

62
11-15-16
(O-2017-54)

ORDINANCE NUMBER O- 20745 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 17 2016

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE, DELIVER AND EFFECTUATE THE TERMS OF THAT CERTAIN LEASE AGREEMENT WITH 101 ASH, LLC FOR THE LEASE OF REAL PROPERTY AND IMPROVEMENTS LOCATED AT 101 ASH STREET (ASSESSOR PARCEL NUMBERS 533-424-11 AND 533-424-14), IN DOWNTOWN SAN DIEGO, CALIFORNIA; AND AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR.

WHEREAS, The Gas & Electric Headquarters Building – San Diego, L.P. and Shapery Developers Gas & Electric Property, L.P. (collectively the “Sellers”) own the real properties and improvements located at 101 Ash Street, Assessor Parcel Numbers 533-424-11 and 533-424-14 (Property); and

WHEREAS, the building located at the Property is a single 21-story commercial office building, comprised of 314,545 square feet; and

WHEREAS, the Property includes two levels of underground parking with 235 parking spaces, of which approximately two-thirds are tandem, and may be rented; and

WHEREAS, Cisterra Partners, LLC (Cisterra) is in escrow to purchase the Property pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions (PSA) between Cisterra and the Sellers; and

WHEREAS, Cisterra has agreed to assign the PSA to 101 Ash, LLC, an affiliate of Cisterra; and

WHEREAS, the City of San Diego (City) has an opportunity to enter into a twenty (20) year lease-to-own agreement with 101 Ash, LLC, commencing on the date 101 Ash, LLC acquires the fee title to the Property; and

WHEREAS, the terms of the lease of the Property (Lease Agreement) include a rental rate of \$534,726.50/month, with no annual increases; the City will be responsible for all operating expenses, which are estimated to be \$9.60 per square foot/year, for a total estimated operating expense cost of \$3,029,232/year; at any time after the fifth year, the City may opt to transfer the loan for \$1 to a City entity and continue making lease payments to that City entity, rather than to 101 Ash, LLC; in addition, at any time after the fifth year, the City may prepay the Lease Agreement and have the right to purchase the Property by paying an amount to 101 Ash, LLC, equal to the net present value of the remaining payments due under the Lease Agreement, using a discount rate calculated by a formula set forth in the Lease Agreement; and

WHEREAS, City staff recommends that City enter into the Lease Agreement for the following reasons: (1) the lease-to-own of the Property will save the City an estimated \$44,000,000 over 20 years by eliminating the need to lease office space for City staff, when compared with current lease options; (2) the opportunity exists to combine several City departments in the same building for the benefit of City staff and the public; (3) the opportunity exists for City staff to vacate buildings with documented deficiencies in plumbing, heating and air conditioning; and (4) the opportunity exists for the City to control 86% of the City-occupied space in Downtown San Diego; and

WHEREAS, under Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance approved by a two thirds' majority vote of the City Council; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That the Mayor, or his designee, is hereby authorized and directed to execute, deliver, and effectuate the terms and conditions of that certain Lease Agreement, on file

with the Office of the City Clerk as Document No. OO- 20745, between the City of San Diego and 101 Ash, LLC, to commence on the date 101 Ash, LLC acquires the fee title to the Property, to lease the real properties and all the improvements located at 101 Ash Street, in San Diego, California.

Section 2. That the Chief Financial Officer is authorized to expend all funds for rent, operating expenses and as otherwise required by the Lease Agreement in an amount not to exceed \$4,183,448.50 for the remaining Fiscal Year 2017, from the General Fund 100000.

Section 3. That the Chief Financial Officer is authorized to transfer an amount not to exceed \$1,921,000 from the Real Estate Assets Operating Department Budget to the Citywide Program Expenditures Department and expend these funds for rent, operating expenses, improvements and as otherwise required by the Lease Agreement for the remaining Fiscal Year 2017.

Section 4. That the Chief Financial Officer is authorized to expend all funds for rent, operating expenses and as otherwise required by the Lease Agreement in a total amount not to exceed \$201,902,440, all contingent upon the adoption of each annual fiscal year Appropriation Ordinance and contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure of each year's expenditure are, or will be, on deposit with the City Treasurer.

Section 5. That the Chief Financial Officer is authorized to deposit all rent revenues received from the parking facility at 101 Ash Street into General Fund 100000.

Section 6. That the Chief Financial Officer is authorized to establish a restricted CIP fund for capital improvements relating specifically to 101 Ash Street, San Diego CA 92101.

Section 7. That the Mayor, or his designee, is authorized to execute and deliver all such agreements and all other instruments to effect and complete the transaction contemplated by this ordinance.

Section 8. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 9. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Hilda R. Mendoza
Hilda R. Mendoza
Deputy City Attorney

HRM:als
10/13/2016
Or.Dept: Real Estate Assets Dept.
Doc. No.: 1373118

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 15 2016.

ELIZABETH S. MALAND
City Clerk

By Linda Irwin
Deputy City Clerk

Approved: 11/17/16
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 15 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 17 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 17 2016, and on NOV 17 2016

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20745