



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE (1) AUTHORIZING A LEASE AMENDMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND SCHOOL FOR THE ARTS (OSA) FOR APPROXIMATELY 62,910 SQUARE FEET LOCATED ON THE 2ND AND 3RD FLOORS OF THE FOX THEATER AT 1805 TELEGRAPH AVENUE TO EXTEND THE REDUCED RENTAL RATE OF FORTY-SEVEN THOUSAND TWENTY-FIVE DOLLARS (\$47,025) PER MONTH THROUGH JUNE 30, 2026; (2) MAKING FINDINGS THAT THE LEASE AMENDMENT FOR BELOW FAIR MARKET VALUE IS IN THE BEST INTEREST OF THE CITY; AND (3) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the historic Fox Oakland Theater (Fox Theater) located at 1805 Telegraph Avenue is an approximately 140,000 square foot historic theater in the City of Oakland (City) Uptown neighborhood that was built in the 1920s and acquired and renovated by the Oakland Redevelopment Agency in the early 2000s; and

WHEREAS, a portion of the ground floor of the wrap around buildings off Telegraph Avenue, along 18th Street and 19th Street, as well as the second and third floors of the Fox Theater were intended for use by the Oakland School for the Arts (OSA), a public charter school in the Oakland Unified School District; and

WHEREAS, OSA is a public charter school founded in 2002 serving over 800 students in grades 6-12 tuition-free. OSA serves students across the Bay Area and 72 percent of students are from Oakland; and

WHEREAS, on April 15, 2006, Oakland Renaissance NMTC, Inc. (Renaissance) an entity created by the Oakland Redevelopment Agency for the redevelopment of the Fox Theater, OSA as the tenant, and CBS Outdoor Inc. (CBS) executed an agreement (Pledge Agreement) whereby CBS would pay a portion of revenue (Billboard Revenue) from one double-sided digital billboard on Port of Oakland property at the eastern approach of the San Francisco – Oakland Bay Bridge to Renaissance to cover OSA's obligations to pay base rent under the Lease. The City is the successor to Renaissance pursuant to the asset transfer from ORSA, and Outfront Media is the successor to CBS under the Pledge Agreement; and

WHEREAS, OSA is obligated to make up any difference if the Billboard Revenue falls short of OSA's base rent obligations under the Lease or if the Pledge Agreement is terminated; and

WHEREAS, on December 18, 2006, OSA executed a lease (Lease) with the City-affiliated non-profit Fox Oakland Theater, Inc. (FOT) as the then master tenant of the Fox Theater and landlord for approximately 62,910 square feet of the Fox Theater (Premises) for a public charter school. Base rent under the Lease was Seventy-One Thousand Two Hundred Fifty Dollars (\$71,250) per month until June 30, 2016 and Seventy-Eight Thousand Three Hundred Seventy-Five Dollars (\$78,375) per month thereafter through the Lease term ending June 30, 2021; and

WHEREAS, on December 15, 2020, the Oakland Redevelopment Successor Agency (ORSA) authorized transfer of ownership of the Fox Theater by grant deed to the City of Oakland pursuant to Ordinance No. 13629 C.M.S.; and

WHEREAS, on December 15, 2020, FOT authorized assignment of its interests in the three subleases at the Fox Theater with OSA, Emporium Oakland LLC, and GASS Entertainment, LLC, to the City with assistance of a third-party property management company pursuant to Ordinance No. 13630 C.M.S.; and

WHEREAS, Billboard Revenue has declined over time as additional billboards were developed in the vicinity such that since 2013 the Billboard Revenue has been insufficient to cover OSA's base rent obligations under the Lease; and

WHEREAS, prior to the City's acquisition of the Fox Theater and assumption of the Pledge Agreement and three subleases from ORSA, on June 7, 2021, FOT amended the Lease (First Amendment) to (a) extend the lease term by two (2) years to June 30, 2023 with one 3-year option to renew to June 30, 2026; and (b) temporarily reduce the base rent of Seventy-Eight Thousand Three Hundred Seventy-Five Dollars (\$78,375) per month by forty percent (40%) to Forty-Seven Thousand Twenty-Five Dollars (\$47,025) per month for the period of July 1, 2021 to June 30, 2023. This rent reduction allowed the Billboard Revenue to continue to fully cover OSA's base rent obligations so that OSA's limited funds could be focused on school operations, which costs are higher than comparable public charter schools because of OSA's immersive arts curriculum; and

WHEREAS, it is expected that the Billboard Revenue will continue to be insufficient to meet all of OSA's base rent obligations when the rent reduction ends on June 30, 2023, pursuant to the First Amendment, and OSA's obligation to then begin supplementing the Billboard Revenue will make it difficult for OSA to sustain its tenancy at the Fox Theater; and

WHEREAS, the City relies on the rent collected from the tenants of the Fox Theater to sustain the Fox Theater, including to finance capital improvements. Financial modeling indicates that the City can sustain continuation of OSA's Temporary Rent Reduction through the amended Lease term ending June 30, 2026; and

WHEREAS, both the Lease and Pledge Agreement expire in 2026. To continue OSA's tenancy thereafter the Lease will need to be further extended and a source of revenue will be needed to meet OSA's base rent obligations and pay for expenses associated with the Fox Theater; and

WHEREAS, pursuant to Oakland Municipal Code Section 2.42.110, City-owned real property must be leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market rental value, unless the City Council has made a finding and determination that the lease of the property for less than its fair market rental value is in the best interests of the City; and

WHEREAS, in the case of 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, many students arrive at OSA from under-resourced schools and all are admitted 100 percent grade-blind, which means students who need academic and artistic support enroll alongside students who face fewer challenges to their educational success; and

WHEREAS, the demographics of OSA's student body are as follows: 23 percent Black, 22 percent multi-ethnic, 11 percent Latinx, 34 percent white, 6 percent Asian, and 1 percent Pacific Islander, and 3% declined to state. Additionally, the student body is 65 percent female, 34 percent male, and 1 percent non-binary, and approximately 40 percent of OSA students identify as LGBTQIA+; and

WHEREAS, the City desires to amend the Lease so as to continue the temporary rent reduction for the remainder of the Lease term ending June 30, 2026; and

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

SECTION 1. The City Administrator is hereby authorized to negotiate and execute a second amendment (Second Amendment) to the Lease so as to set the base rent rate at Forty-Seven Thousand Twenty-Five Dollars (\$47,025) per month through June 30, 2026.

SECTION 2. That funds collected from the tenant will be placed in the Central District TA Bonds Series 2006T Fund (5614), Real Estate Organization (85231), Miscellaneous Rental Revenue Account (44419), Fox Theater Capital Project (1005784), Real Estate Program (PS32) and used to pay for costs associated with the Fox Theater.

SECTION 3. The City Council finds and determines that the lease of the Premises to OSA for less than its fair market rental value is in the best interests of the City, because OSA is a long-term anchor tenant at the Fox Theater, stabilizing institution and source of vitality for the Uptown

neighborhood, public charter school serving a majority of diverse Oakland students focused on the arts, and a critical contributor to Oakland's arts and culture sector.

SECTION 4. The City Council hereby authorizes the City Administrator, without returning to City Council, to negotiate and execute (a) such other additions, amendments or other modifications to the foregoing document 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 (b) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate and consummate the transactions in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 5. The Second Amendment and any other documents necessary for the leasing of the property 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 6. The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines that this action complies with the California Environmental Quality Act (CEQA) because this action on the part of the City is exempt from CEQA pursuant to Section 15301 (existing facilities).

SECTION 7. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 8. 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 9. 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

ORDINANCE (1) AUTHORIZING A LEASE AMENDMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND SCHOOL FOR THE ARTS (OSA) FOR APPROXIMATELY 62,910 SQUARE FEET LOCATED ON THE 2ND AND 3RD FLOORS OF THE FOX THEATER AT 1805 TELEGRAPH AVENUE TO EXTEND THE REDUCED RENTAL RATE OF FORTY-SEVEN THOUSAND TWENTY-FIVE DOLLARS (\$47,025) PER MONTH THROUGH JUNE 30, 2026; (2) MAKING FINDINGS THAT THE LEASE AMENDMENT FOR BELOW FAIR MARKET VALUE IS IN THE BEST INTEREST OF THE CITY; AND (3) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

An Ordinance authorizing the City Administrator to negotiate and execute a lease amendment with the Oakland School for the Arts, a California nonprofit public charter school, for approximately 62,910 square feet located on the second and third floors of the Fox Theater at 1805 Telegraph Avenue to extend the reduced rental rate at a below fair market rate of Forty-Seven Thousand Twenty-Five Dollars (\$47,025) per month through June 30, 2026 for use as a public charter school.