

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

**ORDINANCE (1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIVE-YEAR LICENSE WITH ONE FIVE-YEAR OPTION TO RENEW, AT THE BELOW MARKET RATE OF \$1000 PER MONTH, INCREASING BY \$100 IN EACH YEAR INCLUDING THE OPTION TERM, FOR USE OF SPACE BY GONDOLA SERVIZIO L.L.C. AT LAKE CHALET, 1520 LAKESIDE DRIVE, AND LAKE MERRITT BOATING CENTER, 568 BELLEVUE AVENUE, BOTH PROPERTIES ON THE SAME PARCEL (APN 10-764-3), FOR GONDOLA SERVICES ON LAKE MERRITT AND (2) MAKING FINDINGS THAT THE LICENSE FOR BELOW FAIR MARKET VALUE IS IN THE BEST INTERESTS OF THE CITY**

**WHEREAS**, the City of Oakland (City) owns Lake Chalet, 1520 Lakeside Drive, and Lake Merritt Boating Center, 568 Bellevue Avenue (APN 10-764-3);

**WHEREAS**, Gondola Servizio L.L.C. (Licensee) is an Oakland-based service company that operates gondolas for recreation;

**WHEREAS**, Licensee desires to operate its gondolas on Lake Merritt and store its gondolas and equipment nearby;

**WHEREAS**, Licensee seeks to license space from the City which consists of: (1) commercial space (512 square feet) at Lake Chalet, (2) floating dock (about 400 square feet on SE side of commercial space) and accompanying berths at Lake Chalet, and (3) storage bay #A (484 square feet) at Lake Merritt Boating Center (the Premises); and

**WHEREAS**, Oakland Municipal Code (OMC) Section 2.42.110 provides that a license for use of City property must be for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market value, unless the City Council determines that the license of the property for less than its fair market value is in the best interests of the City; and

**WHEREAS**, OMC Section 2.42.110 provides that the value of in-kind services in lieu of cash rent provided by licensee to the City or the community at large, including social and cultural benefits to the community, may be considered by the Council in making a finding that the license for use of the property for less than its fair market rental value is in the best interests of the City; and

**WHEREAS**, gondola cruises complement existing water activities on Lake Merritt and provide equitable access to the Lake; and

**WHEREAS**, Licensee has agreed to a set of in-kind services that will benefit the Oakland community; and

**WHEREAS**, Licensee will donate gift certificates for gondola cruises for Oakland public schools, nonprofit groups, and charity organizations such as the Oakland Parks and Recreation Foundation; and

**WHEREAS**, Licensee will offer discounts or scholarships for rowing lessons for promising youth and community college students interested in learning the rare skill of Venetian rowing who will then be able to join Licensee's team of local rowers; and

**WHEREAS**, City staff have negotiated with Licensee the terms for a new five-year license for use of the Premises with one five-year option to renew, in exchange for a below-market monthly license fee of \$1000, increasing by \$100 each year including the option term, as well as the social, cultural, and economic benefits Licensee will provide to the City, including agreed-upon in-kind services (the License); and

**WHEREAS**, such proposed material terms for the License are described in the Agenda Report accompanying this Ordinance;

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

**SECTION 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**SECTION 2.** Pursuant to OMC Section 2.42.110, and based on the value of the in-kind services and the social, cultural, and economic benefits of the License described in the above recitals and in the Agenda Report, the City Council finds and determines that it is in the City's best interest to enter into the License with Licensee at the below market license fee of \$1000 per month, increasing by \$100 each year.

**SECTION 3.** The City Council hereby authorizes the City Administrator, or designee, to negotiate, enter into, and execute a License with Licensee, for a term of five years with one five-year option to renew, and consistent with the material terms set forth in the Agenda Report.

**SECTION 4.** The City Attorney's Office shall review and approve the License and any amendments as to form and legality and consistency with this Ordinance, and a copy of each shall be placed on file with the City Clerk.

**SECTION 5.** The City Council hereby authorizes the City Administrator, or designee, to enter into amendments to the License, without extending the term of the License, consistent with this Ordinance and its basic purposes.

**SECTION 6.** The City Council hereby finds and determines, on the basis of substantial evidence in the record, that this action is not a project subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because the License authorized by this Ordinance will not have a direct or reasonably foreseeable indirect physical change in the environment. The City Administrator, or her designee, is hereby authorized to file a notice of exemption with the appropriate agencies.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 8. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,  
THAO, AND PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

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

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

**ORDINANCE (1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIVE-YEAR LICENSE WITH ONE FIVE-YEAR OPTION TO RENEW, AT THE BELOW MARKET RATE OF \$1000 PER MONTH, INCREASING BY \$100 IN EACH YEAR INCLUDING THE OPTION TERM, FOR USE OF SPACE BY GONDOLA SERVIZIO L.L.C. AT LAKE CHALET, 1520 LAKESIDE DRIVE, AND LAKE MERRITT BOATING CENTER, 568 BELLEVUE AVENUE, BOTH PROPERTIES ON THE SAME PARCEL (APN 10-764-3), FOR GONDOLA SERVICES ON LAKE MERRITT AND (2) MAKING FINDINGS THAT THE LICENSE FOR BELOW FAIR MARKET VALUE IS IN THE BEST INTERESTS OF THE CITY**

This Ordinance authorizes a below-market-rate license for use of space by Gondola Servizio L.L.C. at Lake Chalet and Lake Merritt Boating Center, on a five-year term with one five-year option to renew, in exchange for below-market-rate monthly license of \$1000, increasing by \$100 in each year including the option term, in-kind gondola services, and social, cultural, and economic benefits as authorized by O.M.C. Section 2.42.110. This Ordinance also authorizes the City Administrator or her designee to negotiate and enter into a below-market-rate license for this transaction and amendments consistent with the Ordinance, and makes associated findings with respect to the California Environmental Quality Act and other matters.