

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE: (1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE WITH AVA COMMUNITY ENERGY (AVA), A CALIFORNIA NOT-FOR-PROFIT JOINT POWERS AUTHORITY (JPA), A MASTER SITE LICENSE AGREEMENT TO INSTALL, OPERATE, AND MAINTAIN PHOTOVOLTAIC SOLAR AND BATTERY ENERGY STORAGE PROJECTS FOR A COMMERCIAL OPERATION TERM OF TWENTY-FIVE (25) YEARS EACH NOT TO EXCEED DECEMBER 31, 2052, AT A RATE OF ZERO DOLLARS (\$0.00) PER YEAR AND SUBJECT TO POTENTIAL EARLY TERMINATION DAMAGES FOR THE FOLLOWING TEN (10) MUNICIPAL FACILITIES:

- A. OAKLAND ICE CENTER AT 519 18TH STREET;**
- B. OAKLAND MUNICIPAL SERVICES CENTER AT 7101 EDGEWATER DRIVE;**
- C. EAST OAKLAND SPORTS CENTER AT 9161 EDES AVENUE;**
- D. 81ST AVENUE PUBLIC LIBRARY AT 1021 81ST AVENUE;**
- E. MAIN PUBLIC LIBRARY AT 125 14TH STREET;**
- F. FIRE STATION NO. 1 AT 1603 MARTIN LUTHER KING JR WAY;**
- G. FIRE STATION NO. 3 AT 1445 14TH STREET;**
- H. FIRE STATION NO. 15 AT 455 27TH STREET;**
- I. FIRE STATION NO. 17 AT 3344 HIGH STREET; AND**
- J. FIRE STATION NO. 20 AT 1401 98TH AVENUE;**

(2) MAKING FINDINGS THAT THE LICENSES FOR A BELOW FAIR MARKET VALUE ARE IN THE BEST INTERESTS OF THE CITY; AND

(3) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, on May 15, 2018, the City Council approved Resolution No. 87183 C.M.S., adopting the greenhouse gas (GHG) emissions reduction target of 56 percent below 2005 emissions by 2030; and

WHEREAS, the City Council adopted the 2030 Equitable Climate Action Plan (ECAP) in July 2020 which establishes actions that the City and its partners will take to equitably reduce Oakland’s climate emissions 56 percent by 2030 compared to 2005 emissions and adapt to a changing climate; and

WHEREAS, ECAP action “City Leadership–1” calls for the City to reduce climate impacts of City expenditures and operations and the installation of solar systems contributes to achieving this goal; and

WHEREAS, on December 20, 2022, the City Council adopted Resolution No. 89536 C.M.S. authorizing the City Administrator to evaluate the potential deployment of solar and battery energy stems at critical municipal facilities in partnership with East Bay Community Energy; and

WHEREAS, in October 2023, East Bay Community Energy changed its name to Ava Community Energy (Ava) and remains a California Joint Powers Authority (JPA); and

WHEREAS, on November 12, 2024, the City Council is scheduled to hear consider adoption of a Resolution authorizing the City Administrator to negotiate and enter into a Power Purchase Agreement (PPA) with Ava for the deployment of solar and battery energy systems at critical municipal facilities; and

WHEREAS, the PPA will allow a third-party developer to own, operate, and maintain the generating equipment, and the City would agree to host the systems and purchase the electric output for 25 years for a net savings in utility costs; and

WHEREAS, in Section 219(6) of the Charter, the license or lease of City-owned real property by the City for longer than one year must be authorized by an ordinance enacted by the City Council pursuant to Oakland Municipal Code Section (OMC) 2.42.100; and

WHEREAS, pursuant to OMC Section 2.42.110, City-owned real property must be licensed or leased 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 or lease of the property for less than its fair market value is in the best interest of the City; and

WHEREAS, in the case of licensees or lessees who provide in-kind services in lieu of cash rent, the value of such in-kind services to the City or the community at large may be considered in making the required Council finding and determination. In-kind services include benefits or values the provider renders to the City or the community at large as a result of the tenancy in lieu of payment of cash, including, but not be limited to, property security and maintenance, social and cultural benefits to the community, or other appropriate services; and

WHEREAS, Ava is a not-for-profit JPA, of which the City is a member and has the primary objectives of providing its member agencies local energy control and oversight, providing cleaner electricity at competitive rates, driving investment in renewable energy, and improving the resilience of local communities; and

WHEREAS, Ava proposes to develop, construct, operate, and maintain multiple photovoltaic solar projects and battery energy storage projects on properties owned or controlled by the City at no cost to the City, which will advance climate goals and would otherwise cost the City approximately \$1.59 million dollars per location or approximately \$14.3 million dollars total; and

WHEREAS, proposed locations will not be included in the Master Site License Agreement if staff conclude that it is infeasible to ensure site control for a 25-year operating term for any site; and

WHEREAS, Ava will strive to create work development opportunities for Alameda County and San Joaquin County residents and small local businesses; and

WHEREAS, installing solar and battery energy storage will contribute to the City's energy resiliency provide backup power at these buildings that are critical to City functions; and

WHEREAS, pursuant to Sections 4217.12 of the Government Code regarding energy conservation contracts, the City "may enter into a an energy service contract and any necessarily related facility ground lease on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds: (1) That the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases; (2) That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract;" and

WHEREAS, Ava proposes to install, operate, and maintain photovoltaic solar projects and battery energy storage projects at no cost to the City and would otherwise cost the City approximately \$1.59 million dollars per location or approximately \$14.3 million dollars total; and

WHEREAS, the proposed partnership with Ava would enable the City to lock in a lower 2.5% annual cost of electricity increase for energy generated by the projects, compared to the more expensive 4.5% historical inflation rate on electricity costs.; and

WHEREAS, the proposed solar and battery energy storage projects are improvements, renovations, or updates to an existing building and do not constitute a disposition under the California Surplus Land Act, pursuant to Government Code Section 102(i)(2)(B)(iii) of the Surplus Land Act; and

WHEREAS, the proposed installation of solar and battery storage infrastructure on the identified municipal sites are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15307 (protection of natural resources), 15308 (protection of the environment), and 15183 (projects consistent with General Plan and Zoning); and

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

SECTION 1. That the City Administrator is hereby authorized to negotiate and execute a master site license agreement with Ava Community Energy, a not-for-profit JPA, to develop, construct, operate, and maintain multiple photovoltaic solar projects and battery energy storage projects at no cost to the City for a total commercial operation term of twenty-five (25) years each not to exceed December 31, 2025, at a below market rent rate of Zero Dollars (\$0.00) per year and subject to potential early termination damages at the following ten (10) City of Oakland municipal facilities:

- (A) Oakland Ice Center at 519 18th Street (APN 8-641-8-5);
- (B) Oakland Municipal Services Center at 7101 Edgewater Drive (APN 41-3902-20);
- (C) East Oakland Sports Center at 9161 Edes Avenue (APN 44-5053-1-6);
- (D) 81st Avenue Public Library at 1021 81st Avenue (APN 41-4211-1 and 41-4211-3);
- (E) Main Public Library at 125 14th Street (APN 2-89-1);
- (F) Fire Station No. 1 at 1603 Martin Luther King Jr Way (APN 3-59-16-3);
- (G) Fire Station No. 3 at 1445 14th Street (APN 4-61-17);
- (H) Fire Station No. 15 at 455 27th Street (APN 9-684-5-1);
- (I) Fire Station No. 17 at 3344 High Street (APN 32-2032-175);
- (J) Fire Station No. 20 at 1401 98th Avenue (APN 46-5424-26)

SECTION 2. The City Council finds and determines that the license of the ten (10) identified municipal facilities for less than its fair market rental value is in the best interests of the City pursuant to OMC Section 2.42.110, because (1) Ava will install, operate, and maintain photovoltaic solar projects and battery energy storage projects at no cost to the City and would otherwise cost the City approximately \$1.59 million dollars per location or approximately \$14.3 million dollars total; (2) Ava will strive to create work development opportunities for Alameda County and San Joaquin County residents and small local businesses; (3) Installing solar and battery energy storage will contribute to the City's energy resiliency provide backup power at these buildings that are critical to City function; and (4) providing solar and battery energy storage in Oakland will advance the City's 2030 Equitable Climate Action Plan and the State's climate goals.

SECTION 3. Pursuant to Sections 4217.12 of the Government Code, the City Council finds and determines that the proposed master site license agreement in conjunction with the PPA is in the best interest of the City because (1) the anticipated cost to the City for electrical energy or conservation services provided by the proposed photovoltaic solar and battery energy storage projects under the contract will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of those purchases; and (2) the difference between the fair rental value for the real property subject to the proposed master site license agreement and the agreed below market rent, is anticipated to be offset by improved energy resiliency for the City's critical municipal facilities; below-market energy purchases with a lower 2.5% CPI adjustment for the cost of electricity compared to the more expensive 4.5% CPI increase projected from PG&E; installation, operation, and maintenance of the photovoltaic solar and battery energy storage projects provided under the PPA valued at approximately \$1.59 million dollars per location or approximately \$14.3 million dollars total.

SECTION 4. The City Council finds and declares that the proposed MSLA does not constitute a disposition because the proposed photovoltaic solar projects and battery energy storage projects are “improvements, renovations, or updates to an existing building” under Government Code Section 102(i)(2)(B)(iii) of the Surplus Land Act.

SECTION 5. The City Council has independently reviewed and considered this environmental determination, and the City Council, and the City Council finds and determines that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15307 (protection of natural resources), 15308 (protection of the environment), and 15183 (projects consistent with General Plan and Zoning). The City Administrator or designee is hereby directed to file a Notice of Exemption with the appropriate agencies.

SECTION 6. 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 7. 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 – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation:

NOTICE AND DIGEST

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This Ordinance authorizes the City Administrator to negotiate and execute with Ava Community Energy (AVA), a California Joint Powers Authority, a master site license agreement to install, operate, and maintain photovoltaic solar and battery energy storage projects for a commercial operation term of twenty-five (25) years each not to exceed December 31, 2052, at a rate of Zero Dollars (\$0.00) per year and subject to potential early termination damages for the following ten (10) municipal facilities: (a) Oakland Ice Center, (b) Oakland Municipal Services Center, (c) East Oakland Sports Center; (d) 81st Avenue Oakland Public Library Branch, (e) Oakland Main Public Library; (f) Fire Station No. 1; (g) Fire Station No. 3; (h) Fire Station No. 15; (i) Fire Station No. 17; and (j) Fire Station No. 20. This Ordinance makes findings that the licensees for a below fair market value are in the best interests of the City and adopts appropriate California Environmental Quality Act (CEQA)

findings. The City will hold a public hearing on and adopt findings required by Government Code section 4217.12 regarding anticipated energy cost savings and other benefits the City shall receive as a result of the proposed master site license agreement for photovoltaic solar and battery energy storage projects.