inflation shall be included) broken down by trade, landscape design, and a schedule for construction.</p> <ol style="list-style-type: none">13. Developer shall have submitted for and secured the Pre-Closing Historic Approvals prior to closing.14. Developer shall have provided evidence that it has secured non-binding letters of intent with qualified tenants for at least 31,000 square feet of leasable area in the Project B space.15. Developer shall have submitted and secured City approval (in its proprietary capacity) of the Construction

	<p>Documents for the initial improvements prior to the deadline stated in the Schedule of Performance. Construction Documents means the plans, drawings, specifications, design criteria and other documents necessary or appropriate to obtain the issuance of the applicable Building Permit(s) for the Initial Improvements to be constructed.</p>
	<p>16. Developer is not in default of its obligations under the LDDA.</p> <p>B. <u>Developer Conditions Precedent:</u> The following items occurring prior to the dates set forth in the Schedule of Performance shall be conditions precedent to the Developer's obligation to close escrow on the Lease.</p> <ol style="list-style-type: none">1. Developer shall have obtained the Discretionary Approvals, Regulatory Permits and the City's approval of the Final Construction Documents.2. The Property shall be in the condition required by Section 3.5 below.3. Developer shall have completed and approved its assessment of the feasibility of entering into the Lease with regards to the Developer's potential liability for transfer taxes and possessory interest taxes prior to the date that is three (3) months after the LDDA Commencement Date.4. Developer shall have completed and approved its due diligence inspection of the Property prior to the date that is

	<p>nine (9) months after the LDDA Commencement Date.</p> <ol style="list-style-type: none"> 5. Developer shall have approved title to the Property (the “Permitted Exceptions”) prior to the date that is three (3) months after the LDDA Commencement Date. 6. The title company shall be irrevocably committed to issue (upon payment of premium and execution of the Lease) a Lessee Title Policy subject only to the Permitted Exceptions. 7. There is no third-party litigation challenging the Project or the City’s authority to enter into the Lease. 8. Developer shall have secured non-binding letters of intent with qualified tenants for at least 31,000 square feet of leasable area in the Project B space. 9. Developer shall have submitted for and secured the Pre-Closing Historic Approvals prior to closing. 10. The City is not in default of its obligations under the LDDA.
<p>3.5 Property Condition at Closing</p>	<p>Subject to (a) the Permitted Exceptions and (b) the City’s obligation to deliver the Property at closing in a tenant-free condition and free of all material rubbish (the City shall have no obligation to remove any fixtures or provide a “broom-clean” condition), and (c) the City’s obligations under Section 4.10 below, the Property shall be delivered on the Effective Date of the Lease in an “as is” physical condition.</p>

<p>3.6 Remedies</p>	<p>A. The City's remedies for the Developer's failure to close escrow upon satisfaction of all Developer conditions precedent to closing shall be limited to termination of the LDDA, retention of any Project Payments and payment of liquidated damages in the amount of Two Hundred Thousand Dollars (\$200,000), secured by a letter of credit evidenced prior to the expiration of the due diligence period.</p>
	<p>B. The Developer's remedies for the City's failure to close escrow on the execution of the Lease shall be limited to (i) the termination of the LDDA and refund of a pro-rated portion (based on a 365-day year) of the most recent Project Payment and a return of the letter of credit, or (ii) at Developer's election, specific performance of the City's obligations under the LDDA.</p>
<p>3.8 Pre-Closing Work</p>	<p>Developer shall be permitted to perform exploratory/destructive testing at the Property as is reasonably necessary to complete the Project construction drawings. Such work shall be subject to the right of entry provisions of the LDDA.</p> <p>Further, Developer shall have the right, but not the obligation, to perform certain improvements to the Property to facilitate Developer's pre-leasing efforts. Such improvements may include the build out of "model" office suites, landscaping or the opening/uncovering of windows or non-structural walls. Such work shall be subject to the right of entry provisions of the LDDA and shall be conditioned upon (a) Developer's agreement to remove such improvements if Developer does not close escrow on the Lease (if requested by the City); (b) prior approval of the plans by the City (in its landowner capacity); (c) procurement of requisite permits; and (c) the City's reasonable approval of security for Developer's obligation to remove such</p>

	improvements if the LDDA is terminated prior to closing on the Lease.
4. LEASE TERMS	
4.1 Parties	<p>A. <u>Landlord</u>: City of Oakland, as the “City” or “Landlord.”</p> <p>B. <u>Tenant</u>: Oakland Civic, LLC, or a related entity, as the “Developer” or “Tenant.”</p>
4.2 Premises	The Property.
4.3 Term	<p>A. <u>Initial Term</u>. The Lease shall have an initial term of 34 years.</p> <p>B. <u>Options to Extend</u>. Developer shall have options to extend the Lease on the same terms in six 10-year increments and one 5-year increment up to an aggregate maximum term of 99 years.</p>
4.4 Project Funding Sources; Developer Financing	<p>A. <u>Theatre Contribution</u>. The anticipated Project funding sources would include Developer equity, bank debt, new market tax credits, Historic Tax Credits, and a City contribution of \$3,000,000 to the hard costs allocated to the Theatre (the “City Theatre Contribution”).</p> <p>The City Theatre Contribution will be used to fund costs allocated within the Theatre and shall be drawn by Developer in the form of reimbursement draws for approved costs.</p> <p>B. <u>Developer Financing</u>. The City shall have the right to review the material terms of any construction or permanent financing obtained by Developer. The City’s review of financing shall be limited to confirming that: (i) such financing is adequate to complete the Project, (ii) the terms of the</p>

	<p>financing are commercially reasonable, and (iii) such financing is being provided by an unaffiliated lender through a bona fide arms-length transaction.</p>
<p>4.5 Base Rent and Participation Rent; Proceeds from Refinancing.</p>	<p>A. <u>Base Rent</u>: Developer shall pay a Base Rent of \$1.00 per year.</p> <p>B. <u>Participation Rent</u>: Participation Rent would commence upon receipt of any gross revenues. The "Participation Rent" is defined as the City's share of the Project Net Revenue (defined below), which shall be payable in any given Lease Year pursuant to the following priority:</p> <ol style="list-style-type: none"> 1. The first \$75,000 of Net Revenue (the "Annual Fund") shall be paid to the Theatre Foundation (defined in Attachment B), which will expend such funds in grants to support Target Users (defined below) pursuant to Item 2 of Attachment B. The Annual Fund shall be increased every ten (10) years during the term of the Lease by the cumulative CPI during such period (not to exceed 20% in the aggregate for any adjustment period). If the Net Revenue for any Lease Year is insufficient to fully fund the Annual Fund, the shortfall shall be carried over to successive years (without interest) until fully paid. 2. The Developer Fee set forth in Section 4.12 below, or any balance thereof, to the extent that said Developer Fee has not been paid to Developer at the end of Project construction. The Developer Fee shall not be treated as equity and shall not be subject to any Applicable Preferred Return, as defined below. 3. Subject to the requirements of Section 4.6 below, Developer shall receive the Applicable Preferred Return (defined below) until Developer has been paid its

	<p>accrued Applicable Preferred Return on outstanding Developer Equity.</p>
	<p>“Developer Equity” means funds expended by Developer (a) for third-party Project costs that (i) cannot be funded through commercially reasonable construction financing secured by a first deed of trust against Developer’s leasehold interest (which financing is consistent with Paragraph 4.4(B) below) that charges a lower interest rate than the Applicable Preferred Return and (ii) is related to the design, permitting and construction of the Initial Improvements, initial common area improvements and any initial tenant improvements (or initial tenant improvement allowances) required by a lease with a third party, (b) to fund Third Party Capital Costs (defined below) if there are no reasonable alternative financing methods secured by a first deed of trust on Developer’s leasehold interest available that charge a lower interest rate than the Applicable Preferred Return, and (c) to fund any operating or capital reserves required by a lender to the extent not covered by the initial financing proceeds or cash flow.</p> <p>Third party costs shall include the actual cost (wages, benefits and employer taxes) for construction supervision and labor that is “self-performed” by employees of Developer affiliates.</p> <p>The parties acknowledge that (1) Developer may identify Developer equity as 100% of the Project funding sources to timely satisfy the condition precedent set forth in Paragraph 3.4(A)(6) prior to the closing of the construction loan and (2) the fact that Developer acquires a construction loan that satisfies the financing requirements of clause (a) above after the satisfaction of such condition shall not disqualify the</p>

	<p>Project, design, permitting and construction costs actually funded by Developer equity (and not reimbursed to the Developer or directly funded by the subsequent construction loan) from being credited towards the Developer Equity.</p> <p>“Applicable Preferred Return” shall refer to either the “Return on Base Equity” or “Return on Additional Equity,” as applicable.</p>
	<p>“Return on Base Equity” means a fifteen percent (15%) simple, annual return on the first tier of up to \$10,000,000 of outstanding Developer equity (“Base Equity Contribution”).</p> <p>“Return on Additional Equity” means a nine percent (9%) simple, annual return on an additional second tier of up to \$10,000,000 of outstanding Developer equity (“Additional Equity Contribution”).</p> <p>In no event shall Developer Equity exceed \$20,000,000. Any unpaid Applicable Preferred Return accumulates until paid without compounding.</p> <p>“Third-Party Capital Costs” means third-party costs related to capital repairs and replacements (and not additional new improvements to the building) that (a) occur after the initial completion of the Project and are required pursuant to a capital improvement plan approved by the City and (b) cannot be funded by available operating revenue, capital reserves, or insurance proceeds.</p> <p>The Lease will describe a process by which Developer may seek City approval for new improvements to the building during operation of the Project.</p>

4. Subject to the requirements of Section 4.6 below, Net Revenue shall be paid to Developer as a return of all outstanding Developer equity (whether or not such equity is Developer Equity entitled to an Applicable Preferred Return) until Developer has been paid all of its outstanding Developer Equity. Developer shall continue to receive the Applicable Preferred Return on unreturned Developer Equity, subject to the restrictions set forth in Section 4.5(B)(3) above. Net Revenue shall be used to return Developer Equity in the following order: first, to return the Additional Equity Contribution; second, to return the Base Equity Contribution; and third, to return Developer Equity that was not entitled to an Applicable Preferred Return.

5. Thereafter, Net Revenue would be paid to the City and Developer, 50%/50% on a pari-passu basis.

“Net Revenue” is generally defined as the gross revenue from Theatre operations, gross sublease rent for the balance of the Project, and gross proceeds from financing (excluding construction loans related to the initial construction of the Project), less the following (all as are reasonable and customary): (i) ownership and operating expenses, taxes (including any Special District assessments), utilities, maintenance and repairs, if applicable, lease commissions, sub-landlord tenant improvement expenses, etc.), (ii) debt service, (iii) cost of financing related to any refinancing of the project’s permanent debt on the project, (iv) lender-required or City-approved reserves except for such reserves funded by financing proceeds; (v) Theatre operating costs, to the extent such costs are to be paid by Developer or, if the Theatre Operator is retained on a sublease basis, the Theatre Operator, and (vi) reasonable and

	<p>customary asset/property management fees.</p> <p>If Developer receives sublease rent in the form of any real or personal property in lieu of cash, the fair market value of such real or personal property would be included in the gross revenue.</p> <p>Developer would provide the City with an accounting of the Net Revenue for the prior year on or before May 1st of each year and deliver the required Participation Rent Payments with such accounting. City shall have the right to audit any such accounting.</p>
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	<p>At the expiration of its construction loan, Developer will use commercially reasonable efforts to obtain permanent financing secured by a first deed of trust on Developer's leasehold interest in a sufficient principal amount to pay down Developer's outstanding Developer Equity to \$10,000,000 or, at Developer's discretion, less, and its accrued but unpaid Applicable Preferred Return.</p>
<p>4.6 Refinancing</p>	<p>Commencing on the first day of the sixteenth (16th) year of the Lease term ("Best Efforts Commencement Date"), Developer will use its best efforts to obtain permanent financing secured by a first deed of trust on Developer's leasehold interest that refinances any then current Project loan and then returns all remaining Developer Equity. Notwithstanding the foregoing to the contrary, Developer shall not be required to do any of the following to increase the amount of the subject loan in order to return any or all of the remaining Developer Equity:</p> <ol style="list-style-type: none"> 1. Obtain a loan in a principal amount that exceeds a fifty percent (50%) loan to value ratio; 2. Obtain a loan that requires the payment of interest or fees/points that are greater than the prevailing interest rate or fees/points for loans secured by commercial real estate (i.e. a "hard-money" loan); 3. Provide any credit enhancements beyond a "bad boy" carve-out repayment guaranty; or 4. Provide any collateral for the subject loan beyond Developer's leasehold interest, Project rents and Project cash

accounts and reserves owned by Developer.

Developer will be deemed to have satisfied its obligation to use best efforts to obtain the required financing if it has either (i) obtained the required loan or (ii) obtained indications from at least two (2) regional or national banks stating that the required loan is not available at the required terms. Further, after the Best Efforts Commencement Date, Developer will not be required to seek financing more often than once per year and provided further that Developer will not be required to seek financing during the first five (5) years of any loan that closes after the Best Efforts Commencement Date.

Notwithstanding the provisions of Section 4.5(B)(3) and (4) to the contrary, Developer shall apply net proceeds from permanent financing and/or any refinancing of Project debt required by this Section 4.6 first to pay down outstanding Developer Equity (for the initial re-financing to \$10,000,000 or, at Developer's discretion, or less) (first applied to Additional Equity Contribution then to Base Equity Contribution) and then to pay Developer a return of accrued but unpaid Applicable Preferred Return. All other refinancing proceeds shall be distributed in accordance with the waterfall presented in Sections 4.5(B)(3) and (4), first being applied to payment of accrued Applicable Preferred Return.

<p>4.7 Prepayment of Sublease Rent</p>	<p>If Developer receives pre-paid sublease rent (in cash or real/personal property), Developer may, at its sole discretion, elect to apply all or a portion of the net proceeds towards the reduction of Project debt. Any amounts not applied to the reduction of Project debt would be applied as Net Revenue (along with all other Net Revenue for the applicable Lease year) and paid/applied pursuant to the Participation Rent waterfall set forth in Section 4.5(B) above.</p>
<p>4.8 Sale of Lease Position</p>	<p>If Developer, subject to City's approval rights set forth in Section 4.14, below, sells its leasehold position to an approved buyer, the purchase price paid by the transferee for such sale (the "Transfer Price") would be applied as follows:</p> <p>A. Any portion of the Transfer Price funded by the net proceeds (principal amount less origination fees and costs paid from the loan funds and less any required loan reserves) from a new loan secured by a collateral interest in the leasehold interest ("New Leasehold Loan Proceeds") would be applied as follows:</p> <ol style="list-style-type: none"> 1. 100% of the New Leasehold Loan Proceeds would be applied to the repayment of any existing debt secured by the leasehold interest until the existing debt has been fully repaid; and 2. thereafter, the remaining New Leasehold Loan Proceeds would be applied as Net Revenue (along with all other Net Revenue for the applicable Lease year) and paid/applied pursuant to the Participation Rent waterfall set forth in Section 4.5(B) above. <p>If Developer sells its leasehold position to a third party who desires to increase the debt level of the</p>

	<p>Property to pay all or a portion of the Transfer Price, subject to the applicable limitations in the Ground Lease, such transferee may increase the debt level and thereafter, the calculation of subsequent Net Revenues shall be based on the amount of the new debt.</p> <p>B. Any portion of the Transfer Price not funded by New Leasehold Loan Proceeds would be paid 100% to Developer.</p> <p>Any subsequent owner of Developer's leasehold position shall receive a Preferred Return on the amount of unreturned equity the initial Developer had in the deal at time of sale (subject to any subsequent return-of-equity payments and any additions of capital pursuant to Section 4.5 above).</p> <p>C. Nothing in the Lease shall prevent a transferee from assuming the existing Project debt.</p>
<p>4.9 Tax Assessment</p>	<p>The value of the premises for purposes of any transfer tax or assessment of the possessory interest therein shall be determined by the City's tax administrator, the County Tax Assessor or other taxing agency with jurisdiction over the premises (each in accordance with applicable laws).</p>
<p>4.10 Construction of Initial Improvements</p>	<p>A. <u>Conditions Precedent to the Commencement of Construction</u>: Developer's right to commence construction on all or any phase of the Initial Improvements (which phasing shall be subject to the building department's prior approval) shall be subject to the prior satisfaction of the following conditions precedent:</p> <p>(1) Developer shall have received the City's regulatory final plan check approval for the final construction plans for the Initial Improvements.</p>

(1) (2) Developer shall have received all Building Permits for the Initial Improvements (the "**Building Permits**"), which condition may be satisfied by (a) evidence that the City is prepared to issue the Building Permit upon payment of the applicable fees and (b) payment of such fees through the close of escrow under the LDDA. Developer shall provide City will all other Building Permits for all subsequent work required to complete the Initial Improvements as shown in the Schedule of Performance.

(2) Developer shall have provided the City with a copy of the contract with the general contractor(s) showing the total hard construction costs for the Initial Improvements consistent with the Budget (the "**General Contract**"). Developer shall provide City will all addenda and/or amendments to the General Contract for all subsequent work required to complete the Initial Improvements.

(3) Developer shall have provided evidence of required insurance for the construction period of the Lease.

The foregoing conditions shall not apply to Pre-Closing Work.

B. Commencement of Construction:

Developer would commence construction of the Initial Improvements by the applicable date set forth in the Schedule of Performance.

C. Completion of Construction:

Developer would complete construction of the Initial Improvements by the applicable date set forth in the Schedule of Performance.

	<p>D. <u>Force Majeure</u>: All commencement/construction/ completion dates would be subject to extension for up to one (1) year due to force majeure events, including delays by the City in processing Developer's government approvals that exceed the City's normal processing time for a project of this type and complexity (i.e., up to six months with overtime plan check services or nine months without overtime plan check).</p>
	<p>E. <u>Changes to Plans</u>: Developer would have the right, with City's prior approval (not to be unreasonably withheld, conditioned or delayed), to make changes to approved plans to address unforeseen conditions, meet the Secretary's Standards, tenant requirements and to incorporate value engineering concepts upon receipt of all regulatory approvals and provision of evidence that the sources (debt/equity) have been secured to fund any cost increases.</p>
<p>4.11 Hazmat</p>	<p>The City will reimburse Developer for up to \$100,000 in third-party costs incurred in the remediation of any below-ground contamination. Developer agrees to not hold City liable for any additional remediation costs.</p> <p>In the event that Developer discovers any such below-ground contamination, Developer shall be entitled, subject to approval of the applicable regulatory agencies and prior consultation with and approval of the City's designated hazardous materials experts, to remediate the condition using a risk-based, brown-fields approach based on the intended use of the Property. The City will cooperate with such efforts, including without limitation, executing and recording any required deed restrictions or consenting to required</p>

	<p>modifications to the construction plans as necessary to incorporate any required mitigation measures. If the City is named on any order with respect to such below-ground contamination and required to conduct any investigation or remediation by a third party regulatory agency, Developer shall reimburse City for third party costs for peer review or technical expertise retained by City in connection with the same.</p>
<p>4.12 Commission</p>	<p>In the event a properly licensed Developer affiliate brokers a lease or lease-sale agreement between itself and a subtenant/lease purchaser, Developer may take a commission in accordance with the below commission schedule. In the event Developer represents itself but not a Tenant/Buyer, Developer to receive 50% of Commission income outlined below. Commission income would not go through the Project Waterfall.</p> <p>Commission Payment Schedule:</p> <p>2% of base rental income for the first five (5) years in which base rent is to be paid.</p>
<p>4.13 Developer Fee</p>	<p>\$2,300,000, paid pursuant to Section 4.5.</p>
<p>4.14 Special Districts</p>	<p>During the term of the Lease, Developer shall be allowed a reasonable opportunity to meet and confer with the City prior to the City voting the property owner's interest with respect to the formation or amendment of any special taxes or districts (including any CFD, CSD or BID) that would affect the Property or impose a tax on Developer's possessory interest; provided, however, that the City shall cast any such vote in its sole and absolute discretion and shall have no liability to the Developer arising from any such vote or otherwise under this Section.</p>

<p>4.15 Transfers</p>	<p>A. <u>Prior to Completion of the Initial Improvements</u>: Any transfer of all or a portion of Developer's interest in the Lease to an Affiliate would be a permitted transfer upon prior written notice to City. All other transfers would require the prior consent of the City Council, which may be withheld conditioned or delayed at the City Council's sole and absolute discretion.</p> <p>B. <u>After Completion of the Initial Improvements</u>: Same as prior to Completion of Initial Improvements for transfers to Affiliates. All other transfers would require the prior consent of the City Administrator, which consent may not be unreasonably withheld, conditioned or delayed. LDDA will describe reasonable conditions of approval, including financial capacity and experience of transferee. City will not require any payment (beyond reimbursement of reasonable legal fees and staff costs) as a condition to approving any transfer.</p> <p>D. <u>Subleases</u>. Developer would have the right to sublease all or a portion of the Property to one or more non-Developer third parties upon prior written notice. The City would enter into non-disturbance agreements with such sublessees upon written request and subject to standard conditions, including a requirement that the subtenant and sublease are expressly subject to all terms and requirements of the Lease.</p> <p>E. <u>Tax Credits</u>. City shall reasonably approve any transfer(s) or sublease(s) solely for the purpose of obtaining</p>

	<p>or selling tax credits to a tax credit investor(s) if a component of the Developer financing.</p>
<p>4.16 Condition of Premises at End of Lease</p>	<p>Lease provisions will require periodic updating of improvements. Condition at expiration of Lease: as constructed, well-maintained, minus reasonable wear and tear. Developer will leave the premises in a warm shell condition, meaning that the premises shall have finished well-maintained interiors, well-functioning heating and cooling (HVAC) system, drop ceilings, well-maintained plumbing and restrooms, and functioning interior lighting, with all structural improvements intact. Developer shall remove all furniture, fixtures, and equipment and trade fixtures at City's request, or, upon approval by the City, may leave premises occupied with subleases that extend beyond the term of the lease.</p>
<p>4.17 Community Benefits</p>	<p>See Exhibit A.</p>
<p>4.18 Indemnification</p>	<p>Developer shall provide standard commercial hold harmless, defend, and indemnification provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents, including environmental indemnification. Developer's obligations shall exclude any matters arising out of the existing condition of the Property, or the indemnified parties' sole active negligence or willful misconduct.</p>
<p>4.19 Schedule of Performance</p>	<p>See Exhibit B.</p>
<p>4.20 Closing Costs</p>	<p>Developer shall pay all costs or expenses and other amounts necessary for the Close of Escrow, including, but not limited to escrow fees; recording fees, and transfer taxes, if any, and the cost of title insurance and necessary surveys.</p>
<p>4.21 Taxes and Assessments</p>	<p>Developer understands that the LDDA or the Lease may constitute a possessory interest and that</p>

	<p>interest may be subject to property taxation. If for any reason imposed, ad valorem taxes and assessments levied, assessed or imposed for any period either before (as a result of the parties' execution of the LDDA) or after delivery of the Property, including but not limited to, possessory interest taxes, shall be the sole responsibility of the Developer (as an expense to be deducted in determining Net Revenue).</p> <p>The City shall not assert that the execution of the LDDA creates a taxable possessory interest in the Property.</p>
<p>4.22 City Approvals</p>	<p>The City Administrator, in consultation with the City Attorney, shall be authorized to provide City approvals or consents required under or contemplated by the LDDA without further approval from the City Council except for: (i) any Transfers requiring City Council approval pursuant to Section 4.14; (ii) outside dates for closing or completion of construction (iii) changes in community benefits; (iv) changes to the financial terms of the transaction or (v) as otherwise required by law.</p>
<p>4.23 Non-Binding Proposal</p>	<p>This term sheet sets forth a general summary of some of the material terms that would need to be negotiated and memorialized in a formal LDDA/ Lease approved by both parties in their respective sole and absolute discretion. Until that time,</p> <p>A. neither party shall have any obligation to the other party with respect to the Property,</p> <p>B. neither the expenditure of funds, the making of any commitments, nor the taking of any actions by any party to implement any of the terms and conditions of this submission or any such correspondence shall be regarded as part performance or otherwise effectuate any</p>

	<p>agreement prior to the full execution and delivery of the formal agreement and</p> <p>C. either party may terminate negotiations at any time for any or no reason.</p>
<p>4.24 Document Preparation Fee</p>	<p>Developer acknowledges and agrees that City may engage, in its sole discretion, outside counsel to assist with expedited preparation of the LDDA and Lease, after Council formally has approved the Term Sheet. City estimates that such amount shall approximate \$50,000 and shall inform Developer if billings are anticipated to exceed such amount. Developer shall reimburse the City for such legal fees within 5 days of execution of the LDDA.</p>

Attachment A
Project Site/Space Plan

[See attached.]

Exhibit A
Community Benefits

HJK Community Benefits

Orton Development commits to the following community benefits as part of the Henry J. Kaiser Convention Center rehabilitation project.

Community Benefit Category, per ENA and RFP	Developer Proposal
<p>1. Rehabilitation and reopening of the entire historic building with a mix of uses that allows for public access</p>	<p>The rehabilitation of this long vacant and deteriorating historic landmark, and allowing for its sustainable reuse and public enjoyment, is the primary outcome and benefit of the project. The building will be registered as a National Historic Landmark and rehabilitated to the Secretary’s Standards.</p> <p>Necessary seismic and life safety work will be done to return the currently vacant building to productive use.</p> <p>A. <u>Designated Public Access Areas.</u> The public will have access to designated portions of the building during regular business hours. The designated public access areas will include the following components (subject to Building Department and SHPO approvals), each as depicted on Attachment B(1): (i) the deck, (ii) exterior plaza area and (iii) the area of approximately 2,300 square feet on the first floor designated for a Public-Serving Use (defined below). As used herein, the term “Public Serving Use” means a use that is open to and serving the general public, including reasonable evening and weekend hours (in addition to Project tenants and their licensees) including, without limitation, restaurant, retail or museum uses. Public access to areas (i) and (ii) may be subject to (a) modification in response to requests related to subtenant requirements, subject to mutual agreement between Developer and City, or (b) reasonable restriction for special events held at the Project. Notwithstanding the foregoing to the contrary, Developer may sublease area (iii) for a use other than a Public-Serving Use at any time after another area of at least the square-footage indicated for the Public-Serving Use on Attachment B(1) within the Project has been subleased for a Public-Serving Use on the ground floor.</p> <p>B. <u>Scheduled Public Access.</u> Developer shall develop a program to permit the public to request and schedule access to tour/view the</p>

	<p>Arena portion of the Project. Such access shall be supervised by a Developer representative. The scheduled access program shall take into account the needs of the Arena subtenants and be subject to the City's reasonable approval. The schedule access program will be based on a minimum of four hours (e.g. 9:00a – 1:00p) on three days a month (e.g. 1st, 10th and 15th) for each month of the year and for a minimum of 20-minute tour of Arena and Theatre during the access hours.</p>
<p>2. Restoration, reopening and operation of the Calvin Simmons Performing Arts Theatre and ancillary spaces including ballrooms</p>	<p>Developer will reopen the Theatre as a performing arts venue with affordable rates for local non-profit performing arts groups. Developer will propose to the City an entity to manage, operate and program the Theatre (the "Theatre Operator"). The Theatre Operator may be a newly established entity, or an existing entity that agrees to fulfill the required responsibilities. Developer will engage the proposed entity as the Theatre Operator only with written consent of the City.</p> <p>The contract between Developer and the Theatre Operator will be subject to City review and approval before initial execution and before any amendment or extension. Such contract will require that the Theatre cannot be booked by a non-Target User (defined below) for more than two hundred (200) days in any calendar year without the prior approval of the City Administrator. As used herein, the term "Target User" means local educational users (school districts, colleges and their sponsored groups), local non-profit organizations and local performance/arts groups.</p> <p>Ancillary spaces around the Theatre, such as the ballrooms, will also be made available to Target Users for rehearsal spaces, events, smaller performances, meeting space etc. The ballrooms will also be available for rental by the general public for private or community events for at least one hundred eighty (180) days in any calendar year.</p> <p>The Theatre Operator shall use commercially reasonable efforts to require non-Target Users to provide at least 10 tickets per show for free or at a discounted price to Target Users.</p>

	<p>The Theatre Operator will establish a private, charitable foundation (the “Foundation”) to administer the Annual Fund (as defined in the Term Sheet). The Foundation will establish a grant process for the allocation of 100% the prior year’s Annual Fund funds to a variety of Target Users for the following year. These grants will fund/support the following: grantees’ use of the Theatre and its ancillary spaces (e.g. the Gold Room and the Ballroom), artist fees, production expenses or marketing expenses. The grants will be determined by a panel consisting of three individuals, one appointed by the City Administrator, one appointed by the Theatre Operator and one jointly selected by the City Administrator and the Theatre Operator with experience working with from local performance/arts groups.</p>
<p>3. Office space for non-profit arts organizations</p>	<p>The Project B space will contain at least 13,000 leasable square feet that are designated for use by Target Users (the “Minimum Target User Office Space”). Up to fifty percent (50%) of the Minimum Target User Office Space may be located in the basement. The design for the Minimum Target User Office Space will allow for shared resources that may include conference rooms, equipment, kitchens, co-working spaces, reception areas, etc. to ensure that rents are affordable for individual Target Users. The Developer is also investigating ways to provide shared back office and other services for arts tenants such as HR and graphic design. These shared resources, along with the availability of event, rehearsal, office, and storage space under the same roof, are intended to create operational, economic efficiencies and affordable rents for the Target Users housed within the Project. The LDDA will provide with greater specificity for the design elements that are intended to provide operational and economic efficiencies, and affordable rents for Target Users.</p> <p>At least 3,000 square feet of the leasable square footage in the Minimum Target User Office Space (the “Local-Reserved Space”) will be leased to and reserved for Local Arts Organizations (defined below). The Local-Reserved Space shall be identified to City by the Developer and may “float” from one portion of the Minimum Target User Office Space to another, with prior notice to the City, as the parties anticipate the exact mix of tenants and uses may evolve over time. The Lease will include a provision that</p>

prohibits Developer from leasing the Minimum Target User Office Space (or any portion thereof) to a non-Target User, and prohibits Developer from leasing the Local-Reserved Space to a person or entity other than a Local Arts Organization, without the City Administrator's prior written consent. The City Administrator will not unreasonably withhold such consent if the City Administrator in good faith determines Developer has been unable to obtain a credit-worthy Target User tenant for the available space, including Local Arts Organizations for the Local-Reserved Space, after having met the Marketing Requirement (defined below). Any City Administrator consent will be limited to the instant request and does not imply that the City Administrator will consent to subsequent requests.

As used herein, the term "**Local Arts Organization**" means a person or entity that meets the following criteria:

1. The organization's primary purpose is to provide arts or cultural services or the organization has an ongoing, substantial, and integral arts or cultural program with a minimum of two (2), consecutive years providing art and cultural services in the City of Oakland.
2. The organization maintains an office physically located in Oakland with an Oakland street or P.O. Box address (postal box services that provide a street address do not qualify).
3. The organization is a nonprofit registered with the State of California and in good standing.
4. The organization is a tax-exempt organization under Section 501(c)3 of the federal tax code with an IRS Determination Letter listing a street address in Oakland. Alternatively, the organization can demonstrate that it has begun the process of securing 501(c)3 status.

As used herein, the term "**Marketing Requirement**" means that Developer has (a) provided the City with written notice that Developer has not been able to secure leases with Target Users for the Minimum Target User Office Space and (b) actively and professionally marketed such space in a commercially reasonable manner for a period of nine (9) months upon initial lease of the space and a period of sixty (60) days for re-rent of any leased space previously, after providing such notice to the City at a rate that does not exceed \$2.75 per square foot per month of exclusive use space (which amount shall be adjusted annually by the CPI), under a

	<p>NNN lease. Developer may not provide such notice prior to issuance of the temporary certificate of occupancy for the Project.</p> <p>Developer will provide the City with evidence to substantiate Developer's satisfaction of part (b) of the Marketing Requirement, including but not limited to copies of Developer's marketing materials, copies of contracts or other agreements with commercial brokers hired to market the available space and a copy of a correspondence log evidencing communications to/from potential Target User tenants, including Local Arts Organizations.</p>
<p>4. Improvements to, and the creation of new, on-site public spaces surrounding the building for public use and access </p>	<p>Developer, working with its landscape architect and in consultation with its neighbors, will design, fund, construct, and maintain new and improved public spaces immediately around the building on the project site including:</p> <ul style="list-style-type: none"> • Aesthetic and functional improvements to the parking lot to better link the building to Lake Merritt visually and physically • Improvements to 10th Street along the Project frontage as well as parking lot entrances. • Outdoor seating, trash receptacles, and exterior lighting etc. • Aesthetic and functional improvements to the public area between the Theatre and the OMCA to create a stronger link between these two buildings and a more pleasant visitor experience. <p>All improvements will be designed with input from Oakland Museum of California ("OMCA"), the City, and other neighbors and community stakeholders, including the Measure DD Community Coalition, and the Oakland Heritage Alliance.</p>
<p>5. Pedestrian, bike and other improvements to better link the Project to BART and</p>	<p>Developer shall participate with Project neighbors such as OMCA, Laney College, BART, East Bay Asian Local Development Corporation ("EBALDC"), Urban Core, Oakland Unified School District ("OUSD"), and the City, in collaborative efforts to improve surrounding wayfinding, links from the Project to BART and the Lake, and the pedestrian experience in the larger neighborhood</p>

<p>Lake Merritt</p>	<p>context.</p> <p>Developer commits to working with these partners on grant applications and other fundraising efforts, as well as participating in design processes, to help implement improvements.</p> <p>Cost splitting of these improvements beyond the Project site to be negotiated at a later point.</p>
<p>6. Wages</p>	<p>All construction jobs will be subject to payment of Prevailing Wages.</p> <p>Project employers covered by the Oakland Living Wage Ordinance (Oakland Municipal Code Ch. 2.28) shall provide compensation to employees as required by that ordinance.</p>
<p>7. Labor Peace</p>	<p>Any project labor agreement (“PLA”) or labor peace agreement entered into by Developer (in Developer’s sole and complete discretion) and one or more unions shall facilitate implementation of the Small/Local Business Enterprise Policy (“S/LBE”) (including the Local Employment Program) as incorporated into the LDDA, regardless of terms of existing collective bargaining agreements, including by requiring unions party to the PLA to refer local residents regardless of such workers’ place on hiring hall lists, and by permitting contractors to employ local residents referred by other sources when local residents who are union members are not available. Prior to execution of any such PLA or labor peace agreement, Developer shall provide a final draft to the City, and shall execute such draft only with the City’s consent, which shall be provided unless the text of the draft agreement does not comply with such requirements.</p> <p>Prior to Closing, Developer will execute and deliver to City a commercially reasonable labor peace agreement covering restaurant or other food uses that may be in the project with more than 50 full-time employees, as well as chain restaurants of any size with gross revenues exceeding \$50 million across all locations.</p>

<p>8. Educational opportunities, workforce training, apprenticeship programs etc.</p>	<p>The Theatre Operator shall work collaboratively with one or more local educational institutions such as Laney College, OUSD, and the Stagehands Union (I.A.T.S.E) to develop apprenticeship programs in fields such as hemp house operation, lighting, sound, etc., turning the Theatre into a “teaching theatre.” The City may require recipients of any portion of the Annual Fund to participate in the apprenticeship program, through provision of training and/or work opportunities.</p>
<p>9. Local Employment Policy and Small/Local business Contracting Policy</p>	<p>Developer and Project employers shall meet the requirements of:</p> <ul style="list-style-type: none"> • the City’s 2012 S/LBE Program, which includes the City’s Local Employment Program and Oakland Apprenticeship Program; • the City’s Equal Benefits Ordinance; and • the City’s Living Wage Ordinance.

<p>10. Health and Environment</p>	<p>Orton (and City, where applicable) will comply with the following:</p> <ul style="list-style-type: none"> • Public Information: The City shall share information with the public regarding past soil testing and remediation and the existing requirements for truck routes surrounding public land parcels to those living in the surrounding; • Trees: Projects must incorporate and maintain trees on the site and adjacent street frontage (as specified by Oakland Municipal Code Chapter 17.124); there must be a net tree increase, so that trees that are cut must be replaced; • Renewable Energy: Project selection must consider on-site renewable energy infrastructure such as solar, wind, geothermal, or biomass with production capacity of at least 5% of the project's annual electrical and thermal energy cost; • Solar: Projects must maximize opportunities for solar panel installation, including, but not limited to, applying for grant or subsidy programs when available; • Low-VOC Paints: Projects must use paints that have low concentrations of volatile organic compounds; • Indoor Air Quality: Projects must incorporate measures to improve indoor air quality and reduce exposure to air pollution in new development projects, as required in Standard Conditions of Approval (SCA) 20 and 21.
<p>11. Historic Kiosk</p>	<p>Developer will place a kiosk inside the Kaiser Center in a publicly-accessible area that will provide historic background and photographs of the Kaiser Center.</p>

Exhibit B
Schedule of Performance

Item No.	Developer Conditions Precedent to Lease Execution	Within Number of Calendar Days of the Execution of the LDDA	Within Number of Months of the Execution of the LDDA
1	Submit Good Faith Deposit to City	5	-
2	Submit Lessee's Formation Documents and evidence of Oakland Business License.	15	-
3	<p>Submit the following regarding the operation and management of the Calvin Simmons Theatre:</p> <ul style="list-style-type: none"> - A description of the financial and legal structure of the proposed operating entity for the Theatre. - Formation of draft documents for the entity operating the Theatre. - A business and management plan for the operation of the Theater, including an operating budget for the first five years of operation of the Theatre. 	120	4
4	Submit Final Design Development Plans to City for approval.	300	10
5	<p>Submit updated Financial Plan to City, which includes, but is not limited to:</p> <ul style="list-style-type: none"> - Itemized Project development budget including all sources and uses - Ten-year Cash-flow projection 	300	10
6(a)): Submit Final Project Construction Plans that the Developer intends to submit to the City's Building Department for Plan Check/Building Permit Issuance.	540	18
6(b)			
7	: City and Developer to conduct joint walk-through of Property to confirm that it is in the required condition for delivery at closing.	660	22
8	<p>Submit Final Financial Plan to City, which includes, but is not limited to:</p> <ul style="list-style-type: none"> - Binding commitment for construction financing from a reputable institutional lender - Certified financial statement evidencing sources of Developer equity 	660	22

	- Certified financial statement from Eddy Orton evidencing financial capacity to satisfy Completion Guaranty requirements - Funding Agreements with investors evidencing the availability of Historic Rehabilitation Tax Credits and New Market Tax Credits when needed during the construction of the Project		
9	Submit final Construction Contract to City including - Construction schedule - Construction cash flow (draw down) projection	660	22
10	- Initial plan and schedule to incorporate public art	660	22
11	Submit evidence that it has secured non-binding letters of intent with qualified tenants for at least 31,000 square feet of leasable area in the Project B space.	660	22
12	Certified Copies of Governmental Approval - regulatory permits and City final plan check for initial improvements	690	23
13	Completion Guaranty from Eddy Orton and performance and payment bonds.		
14	Lessee formation documents and current City business license (if different than LDDA party).		
15	Submit evidence of Pre-Closing Historic Approvals.	710	27
16	Items to be delivered at Conveyance/Close of Escrow	720	24
	Evidence that Developer has received all Building Permits for the Initial Improvements which condition may be satisfied by (a) evidence that the City is prepared to issue the Building Permits upon payment of the applicable fees, and (b) payment of such fees through the close of escrow.		
	Submit evidence of required insurance for Project.		
17	Commence Construction	750	25
18	Complete Construction of Initial Improvements	1,805	61

Attachment B

Kaiser Auditorium – Summary of Community Benefits

Rehabilitation and Reopening of Historic Kaiser Auditorium

- A rehabilitated and activated Kaiser Auditorium after being closed for almost 14 years.
- Approximately 76,000 square feet of new office space in the arena and basement.
- Rehabilitation in accordance with the Secretary's Standards and designation on the National Register of Historic Places.

Theatre Rental and Office Space Leasing for Local Education, Nonprofit and Arts Groups

- A reopened Theatre as a state-of-the-art performing arts venue.
- Theater available to local nonprofits for a minimum of two hundred (200) days in any calendar year at affordable rates.
- Approximately 13,000 square feet or 17% of the leasable area in the arena and the basement will be made available to nonprofit arts groups, of which 3,000 square feet (23%) will be reserved for local arts organizations at below Class B rent.

Funding Support for Local Education, Nonprofit and Arts Groups

- Each year of the Lease, Developer will place the first \$75,000 of the previous year's net Project income in an Annual Fund to subsidize low-cost access to the Theater for local nonprofits.

Public Access

- The Theatre will be open to the public during all regular performances and events.
- Public access to tour/view the arena based on a given schedule for each month.
- New restaurant/café open to the public on the ground floor of the Theatre, which will open to a deck facing Lake Merritt.

Project Labor Agreement

- Developer will use good faith efforts to negotiate a PLA for the Project, which must explicitly facilitate compliance with the City Local Business and Employment Programs.

Employment Opportunities and City's Local Business and Employment Programs

- 270 new construction jobs with total annual wages of approximately \$18.7 million.
- 260 permanent jobs and annual wages of approximately \$20.3 million.
- City Programs will apply, with a goal of 50% of the work hours on a construction job to be performed by Oakland residents on a craft-by-craft basis.
- Minimum of 50% of all new hires (on a craft-by-craft basis) must be Oakland residents.
- Developer will pay prevailing wages during construction, and pay living wages for staff operating the building upon completion of the rehabilitation work.

Green Building Standards

- Compliance with Health and Environmental building requirements consistent with the Public Lands Resolution, including retention of trees, renewable energy and solar, use of low-volatile organic compound containing paint and indoor air quality measures.

Attachment C

Kaiser Auditorium - Fiscal Impact and Job Creation

The Project will produce jobs and ongoing revenue to the City in the form of possessory interest tax, sales tax, business license tax, utility tax, and parking tax, as well as bringing varied contributing to the growth of the downtown economy. The following figures are based on currently available information and are subject to modification as new data becomes available. Staff estimates:

- The project will generate 270 construction jobs with total annual wages of approximately \$18.7 million, as well as 260 permanent jobs and annual wages of approximately \$20.3 million.
- The City will receive annual possessory interest tax of approximately \$157,000.
- The City will receive sales tax from the restaurant, as well as new employee spending elsewhere in the City, that is estimated at \$26,000 annually.
- The 174 parking spaces are anticipated to generate \$149,000 annually in parking taxes to the City.
- The City will receive approximately \$49,000 annually in business taxes on rental income.
- The City will receive additional business taxes on business operation as well as utility taxes.
- The City will receive approximately \$776,000 in development impact fees, consisting of transportation, capital improvement, public art, and jobs/housing impact fees.

Table 1. Fiscal Impact Summary

Revenues	Total
Annual Tax Revenues	
Possessory Interest Tax	\$157,000
Total Sales & Use Taxes [1]	\$26,000
Business License Tax: Rental Income [2]	\$49,000
Parking Tax	\$149,000
Total Annual Tax Revenues	\$382,000
Development Impact Fees	\$776,000

Notes:

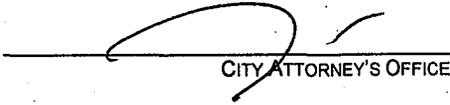
[1] Oakland receives 1% of each dollar sold.

[2] Business license tax rate on rental income is \$13.95 per \$1,000, or 1.395% of total rental income.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 JUN 13 PM 4: 04

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING: (A) THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, UP TO NINETY-NINE YEAR LEASE, AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND OAKLAND CIVIC, LLC, OR ITS AFFILIATE ("OAKLAND CIVIC") FOR THE HENRY J. KAISER CONVENTION CENTER LOCATED AT 10 TENTH STREET; (B) ESTABLISHMENT OF AN ANNUAL FUND TO BE FUNDED BY TENANT FROM ANNUAL NET PROJECT INCOME FOR USE BY A TO-BE-FORMED NONPROFIT CALVIN SIMMONS THEATRE OPERATOR ("THEATRE NONPROFIT") TO PROVIDE GRANTS RELATED TO USE OF THE CALVIN SIMMONS THEATRE; (C) A GRANT UP TO \$100,000 FOR SUBSURFACE HAZARDOUS MATERIALS REMEDIATION TO OAKLAND CIVIC, LLC; AND (D) A GRANT OF \$3,000,000 TO THE THEATRE NONPROFIT FOR THEATRE REHABILITATION COSTS

WHEREAS, the City of Oakland ("City") owns approximately 4.79 acres of property located at 10 Tenth Street, which is improved with the historic Henry J. Kaiser Convention Center (the "Property" or "Kaiser Auditorium"), which is prominently located at the southern end of Lake Merritt; and

WHEREAS, originally named the Oakland Civic Auditorium, the building houses the 1,899- seat Calvin Simmons Theatre (the "Theatre"), a large arena, three large event spaces, a full basement, ancillary office spaces, lobby areas and large hallways; and

WHEREAS, starting in the 1960s the Kaiser Auditorium's use slowly declined and in 2005 the City Council voted to close the building after years of unsuccessful attempts at finding an economically sustainable operating model for the facility; and

WHEREAS, pursuant to the requirements of the California Surplus Land Act, on May 15, 2014, the City issued a Notice of Offer and Intent to Convey the Property ("Notice") to potential developers and public agencies in Alameda County; and

WHEREAS, the City did not receive any responses to the Notice; and

WHEREAS, on September 22, 2014, the City released a Request for Proposals ("RFP") soliciting developer proposals to rehabilitate, lease and operate the Kaiser Center in return for a lease with the City with a term of up to ninety-nine years (the "Lease") and \$3,000,000 in grant funding (the "City Grant"); and

WHEREAS, the City received two responses to the RFP and, after extensive analysis, selected Orton Development, Inc. ("Orton") for the project; and

WHEREAS, the City Council adopted a Resolution in December 2014 to establish a general policy to lease rather than sell City property (Resolution No. 85324 C.M.S.); and

WHEREAS, on July 21, 2015, the City Council, pursuant to Resolution No. 85728 C.M.S., authorized an Exclusive Negotiating Agreement ("ENA") between the City and Orton for the purposes of developing a project proposal for City review and approval, completing California Environmental Quality Act ("CEQA") review, and negotiating the terms and conditions of a Lease Disposition and Development Agreement ("LDDA"), Lease and related documents; and

WHEREAS, Orton, through its affiliate, Oakland Civic, LLC (or its affiliates hereinafter referred to as "Oakland Civic" or "Tenant"), proposes to (1) rehabilitate and operate the Theatre through a nonprofit Theatre operator (the "Theatre Nonprofit") as a performing arts venue, (2) adaptively reuse the arena and basement of the building as commercial private office and restaurant space; (3) improve building accessibility, public spaces, parking, and landscaping, and (4) market the building to nonprofit and art organizations (collectively the "Project"); and

WHEREAS, the Project will result in the rehabilitation and operation of a vacant and blighted historic landmark that will activate the southern end of Lake Merritt, help complete an entertainment, education, and cultural hub in the Lake Merritt area; and generate tax benefits and local jobs; and

WHEREAS, the expenditure of excess bond proceeds (Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13)) is consistent with Resolution No. 84516 C.M.S., which approved a plan for spending excess tax allocation bond proceeds and allocation of such funds to projects and programs in the Central District Redevelopment Project Area, such as the Kaiser Auditorium; and

WHEREAS, a March 2019 appraisal conducted by Yovino & Young concluded that the as-is Fair Market Rental Value of the Property consists of equal annual payments of \$673,000 to the City over the term of the Lease, which, according to the appraiser, is equivalent to the annual nominal base rent of \$1 per year and the projected uneven 50% participation rental income payments to be received by the City during the term of the

Lease after Oakland Civic has been paid its developer fee, equity investment and earned return on its investment and taking into account below-market rental rates, when converted to a level annual payment; and

WHEREAS, the City staff and Orton have negotiated a proposed LDDA and Lease, which will set forth the terms and conditions under which the City will lease the Property to Oakland Civic and under which Oakland Civic will rehabilitate the building, construct improvements and operate the Property; and

WHEREAS, the City has prepared and placed on file a summary of the transaction contemplated by this Ordinance as required by California Government Code Sections 52201 and 53083 ("52201/53083 Report"), and the City has conducted a noticed public hearing on the transaction as required by Government Code Sections 52201 and 53083; and

WHEREAS, a public hearing of the City Council was held to hear public comments on the sale of the Property to the Oakland Civic or affiliated entity for the Project; and

WHEREAS, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

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

SECTION 1. The City Council hereby finds, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to lease the Property for the reasons described in the Agenda Report for this item, and hereby authorizes the lease of the Property to Oakland Civic pursuant to the terms of the documents described in Section 7 hereof.

SECTION 2. The City Council hereby finds and determines, based on the fair market rental value appraisal conducted by Yovino & Young that Property will be leased at its fair market rental value equivalent.

SECTION 3. The City Council authorizes the City Administrator to deposit participation rent payments in the General Purpose Fund (1010), Real Estate Services Organization (85321), Lease Revenue (44420), in a project to be created.

SECTION 4. The City Council authorizes the City Administrator to deposit an annual Project payment of \$25,000 from Oakland Civic pursuant to the LDDA in the General Purpose Fund (1010), CIP Central District (94889), in a project to be created.

SECTION 5. The City Council authorizes (a) the grant of \$3,000,000 to the to-be-formed Theatre Nonprofit for Theatre rehabilitation costs; (b) the City Administrator to execute and administer the terms of a Grant Agreement between the City and the to-be-

formed Theatre Nonprofit; and (c) to appropriate and deposit funds in escrow in an amount not to exceed \$3,000,000 funded from the Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13), in a new project to be created.

SECTION 6. The City Council authorizes (a) the grant of up to \$100,000 to Oakland Civic for subsurface hazardous materials remediation; (b) the City Administrator to execute and administer the terms of a Grant Agreement between the City and Oakland Civic; and (c) to appropriate an amount not to exceed \$100,000 funded from the Central District Projects Fund (5610), Central District Redevelopment Organization (85245), UCOP Garage 5610 Project (1004262), Downtown Redevelopment Program (SC13), in a new project to be created, to pay to Oakland Civic for subsurface hazardous materials remediation.

SECTION 7. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) an LDDA, a Lease and related documents with Oakland Civic, for the lease and development of the Property, all of the foregoing documents to be in a form and content substantially in conformance with the Term Sheet attached as Exhibit A to this Ordinance; (2) such other additions, amendments or other modifications to any of the foregoing documents 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 (3) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the lease and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 8. The City Administrator, without returning to the City Council, shall determine satisfaction of conditions precedent to the lease of the Property to Oakland Civic.

SECTION 9. The City Council authorizes the establishment of an annual fund to be funded by the Tenant from annual net revenues pursuant to the Lease for use by the Theatre Nonprofit to provide financial assistance to eligible organizations for use of the Calvin Simmons Theatre in conformance with the Term Sheet.

SECTION 10. All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 11. The City Council finds and determines that the anticipated environmental effects of the Project have been evaluated in "The Oakland Civic Auditorium Rehabilitation – CEQA Analysis" (the "2019 CEQA Analysis") for the Project

and, as supported by substantial evidence in the record, no additional environmental analysis beyond the 2019 CEQA Analysis is necessary for lease of the Property and the development of the Project. The 2019 CEQA Analysis concluded 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.

SECTION 12. The City Administrator or his/her designee is hereby directed to file a notice of determination and a notice of exemption with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

SECTION 13. The record before this Council relating to this Ordinance includes, without limitation, the following:

- A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Planning Commission Report and all notices relating to this Ordinance and the LDDA; and
- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance, including without limitation the Planning Commission consideration of general plan conformity; and
- C. The 52201 Report and the 53083 Report; and
- D. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation, the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.

SECTION 14. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively (a) the Project Implementation Division, 250 Frank Ogawa Plaza, 5th Floor, Oakland, California; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3rd Floor, Oakland, California; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1st Floor, Oakland, California.

SECTION 15. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 16. The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FURTUNATO BASS, GALLO, GIBSON McELHANEY KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING: (A) THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, UP TO NINETY-NINE YEAR LEASE, AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND OAKLAND CIVIC, LLC, OR ITS AFFILIATE ("OAKLAND CIVIC") FOR THE HENRY J. KAISER CONVENTION CENTER LOCATED AT 10 TENTH STREET; (B) ESTABLISHMENT OF AN ANNUAL FUND TO BE FUNDED BY TENANT FROM ANNUAL NET PROJECT INCOME FOR USE BY A TO-BE-FORMED NONPROFIT CALVIN SIMMONS THEATRE OPERATOR ("THEATRE NONPROFIT") TO PROVIDE GRANTS RELATED TO USE OF THE CALVIN SIMMONS THEATRE; (C) A GRANT UP TO \$100,000 FOR SUBSURFACE HAZARDOUS MATERIALS REMEDIATION TO OAKLAND CIVIC; AND (D) A GRANT OF \$3,000,000 TO THE THEATRE NONPROFIT FOR THEATRE REHABILITATION COSTS

This Ordinance authorizes the leasing of approximately 4.79 acres of City-owned property located at 10 Tenth Street, which is improved with the historic Henry J. Kaiser Convention Center to Oakland Civic, LLC or its affiliates ("Oakland Civic") to (a) rehabilitate and operate the Calvin Simmons Theatre within the building through a nonprofit Theatre operator as a performing arts venue, (b) adaptively reuse the arena and basement of the building as commercial private office and restaurant space; (c) improve building accessibility, public spaces, parking, and landscaping, and (d) market the building to nonprofit and art organizations. This Ordinance authorizes the City Administrator to sign the Lease Disposition and Development Agreement and the Lease with Oakland Civic and make associated findings with respect to the California Environmental Quality Act and other matters.