

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 12, 2010

RE: A City Ordinance Authorizing the City Administrator to Negotiate and Execute a Conditional Assignment Agreement With The Chabot Space and Science Center ("Chabot") and the Oakland Unified School District (the "District") to: (1) Subordinate the City's Right to Assume the Ground Lease for the Property; and (2) Consent to a Restructuring of the District's Loan to Chabot

SUMMARY

An Ordinance has been prepared to authorize the City Administrator, or his designee, to execute the Agreement Regarding Conditional Assignment ("Agreement") between Chabot Space and Science Center, a joint powers authority ("Chabot"), the Oakland Unified School District, a California public school District (the "District") and the City of Oakland ("City") which will (1) allow subordination of the City's right to assume the Ground Lease dated February 25, 1994 (the "Ground Lease"), pursuant to which the City leased to Chabot the real property underlying the Chabot Space and Science Center, 10000 Skyline Boulevard (the "Property"), and (2) consent to the restructuring of the District's loan to Chabot.

In July 1999, the District provided a loan exceeding \$10 million to Chabot for the construction of capital improvements (the "Loan"), which was evidenced by the First Amendment to the Ground Lease between the City and Chabot, and Subordination of Assumption Options (the "First Amendment").

The First Amendment acknowledges the District's security interest in the Property and provides that the District would have the right to succeed to Chabot's interest under the Ground Lease if the District were to foreclose on such security interest or accept a deed in lieu of foreclosure thereof in connection with a default by Chabot under the Loan.

To enable Chabot to repay the outstanding balance of the Loan, Chabot and the District have agreed to restructure the Loan and enter into (1) a Site Lease, pursuant to which Chabot will lease the improvements located on the Property (the "Improvements") to the District, and (2) a Chabot JPA Lease Agreement- Chabot Space and Science Center Facility (the "Facility Lease") pursuant to which the District will lease the Improvements back to Chabot for operation of the Chabot Space and Science Center Facility ("Facility").

The Facility Lease provides that upon the occurrence of an event of default by Chabot, and the expiration of all applicable cure periods, the District may succeed to Chabot's interests in the Property and the Improvements pursuant to an assumption of the Ground Lease.

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October 12, 2010

This Ordinance will allow the District to assume and succeed to the rights of Chabot under the Ground Lease in the event of a default by Chabot under the Facilities Lease.

FISCAL IMPACT

There will be no fiscal impact to the City as a result of this Ordinance. Rent under the Ground Lease is \$1.00 per year, for the 66 year term commencing in 1994, and was paid in full at the commencement of the Ground Lease.

BACKGROUND

The Chabot Space and Science Center is a joint powers authority comprised of the District, the City, and East Bay Regional Park District. The Parties entered a Joint Powers Agreement dated May 26, 1989 (as subsequently amended, the "JPA Agreement") which provides that the City and the District (in that order) have certain rights to assume the Ground Lease under certain circumstances (Sec. 3.04).

On July 1, 1999, the District issued Certificates of Participation (COPs) to provide a loan of \$10,265,000 to Chabot for capital improvements, of which \$8, 327,680.60 is still outstanding. To extend the repayment term and thereby reduce the fiscal burden on Chabot, the District and Chabot have completed negotiations to restructure Chabot's indebtedness to the District. The restructured loan agreement will be in the form of a lease/lease-back of the Facility: the District will lease the Facility from Chabot for \$1 then lease it back to Chabot for \$450,000 per year. The lease payments from Chabot will repay the remaining principal still due on the Loan.

In order to complete the transaction, the District and Chabot require City approval to execute the Conditional Assignment Agreement. This will permit Chabot to enter into the Site Lease with the District so that the District may then Lease the Facility back to Chabot under the Facilities Lease. The Agreement Regarding Conditional Assignment provides recourse to the District in the event of a default by Chabot under the Facilities Lease.

KEY ISSUES AND IMPACTS

The key issue is whether the City should approve the Agreement Regarding Conditional Assignment, which will allow the District to assume the rights of Chabot under the Ground Lease in the event of a default by Chabot under the Facilities Lease.

Under the First Amendment to the Ground Lease, the City has previously agreed to allow the transfer of Chabot's interests under the Ground Lease to the District in the event of a default by Chabot. There will be no impact to the City for allowing an orderly transfer of the Ground Lease to the District should Chabot default in its obligations under the Facilities Lease; the assumption rights of the District under this Agreement Regarding Conditional Assignment are

indistinguishable from the District's rights under the First Amendment to the Ground Lease. Should the District succeed to Chabot's interest under the Ground Lease, then the District would undertake operation of the Space and Science Center.

SUSTAINABLE OPPORTUNITIES

Economic: The restructuring of the Loan under the Facilities Lease will enable Chabot to carry on its innovative astronomy and aerospace sciences programming and continue to operate the facility, generating revenue to repay the District's loan and to operate the Center.

Environmental: The programs offered by Chabot include environmental education, and the facility plans to open the Bill Nye Climate Lab as a new permanent exhibition in November 2010.

Social Equity: The Loan restructure will insure that the Center will remain open and available for District students, the entire Oakland community and future generations to enjoy.

DISABILITY AND SENIOR CITIZEN ACCESS

Disabled and senior citizens will continue to have access to the Property, in compliance with the Americans with Disabilities Act and other applicable laws.

RECOMMENDATION AND RATIONALE

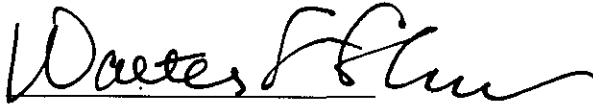
Staff recommends that the City Council approve the Ordinance authorizing the City Administrator to negotiate and execute the Agreement Regarding Conditional Assignment for the following reasons:

1. The approval of this Ordinance is integral to the financial stability and success of the Chabot Space and Science Center and will insure that the Center will remain open and available for future generations to enjoy.
2. The restructuring of the Loan under the Facilities Lease will enable Chabot to carry on its innovative astronomy and aerospace sciences programming and continue to provide community resources to the Oakland Community for the benefit for local and regional residents.
3. There is no fiscal impact to the City under the Agreement Regarding Conditional Assignment.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the Ordinance.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by: Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Reviewed by: Frank Fanelli, Manager
Real Estate Services

Prepared by: Hamid Ghaemmaghami

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

NOTICE AND DIGEST

A CITY ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CONDITIONAL ASSIGNMENT AGREEMENT WITH THE CHABOT SPACE AND SCIENCE CENTER ("CHABOT") AND THE OAKLAND UNIFIED SCHOOL DISTRICT (THE "DISTRICT") TO: (1) SUBORDINATE THE CITY'S RIGHT TO ASSUME THE GROUND LEASE FOR THE PROPERTY; AND (2) CONSENT TO A RESTRUCTURING OF THE DISTRICT'S LOAN TO CHABOT

An Ordinance has been prepared authorizing the City Administrator to negotiate and execute a *conditional assignment agreement* with Chabot Space and Science Centre and the Oakland Unified School District.

INTRODUCED BY COUNCIL MEMBER _____
 OFFICE OF THE CITY CLERK
 OAKLAND

Shirley Miller
 City Attorney

2010 SEP 30 PM 3:03 **OAKLAND CITY COUNCIL**

ORDINANCE No. _____ C.M.S.

A CITY ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CONDITIONAL ASSIGNMENT AGREEMENT WITH THE CHABOT SPACE AND SCIENCE CENTER ("CHABOT") AND THE OAKLAND UNIFIED SCHOOL DISTRICT (THE "DISTRICT") TO: (1) SUBORDINATE THE CITY'S RIGHT TO ASSUME THE GROUND LEASE FOR THE PROPERTY; AND (2) CONSENT TO A RESTRUCTURING OF THE DISTRICT'S LOAN TO CHABOT

WHEREAS, the Chabot Space and Science Center, a joint powers authority ("Chabot") and the City of Oakland (the "City") entered into a Ground Lease dated February 25, 1994, (the "Ground Lease"), pursuant to which the City leased to Chabot certain real property upon which the Space and Science Center facility (the "center") was constructed; and

WHEREAS, the District loaned approximately \$10 million to Chabot to assist in financing construction of the Center (the "Loan"), and in connection therewith, on July 1, 1999, the City and Chabot entered into the First Amendment to the Ground Lease (the "First Amendment"); and

WHEREAS, the First Amendment acknowledges the District's security interest in the Center and provides that should the District foreclose on such security interest, it will have the right to succeed to the interest of Chabot under the Ground Lease, or accept a deed in lieu of foreclosure in connection with a default by Chabot under the Loan; and

WHEREAS, Chabot and the District desire to restructure the Loan to better enable Chabot to repay the outstanding balance, and propose to enter into 1) a Site Lease pursuant to which Chabot will lease the improvements located on the Property to the District (the "Site Lease"), and 2) a Chabot Joint Powers Authority Lease Agreement pursuant to which the District will lease the Improvements back to Chabot for operation of the Chabot Space and Science Center Facility (the "Facility Lease"); and

WHEREAS, the Facility Lease provides that the District and Chabot shall take all actions necessary to terminate, cancel, and reconvey all of the documents and instruments executed in connection with the Loan, including all instruments and agreements providing any form of security interest in connection with the Loan; and

WHEREAS, Section 3.04 of the Joint Powers Agreement of the Chabot Space and Science Center, dated May 26, 1989 (as subsequently amended, the "JPA Agreement") provides that the City and the District (in that order) have certain rights to assume the Ground Lease under certain circumstances; and

WHEREAS, the Facility Lease provides that upon the occurrence of an event of default thereunder by Chabot, and the execution of all applicable cure periods, the District may

assume the Ground Lease, thereby succeeding to the interests of Chabot in the Ground Lease and Improvements, and the District will thereafter operate the Center; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 (“CEQA”), the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been met; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby approves of the District’s restructuring of the loan to Chabot, and consents to the execution of the Site Lease and the Facility Lease.

Section 2. The City Council agrees that following any future occurrence of an event of default by Chabot under the Facility Lease and the expiration of all applicable cure periods, the City shall, upon District's request, approve an assignment of Chabot's interests under the Ground Lease, to the District.

Section 3. For so long as the Facility Lease is in effect, the City agrees to subordinate its option to assume the Ground Lease to the District's option to assume the Ground Lease, pursuant to Section 3.04 of the JPA Agreement

Section 4. The City Administrator, or his designee, is authorized to negotiate and execute the Conditional Assignment Agreement, and any amendments thereto, and any other documents and subsequent amendments necessary to effectuate the purposes of this Ordinance.

Section 5. The City Council has independently reviewed and considered this environmental determination and the City Council finds and determines, based on the information in the staff report accompanying this Ordinance, that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15301(a) (existing facilities) of the CEQA guidelines.

Section 6. The City Administrator, or his designee, shall cause to be filed with the County of Alameda a Notice of Exemption and an Environmental Declaration for this action.

Section 7. All agreements executed by the City pursuant to this Ordinance shall be approved as to form and legality by the City Attorney’s Office and a copy shall be filed with the Office of the City Clerk.

Section 8. This Ordinance shall become effective immediately upon 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- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland , California