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2019 JUN 13 PM 5:13

## AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Richard J. Luna  
Assistant to the City  
Administrator

**SUBJECT:** Oakland Museum of California 20-  
Year Lease Extension

**DATE:** June 11, 2019

City Administrator Approval

Date:

6/13/19

### RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 13709 C.M.S., Which Authorized A Thirty Year Lease Between The City Of Oakland And The Oakland Museum Of California Of Two Buildings And Improvements On City Property Located At 1000 Oak Street And 450 Lancaster Street, To (A) Extend The Lease Under The Same Terms And Conditions For A Period Of Twenty Years Until June 30, 2061 To Facilitate Funding For Extensive Improvements To The Museum Entrances, Gardens And The Museum Café And (B) Amend The Lease To Allow Tenant To Pursue The Improvements.

### EXECUTIVE SUMMARY

The Oakland Museum of California ("Museum") is in the eighth year of a 30-year lease agreement dated as of July 1, 2011 (the "Lease") with the City of Oakland ("City" or "Landlord"), for the properties located at 1000 Oak Street ("Museum Campus") and 450 Lancaster Street ("Museum Collection Center"). In early 2019, OMCA (as defined below) discussed with City staff the possibility of extending the term of the Lease by an additional 20 years beyond its current June 30, 2041 expiration date to enable the OMCA to apply and compete for New Market Tax Credits ("NMTCs"), a funding source, which OMCA was advised, requires applicants to have investment in a property for at least 30 years. The proposed ordinance amends the Lease to extend the termination date to June 30, 2061 and authorizes implementation of the Improvements (as defined below). The amendment is conditioned upon execution of the Lease Assignment (as defined below).

### BACKGROUND/LEGISLATIVE HISTORY

The Museum opened in September 1969 as a public institution, owned by the City and committed to a broad civic mission serving local, statewide and national audiences. From 2006 to 2011, the Museum was operated by the Oakland Museum of California Foundation (the "Foundation") in a public-private-partnership with the City through a management and operations agreement, authorized under Resolution No. 80155 C.M.S. On May 19, 2011, the

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CED Committee  
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Foundation reincorporated as the Oakland Museum of California, a California nonprofit public benefit corporation ("OMCA").

On June 30, 2011, the City Council adopted Resolution No. 83442 C.M.S., which authorized the City Administrator to negotiate and execute a 10-year grant agreement with the Foundation. The grant agreement provides a total of \$42.9 million in City funding to the Foundation to provide continued care and conservation of the City's collections of art and artifacts housed at the Museum and the Museum Collection Center. The grant agreement commenced on July 1, 2011 and has an expiration date of June 30, 2021.

On July 19, 2011, the City Council adopted Ordinance No. 13079 C.M.S., which authorized the City Administrator to negotiate and execute the 30-year Lease of the Museum for an annual rental fee of \$1.00. The commencement date of the Lease was July 1, 2011 and the termination date is June 30, 2041.

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Section 18.2 of the Lease contemplates that the Foundation would continue to operate the Museum until OMCA received confirmation of its nonprofit status and thereafter, the Foundation intended to transfer all of its assets and liabilities to OMCA. Section 18.2 also contemplated that the Foundation, OMCA, and the City would execute an assignment of the Lease ("Lease Assignment") upon such transfer. The Lease Assignment has not yet been executed.

## **ANALYSIS AND POLICY ALTERNATIVES**

As reflected in the June 11, 2019, Life Enrichment Committee informational report, OMCA is working on an \$18 million campus improvement project that will include improved accessibility to the Museum through entrances at 12<sup>th</sup> and 10<sup>th</sup> streets, replanting of the gardens, and create a stronger sense of connection to Lake Merritt (collectively, the "Improvements"). Of the total campus improvement project amount, \$15 million is funded through private fundraising, and the remainder through eligible funds which may include NMTCs.

OMCA is currently working with Equity Community Builders ("ECB") to secure NMTCs and ECB has reached out to several Community Development Entities ("CDEs"), including Oakland Renaissance New Markets Tax Credits ("ORNMTTC"), a City-controlled CDE. Through this work, OMCA was advised that a requirement of securing NMTCs is to have a 30-year investment in the property to qualify for award.

The proposed ordinance will add 20 years to the existing lease term, with a new termination date of June 20, 2061.

### **FISCAL IMPACT**

The City will continue to receive annual rent in an amount of \$1.00 for each year of the Lease.

### **PUBLIC OUTREACH/INTEREST**

No additional public outreach was deemed necessary for this report other than the standard posting of the City Council Agenda.

### **COORDINATION**

Staff coordinated with Lori Fogarty, Executive Director of OMCA; Economic and Workforce Development Department; and the City Attorney's Office in preparing this report and legislation.

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### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Extension of the term of the Lease will enable OMCA the opportunity to apply for and receive additional outside funding sources, which will assist OMCA in securing funding for its proposed Improvements. The Improvements include entrance improvements to the Museum Campus and to the Museum café, which will allow extended hours outside the Museum's operating hours.

***Environmental:*** There are no environmental opportunities related to the Lease term extension.

***Social Equity:*** OMCA's proposed Improvements will improve Americans with Disabilities Act ("ADA") -compliant access to the Museum Campus, including the garden areas. The Museum also offers a number of free and reduced entry admission fees for visitors.

### **CEQA**

The requirements of the California Environmental Quality Act ("CEQA") are to be determined.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance Amending Ordinance No. 13709 C.M.S., Which Authorized A Thirty Year Lease Between The City Of Oakland And The Oakland Museum Of California Of Two Buildings And Improvements On City Property Located At 1000 Oak Street And 450 Lancaster Street, To (A) Extend The Lease Under The Same Terms And Conditions For A Period Of Twenty Years Until June 30, 2061 To Facilitate Funding For Extensive Improvements To The Museum Entrances, Gardens And The Museum Café And (B) Amend The Lease To Allow Tenant To Pursue The Improvements.

For questions regarding this report, please contact Richard J. Luna, Assistant to the City Administrator, at 510-238-4756.

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Respectfully submitted,



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RICHARD J. LUNA  
Assistant to the City Administrator

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Approved as to Form and Legality

**DRAFT**

City Attorney's Office

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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ORDINANCE AMENDING ORDINANCE NO. 13709 C.M.S., WHICH AUTHORIZED A THIRTY YEAR LEASE BETWEEN THE CITY OF OAKLAND AND THE OAKLAND MUSEUM OF CALIFORNIA OF TWO BUILDINGS AND IMPROVEMENTS ON CITY PROPERTY LOCATED AT 1000 OAK STREET AND 450 LANCASTER STREET, TO (A) EXTEND THE LEASE UNDER THE SAME TERMS AND CONDITIONS FOR A PERIOD OF TWENTY YEARS UNTIL JUNE 30, 2061 TO FACILITATE FUNDING FOR EXTENSIVE IMPROVEMENTS TO THE MUSEUM ENTRANCES, GARDENS AND THE MUSEUM CAFÉ AND (B) AMEND THE LEASE TO ALLOW TENANT TO PURSUE THE IMPROVEMENTS

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**WHEREAS**, the Oakland Museum of California, a California nonprofit public benefit corporation ("OMCA"), operates the Oakland Museum of California ("Museum"), and provides important and compelling information and events for the public in the City of Oakland; and

**WHEREAS**, the Museum is comprised of two City-owned properties located at 1000 Oak Street ("Museum Campus") and 450 Lancaster Street ("Museum Collection Center"), in the City of Oakland, California; and

**WHEREAS**, Ordinance No. 13079 C.M.S. authorized the City of Oakland, in 2011, to enter into a thirty-year Lease Agreement ("Lease") with the Oakland Museum of California Foundation ("Foundation") of the Museum, which expires on June 30, 2041; and

**WHEREAS**, OMCA is engaged in a fundraising campaign to implement an \$18 million Museum Campus improvement project that will include improved accessibility to the Museum through entrances at 10<sup>th</sup> and 12<sup>th</sup> Streets, replanting of the gardens, improvements to the Museum café, and a stronger connection to Lake Merritt (collectively, the "Improvements"); and

**WHEREAS**, the majority of the funding for the Improvements will be funded through private fundraising, and OMCA desires to use New Market Tax Credits ("NMTCs") to fund the balance; and

**WHEREAS**, OMCA has been advised that it must have a thirty-year investment in the Museum in order to qualify for NMTCs, and has requested a twenty-year extension of the term of the Original Lease to facilitate funding through NMTCs; and

**WHEREAS**, Section 18.2 of the Lease contemplated the reincorporation of the Foundation as OMCA and an assignment of the Foundation's assets and liabilities to OMCA when the nonprofit status of OMCA was confirmed and that Landlord, Foundation and OMCA would execute an Assignment of Lease binding OMCA to all the terms of the Lease (the "Lease Assignment"); and

**WHEREAS**, the Lease Assignment has not yet been executed; and

**WHEREAS**, OMCA desires a longer term to enable it to pursue various funding and grant opportunities, including NMTCs, to strengthen the financial sustainability, public access, and future of the Museum; and

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**WHEREAS**, the requirements of the California Environmental Quality Act ("CEQA") are [TBD]; and

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

**SECTION 1.** The City Administrator or her designee, is hereby authorized to (a) negotiate and execute an amendment to the Lease that (i) extends the term of the Lease ("Term") for an additional twenty years so that the Lease will expire on June 30, 2061, and (ii) authorizes the pursue implementation of the Improvements, with substantially the same terms and conditions as the existing Lease, except any terms or conditions that would create or cause the City to have additional financial obligations or burdens; and (b) condition the amendments to the Lease on execution of the Lease Assignment.

**SECTION 2.** The City Administrator or her designee, is hereby authorized to take all necessary actions to negotiate and complete the extension of the Term and any amendments, modifications and extensions thereto, consistent with the intent of this Ordinance. The City Administrator shall return to the City Council for approval of terms that create or cause the City to have additional financial obligations or burdens.

**SECTION 3.** The City Council independently reviewed and considered this environmental determination, and the Council finds and determines [TBD].

**SECTION 4.** The Lease Assignment and Term extension documentation 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 5.** This Ordinance shall become effective immediately on the final

adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after the 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 –

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

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

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

## NOTICE AND DIGEST

**ORDINANCE AMENDING ORDINANCE NO. 13709 C.M.S., WHICH AUTHORIZED A THIRTY YEAR LEASE BETWEEN THE CITY OF OAKLAND AND THE OAKLAND MUSEUM OF CALIFORNIA OF TWO BUILDINGS AND IMPROVEMENTS ON CITY PROPERTY LOCATED AT 1000 OAK STREET AND 450 LANCASTER STREET, TO (A) EXTEND THE LEASE UNDER THE SAME TERMS AND CONDITIONS FOR A PERIOD OF TWENTY YEARS UNTIL JUNE 30, 2061 TO FACILITATE FUNDING FOR EXTENSIVE IMPROVEMENTS TO THE MUSEUM ENTRANCES, GARDENS AND THE MUSEUM CAFÉ AND (B) AMEND THE LEASE TO ALLOW TENANT TO PURSUE THE IMPROVEMENTS**

This Ordinance authorizes amendment of Ordinance No. 13709 C.M.S., which authorized a thirty year lease between the City of Oakland and the Oakland Museum of California of two buildings and improvements on City property located at 1000 Oak Street and 450 Lancaster Street to (a) extend the lease under the same terms and conditions for a period of twenty years until June 30, 2061 to facilitate funder for extensive improvements to the museum entrances, gardens and the museum café and (b) amend the lease to allow the tenant to pursue the improvements.

This Ordinance authorizes the City Administrator or her designee sign the Amendment, and makes associated findings with respect to the California Environmental Quality Act and other matters.