


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

EMERGENCY ORDINANCE:

(1) AUTHORIZING CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE AN AGREEMENT TO ACQUIRE THE PROPERTY LOCATED AT 5276 BROADWAY (CLIFTON HALL), FOR AN AMOUNT NOT TO EXCEED \$13.05 MILLION INCLUDING CLOSING COSTS AND FEES, FOR A FAMILY SHELTER AND PERMANENT AFFORDABLE HOUSING;

(2) AUTHORIZING CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE (A) A FIFTEEN-YEAR MASTER LEASE AGREEMENT FOR CLIFTON HALL WITH A HOUSING OPERATOR TO BE DETERMINED BY THE CITY ADMINISTRATOR OR DESIGNEE, FOR ZERO RENT, TO PROVIDE AFFORDABLE HOUSING TO HOMELESS INDIVIDUALS, AND (B) SUBLEASES, FOR TERMS UP TO FIFTEEN YEARS AND TERMINABLE ANNUALLY BY THE CITY ADMINISTRATOR, FOR ZERO RENT, WITH CORNERSTONE COMMUNITY DEVELOPMENT CORP. FOR OFFICE SPACE AND EAST OAKLAND COMMUNITY PROJECT FOR A FAMILY SHELTER;

(3) WAIVING COMPETITIVE BIDDING UNDER OMC 2.04 AND AUTHORIZING CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A CONTRACT FOR GENERAL CONSTRUCTION SERVICES AT CLIFTON HALL WITH SUSTAINABLE URBAN NEIGHBORHOODS, IN A TOTAL AMOUNT NOT TO EXCEED \$1.95 MILLION;

(4) REPEALING ORDINANCE NO. 13553, WHICH ALLOCATED \$3.15 MILLION FROM MEASURE KK FOR ACQUISITION OF A PROPERTY THAT DID NOT GET CONSUMMATED; AND

(5) MAKING SURPLUS LAND ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of the respiratory disease COVID-19; and

WHEREAS, on March 9, 2020, the Oakland City Administrator issued a proclamation of Local Emergency which was ratified by the Oakland City Council on March 12, 2020; and

WHEREAS, in the City of Oakland (City), more than 4000 of its residents are homeless and live outdoors, in tents or in vehicles; and

WHEREAS, because homelessness can both exacerbate vulnerability to COVID-19 and increase the spread of the disease due to inadequate social distancing protocols, the City desires to take measures to preserve and increase housing security for its residents; and

WHEREAS, on March 27, 2020 the City Council adopted Resolution 20-0315 requesting that the City Administrator acquire buildings to house homeless residents to prevent the spread of COVID-19 and seek reimbursement for the associated costs; and

WHEREAS, the California Department of Housing and Community Development (Department) has issued a Notice of Funding Availability (NOFA), dated July 16, 2020, for the Homekey Program (Homekey Program), pursuant to Health and Safety Code section 50675.1.1 (Assem. Bill No. 83 (2019-2020 Reg. Sess.), § 21); and

WHEREAS, the Homekey Program will make available \$600 million in grant funding to local public entities, including cities, counties, or other local public entities, including housing authorities or federally recognized tribal governments within California to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other buildings and convert them into interim or permanent, long-term housing; and

WHEREAS, of the \$600 million in Homekey grant funds, \$550 million is derived from the State's direct allocation of the federal Coronavirus Aid Relief Funds (CRF), and \$50 million is derived from the State's General Fund, and, per the federal funding requirements, the CRF must be expended by December 30, 2020; and

WHEREAS, for projects that involve an acquisition and are receiving CRF awards, grantees must expend the funds by the expenditure deadline, close escrow by December 30, 2020, and occupy at least fifty percent of the units within ninety days of acquisition; and

WHEREAS, the real property located at 5276 Broadway, in the amenity-rich neighborhood of Rockridge in North Oakland, and commonly referred to as Clifton Hall (Property), is currently available for sale by California College of the Arts (Owner); and

WHEREAS, the Property is improved with a four-story vacant dormitory containing 63 rooming units, and previously provided student housing for the adjacent college campus that Owner has ceased to operate; and

WHEREAS, the City desires to purchase the Property for the following uses: (a) dormitory units located on the second floor as an emergency family shelter for approximately 20

families (Family Shelter); (b) 42 units of the dormitory units on the third and fourth floors as permanent affordable housing for seniors experiencing homelessness at high risk of COVID-19 (Permanent Housing); and (c) offices of Family Front Door, which serves as the hub for the coordinated entry system for homeless families in Northern Alameda County, on the ground floor and lobby (Offices); and

WHEREAS, the City desires to undertake certain renovations at the Property, such as the installation of key fobs for doors and elevators, build out of Offices, replacement of flooring, and other minor improvements, to make the Property suitable for the desired uses (Improvements); and

WHEREAS, the City desires to facilitate the creation of the Family Shelter by moving an existing family shelter known as the Family Matters Shelter from its temporary location in Emeryville to a permanent location at Clifton Hall and to have the shelter operated, on behalf of the City, through an amended grant agreement with the East Oakland Community Project (EOCP), an Oakland-based homeless agency that has provided shelter to homeless populations since 1990; and

WHEREAS, the City Administrator or his or her designee will interview and select an operator for the Permanent Housing (Master Tenant) from a qualified list of operators resulting from a competitive solicitation process conducted by the County of Alameda Health Care and Services Agency, and execute a fifteen-year master lease to manage the overall property, operate the Permanent Housing and sublease a portion of Clifton Hall to EOCP for the Family Shelter and a portion to Cornerstone Community Development Corporation d/b/a Building Futures with Women and Children for the Offices; and

WHEREAS, City Staff and the Owner have negotiated a sales price for the Property of thirteen million dollars (\$13,000,000), which price is less than the appraised fair market value as determined by an independent appraisal; and

WHEREAS, the closing costs and fees associated with the purchase transaction are estimated at an amount not to exceed fifty \$50,000; and

WHEREAS, additional funds, up to a maximum of \$1,950,000, are required to complete the Improvements; and

WHEREAS, subject to the City Council adopting the requisite Resolution proposed concurrently with this Emergency Ordinance, the City proposes to enter into a professional services and/or construction agreement with Sustainable Urban Neighborhoods to construct the Improvements, for a total amount not to exceed \$1.95 million, to allow occupancy of at least half of the units in the building within 90 days of acquisition and the remainder thereafter; and

WHEREAS, the contracts to construct the Improvements will include enforceable requirements that the contractor and all subcontractors pay prevailing wages in accordance with California Labor Code Section 1720 et seq., and use a skilled and trained workforce in accordance with California Public Contract Code Section 2600 et seq.; and

WHEREAS, on July 30, 2019, the City Council adopted Ordinance No. 13553 C.M.S., allocating \$3,100,000 from Measure KK Housing and Infrastructure Bond Affordable Housing Fund, Bond Series 2017 A-1 and A-2 (Fund 5331) for the purchase of a 24-unit single room occupancy residential hotel at 2327 San Pablo, plus an additional \$50,000 in closing costs, but the transaction did not close; and

WHEREAS, the City Council desires to repeal Ordinance No. 13553, and so permit the \$3,150,000 in Measure KK funds to be re-allocated to the purchase of the Property by the funding Resolution heard concurrently with this Emergency Ordinance; and

WHEREAS, subject to the City Council adopting the requisite Resolution proposed concurrently with this Emergency Ordinance, the City desires to purchase the Property with a combination of \$9,583,333 in grant funds from the Homekey Program and \$3,416,667 in matching funds from the City's Measure KK, and to complete the Improvements and pay closing costs with no more than \$2 million from the City's Affordable Housing Trust Fund "Boomerang" funds; and

WHEREAS, the City shall record a binding use restriction against the Property that restricts occupancy to individuals experiencing homelessness or at risk of homelessness meeting the definition in 24 Code of Federal Regulations section 578.3, for at least 55 years; and

WHEREAS, subject to the City Council adopting the requisite Resolution proposed concurrently with this Emergency Ordinance, the City desires to fund the first fifteen years of operating expenses for the Family Shelter and Permanent Housing with a combination of \$582,547 in grant funds from the Homekey Program for the first two years, and \$5,220,000 from the remaining HHAP funds through a capitalized grant of 13 additional years; and

WHEREAS, to effectuate the City's goals, Staff has initiated the submittal of an application (Application) for Homekey Program funds to the Department for review and consideration, and the City's offer to purchase the Property is contingent upon the award of Homekey Program grant funds; and

WHEREAS, OMC section 2.41.020 authorizes the City to purchase real property by ordinance; and

WHEREAS, City Charter Section 219(6) and OMC Section 2.42.100.B require leases of real property longer than one year to be authorized by an ordinance; and

WHEREAS, OMC Section 2.42.110 (a) authorizes the City to enter into a lease or license of real property for consideration less than the property's fair market value if the City Council makes a finding and determination that the lease of the property for less than its fair

market value is in the best interests of the City and (b) provides that the City Council may consider the value of in-kind services to the City or the community at large, including social and cultural benefits to the community, in making the required finding and determination; and

WHEREAS, the City desires to enter into a fifteen-year lease with Master Tenant, at no monthly rent, in exchange for community benefits in the form of housing to individuals at risk of experiencing homelessness, and in exchange for the maintenance of the Property; and

WHEREAS, the City desires for Master Tenant to enter into a sublease for up to fifteen years, terminable annually by the City Administrator, for the Family Shelter with East Oakland Community Project, at no monthly rent, in exchange for benefits to the City and the community at large in the form of immediate shelter for homeless families, and supportive services such as case management, intake assessment, benefits advocacy, alcohol and drug counseling, health education, educational services, money management, vocational counseling, job development, transportation and emergency food assistance, and rental and security deposit assistance; and

WHEREAS, the City desires for Master Tenant to enter into a sublease for up to fifteen years, terminable annually by the City Administrator, for the ground floor offices with Cornerstone Community Development Corporation d/b/a Building Futures with Women and Children, at no monthly rent, in exchange for benefits to the City and the community at large in the form of operating a Coordinated Entry System to connect homeless families in Northern Alameda County with housing resources; and

WHEREAS, OMC Chapter 2.04 sets out purchasing and competitive bidding requirements for the provision of services on behalf of the City, which requirements may be waived upon a City Council finding that entering into service agreements without bidding is in the best interests of the City; and

WHEREAS, compliance with the competitive processes required by OMC Chapter 2.04 will make it difficult, if not impossible, for the City to meet the December 30, 2020 expenditure deadline and the 90-day occupancy deadline; and

WHEREAS, the use of the Property for transitional and permanent affordable housing using Homekey Program funds is exempt from discretionary planning approvals pursuant to California Health and Safety Code section 50675.1.1(g); and

WHEREAS, the State Surplus Land Act, Government Code section 15220 *et seq.*, applies to the disposition of surplus land that the local governing body determines is not necessary for the agency's use; and

WHEREAS, the use of the Property for Family Shelter and Permanent Housing is consistent with the City's plans for affordable housing and homeless interventions, and is within the agency's use and is therefore not surplus property under the Surplus Land Act; and

WHEREAS, California Health and Safety Code section 50675.1.2 establishes a statutory exemption from the California Environmental Quality Act (CEQA) for projects using Homekey

grant funds and other public funds that (a) provide safe and sanitary units restricted to individuals and families experiencing homelessness or at risk of homelessness for at least 55 years, (b) include commitments requiring all contractors performing construction work to be paid prevailing wage and use a skilled and trained workforce, and (c) do not increase the footprint of the building by more than 10 percent; and

WHEREAS, each as a separate and independent basis, the acquisition of the Property and the conversion of the existing building into a family shelter and permanent affordable housing units satisfy the conditions of Health and Safety Code section 50675.1.2 and are exempt from CEQA review; and are also exempt from CEQA pursuant to CEQA Guidelines sections 15301 (existing facilities) and 15326 (acquisition of housing); and

WHEREAS, pursuant to section 213 of the Oakland City Charter, an ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members; and

WHEREAS, immediate effectiveness of this Ordinance is necessary to timely acquire the Property in order to quickly address the needs of homeless Oakland residents impacted by the COVID-19 emergency, and to complete the Application, and if awarded, expend the Homekey Program funds by that funding program's December 30, 2020 deadline;

NOW, THEREFORE, THE CITY 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 Emergency Ordinance.

SECTION 2. Contingent on the adoption of the funding Resolution heard concurrently with this Emergency Ordinance and the award of Homekey Program funds, the City Council hereby authorizes acquisition of the 5276 Broadway Property from California College of the Arts, for a purchase price not to exceed \$13,000,000, and closing costs and fees not to exceed \$50,000.

SECTION 3. The City Council hereby authorizes the City Administrator or his or her designee to negotiate and execute such agreements and documents with California College of the Arts necessary to effectuate the acquisition of the Property, and to take any other action with respect to such acquisition as may be consistent with this Emergency Ordinance and its basic purposes.

SECTION 4. Contingent upon the acquisition of the Property by the City, the City Council hereby authorizes the City Administrator or his or her designee to select an operator for the Permanent Housing, and to negotiate and execute a fifteen-year lease for the Property with the selected operator, for no monthly rent, in exchange for maintenance of the Property and the community benefits described above, which lease will authorize up to fifteen-year subleases to East Oakland Community Project for the Family Shelter and Cornerstone Community Development Corporation d/b/a Building Futures with Women and Children for the ground floor offices, which may be terminable by the City Administrator on an annual basis.

SECTION 5. Pursuant to OMC Section 2.42.110, and based on the value of the services discussed above and in the City Administrator's report accompanying this Emergency Ordinance, the City Council hereby finds and determines that offering public land for family shelter and permanent affordable housing for people experiencing homelessness, for less than fair market rental value, is in the best interests of the City.

SECTION 6. Pursuant to OMC Section 2.04.050, the City Council hereby finds and determines that the waiver of competitive bidding and requests for qualifications procedures for selection of the operator(s) of the Property and for the construction contract to rehabilitate the Property for the desired uses is in the best interests of the City.

SECTION 7. The City Council hereby finds that the transaction authorized by Ordinance No. 13553 C.M.S. was never consummated, and thus hereby repeals said Ordinance so that the \$3,150,000 in Measure KK funds (Fund 5331) may be re-allocated by the City Council.

SECTION 8. The City Council hereby finds and determines on the basis of substantial evidence in the record, that the actions authorized by this Emergency Ordinance are exempt from CEQA pursuant to Health and Safety Code section 50675.1.2, which exempt projects using Homekey grant funds and satisfying the conditions described in the above recitals, and CEQA Guidelines 15301 and 15183. The City Administrator or his designee is hereby directed to file a notice of exemption with the Office of the Alameda County Recorder and the State Office of Planning and Research.

SECTION 9. 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 10. Concurrently with this Emergency Ordinance, the City Council shall consider and adopt a funding Resolution to effectuate the purposes of this Emergency Ordinance. Failure to adopt the funding Resolution shall invalidate this Emergency Ordinance, until such time as the City Council adopts a funding Resolution related to the purchase and lease of the Property.

SECTION 11. That prior to execution, all agreements shall be reviewed and approved as to form and legality by the City Attorney, and executed copies shall be filed with the City Clerk.

SECTION 12. The City Council hereby declares that this Emergency Ordinance is necessary for preserving the public health and safety for the reasons stated herein, and there is a necessity to immediately pass this Emergency Ordinance pursuant to the powers given to the City Council under Section 213 of the City Charter. This Ordinance shall be effective immediately upon its adoption by an affirmative vote of six members of the City Council pursuant to City Charter section 213.

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

EMERGENCY ORDINANCE: (1) AUTHORIZING CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE AN AGREEMENT TO ACQUIRE THE PROPERTY LOCATED AT 5276 BROADWAY (CLIFTON HALL), FOR AN AMOUNT NOT TO EXCEED \$13.05 MILLION INCLUDING CLOSING COSTS AND FEES, FOR A FAMILY SHELTER AND PERMANENT AFFORDABLE HOUSING; (2) AUTHORIZING CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE (A) A FIFTEEN-YEAR MASTER LEASE AGREEMENT FOR CLIFTON HALL WITH A HOUSING OPERATOR TO BE DETERMINED BY THE CITY ADMINISTRATOR OR DESIGNEE, FOR ZERO RENT, TO PROVIDE AFFORDABLE HOUSING TO HOMELESS INDIVIDUALS, AND (B) SUBLEASES, FOR TERMS UP TO FIFTEEN YEARS AND TERMINABLE ANNUALLY BY THE CITY ADMINISTRATOR, FOR ZERO RENT, WITH CORNERSTONE COMMUNITY DEVELOPMENT CORP. FOR OFFICE SPACE AND EAST OAKLAND COMMUNITY PROJECT FOR A FAMILY SHELTER; (3) WAIVING COMPETITIVE BIDDING UNDER OMC 2.04 AND AUTHORIZING CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A CONTRACT FOR GENERAL CONSTRUCTION SERVICES AT CLIFTON HALL WITH SUSTAINABLE URBAN NEIGHBORHOODS, IN A TOTAL AMOUNT NOT TO EXCEED \$1.95 MILLION; (4) REPEALING ORDINANCE NO. 13553, WHICH ALLOCATED \$3.15 MILLION FROM MEASURE KK FOR ACQUISITION OF A PROPERTY THAT DID NOT GET CONSUMMATED; AND (5) MAKING SURPLUS LAND ACT AND CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Emergency Ordinance will authorize the City Administrator to negotiate and execute a purchase and sale agreement to acquire the real property located at 5276 Broadway, commonly known as Clifton Hall for a purchase price not to exceed \$13.05 Million, to provide for the relocation of a temporary family shelter, and to create 42 new units of permanent affordable housing. This Emergency Ordinance would also authorize a fifteen-year lease of such property to a master tenant selected by the City Administrator to be the operator of the permanent affordable housing, with up to fifteen-year subleases that are terminable annually by the City Administrator, with East Oakland Community Project for the family shelter portion of the property, and Cornerstone Community Development Corporation for ground floor offices. Such leases and subleases would be offered at no monthly rent, based on the community benefits provided by the tenants, in the best interests of the City and the community at large. This Emergency Ordinance would waive competitive bidding requirements under O.M.C. Chapter 2.04 to authorize a construction contract for the rehabilitation of the property in an amount not to exceed \$1.95 Million. Furthermore, this Emergency Ordinance would repeal Ordinance No. 13553, which allocated \$3.15 Million from Measure KK funds to acquire a property, because the transaction never occurred. Finally, this Emergency Ordinance makes findings that the use of the property within the City's continued use under the Surplus Land Act, and that the acquisition and rehabilitation is exempt under CEQA pursuant to statutory and categorical exemptions. Such Emergency Ordinance depends on the adoption of the funding resolution being concurrently considered by the City Council.

