



**To:** Mayor and City Council  
**From:** Michael Chandler, Assistant to the City Manager  
**Subject:** Campbell Theater Update  
**Date:** October 11, 2016

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**Recommendation**

Receive and file the report.

**Background**

Council requested an update on the status of the Campbell Theater at the September 21, 2016 Council meeting.

The City's lease with the Bart and Jane Bisio Revocable Trust for the site at 636 Ward Street, which later became known as the "Campbell Theater," began on January 1, 2005 ("Master Lease"). The initial term was for 5 years, with a 5 year option to extend thereafter, taking the lease to December 31, 2014. During the option to extend period, the City entered into a Sublease Agreement with Onstage Repertory Theater Company in October 2013 for a term which was set to expire concurrent with the Master Lease on December 31, 2014.

The Master Lease and the Sublease were both extended in July 2014 for another six months (from January 1 to June 30, 2015). These amendments were done to afford the City additional time to consider and decide whether pursuing a long-term option was feasible, and to provide Onstage an opportunity to plan out and book the remainder of their season. It was at this time that JaBa, LLC was identified to the City as the "successor Lessor" and consequently, the First Amendment to the Master Lease was between the City and JaBa, LLC.

The parties negotiated respective Second Amendment to Lease and Sublease documents which went before Council on August 19, 2015. The Second Amendment to Lease was approved via Resolution No. 096-15 by a 3-2 vote, and the Second Amendment to Sublease was approved via Resolution No. 097-15 by a 5-0 vote. At that time, Council and staff were apprised that the successor Lessor's business entity status with the State's Franchise Tax Board had apparently been suspended due to failure to meet tax requirements (which could mean failure to file a return or pay taxes, penalties, and/or interest).

Staff reviewed and confirmed the assertion to be true; the exact nature of the grounds for the suspension was not revealed to the City. As a result of the confirmation, the City did not execute either the lease or sublease documents and did not pay any rent to Lessor which it otherwise would have owed, but did maintain its insurance coverage on the premises as required under the Master Lease.

Onstage was allowed to continue its tenancy and paid the City \$600/month through August 2016, and \$800/month starting in September 2016 per the terms of its Second Amendment to Sublease Agreement. Over the past year, Onstage has produced numerous stage productions (several of which had 11 or more performances); rented the Theater out for various stage productions with multiple performances; hosted several rock and roll shows featuring local bands; and provided magic shows, monthly improv shows, and a children's musical. Onstage also partnered with Main Street Martinez to produce comedy shows with Will Durst and Johnny Steele and provide screenings of the Main Street USA film documentary.

Over the past year, staff made several inquiries regarding the operating status of JaBa, LLC, and were informed in May and July 2016, members of the Bisio family were meeting with an individual assisting with the matter and hoped to have it resolved in the near future. On October 4, 2016, legal counsel representing the family informed the City Attorney that the JaBa, LLC, business entity was back in good standing and now current and active with the State Franchise Tax Board. City staff confirmed the accuracy of this information, including the correct mailing address and signatories for the business entity.

#### **Discussion**

Now that JaBa, LLC has regained its active standing with the Franchise Tax Board, next steps in the process include the following:

- 1) Execute the Second Amendment to Lease and Sublease documents;
- 2) Pay JaBa, LLC the encumbered rent of \$56K (for the period of September 2015 through October 2016);
- 3) Submit formal letter to the entity's noticing agent regarding the stipulation within the amended Section 17 of the Master Lease for the Lessor to repaint the exterior of the building within 4 months of the execution of the Second Amendment to Lease, weather permitting.

#### **Fiscal Impact**

The City had already encumbered via purchase order for FY 2015-16 and FY 2016-17 its rental obligations of \$4K per month for the Lease, commencing September 2015. No additional expense is incurred.

#### **Attachments**

1. Reso No. 096-15 and Second Amendment to Lease (Bisio)
2. Reso No. 097-15 and Second Amendment to Sublease (Onstage)

**APPROVED BY:**



Brad Kilger, City Manager

**RESOLUTION NO. 096-15**

**APPROVING A SECOND AMENDMENT TO COMMERCIAL LEASE AGREEMENT WITH JABA, LLC  
FOR USE OF THE PREMISES LOCATED AT 636 WARD STREET AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE SAME**

**WHEREAS**, the City of Martinez (“City”) entered into a lease on January 1, 2005 (“Master Lease”) for a building of approximately 5,700 square feet (“Campbell Theater”) on a lot of approximately 10,000 square feet with 12 parking spaces located at 636 Ward Street (collectively, the “Premises”) from the Bart and Jane Bisio Revocable Trust, later succeeded in interest by JaBa, LLC (“Lessor”); and

**WHEREAS**, the term of the Master Lease expired on December 31, 2014, and was extended to June 30, 2015, via a First Amendment to Commercial Lease Agreement between the City and Lessor adopted by the City Council on July 16, 2014; and

**WHEREAS**, the City entered into a sublease agreement (“Sublease”) with Onstage Repertory Theater (“Onstage”) on October 17, 2013, for a term to run concurrent with the Master Lease; and

**WHEREAS**, the City and Onstage similarly extended the Sublease to June 30, 2015, via a First Amendment to Commercial Sublease Agreement adopted by the City Council on July 16, 2014; and

**WHEREAS**, the City negotiated with the Lessor and Onstage over the past several months to reach terms which would allow the City to continue providing a performing arts theater available to the public at the Premises; and

**WHEREAS**, because terms were not finalized by June 30, 2015, both the Master Lease and Sublease rolled into a month-to-month status following the expiration of the extended term; and

**WHEREAS**, the City and Lessor have reached terms and desire to enter into a Second Amendment to Commercial Lease Agreement for the Premises, attached hereto as Attachment A; and

**WHEREAS**, the terms include, among other things, an additional three (3) year extension effective September 1, 2015, and modifications to the City’s rental obligations to Lessor.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Martinez hereby approves a Second Amendment to Lease Agreement with JaBa, LLC, for use of the Premises located at 636 Ward Street in the form substantially as set forth in Attachment A, attached hereto and as approved by the Lessor, and further authorizes the City Manager to execute same.

**BE IT FURTHER RESOLVED** the City Council adopts the revision to the Fiscal Year 2015-16 Budget as provided for herein.

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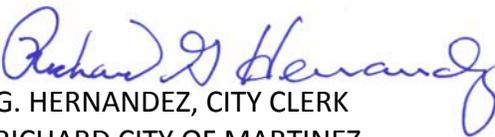
**I HEREBY CERTIFY** the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at an Adjourned Regular Meeting of said Council held on the 19<sup>th</sup> day of August, 2015, by the following vote:

AYES: Councilmember Lara DeLaney, Vice Mayor Mark Ross and Mayor Rob Schroder

NOES: Councilmembers AnaMarie Avila Farias and Debbie M<sup>c</sup>Killop

ABSENT: None



  
G. HERNANDEZ, CITY CLERK  
RICHARD CITY OF MARTINEZ

SECOND AMENDMENT TO COMMERCIAL LEASE  
(Between JaBa, LLC, Lessor and the City of Martinez, Lessee)

This Second Amendment to Commercial Lease is made effective as of September 1, 2015, by and between the successor Lessor, JaBa, LLC ( Lessor ), and the City of Martinez, a municipal corporation ( Lessee ).

RECITALS

- A. WHEREAS, Lessor s predecessor and Lessee entered into that certain Commercial Lease dated as of January 1, 2005 ( Commercial Lease ) whereby Lessee did lease from Lessor that certain parcel of real property commonly known as 636 Ward Street, Martinez, CA , as more particularly described in Exhibit A, attached to said Commercial Lease and incorporated therein by reference (the Premises ); and
- B. WHEREAS, pursuant to Section 3.1 of Said Commercial Lease, the Term thereof was to expire on December 31, 2009; and
- C. WHEREAS, by letter dated June 17, 2009, Lessee did, pursuant to Section 3.2 of said Commercial Lease, exercise the option to extend said Commercial Lease for an additional five (5) years, extending the Term of said Commercial Lease to December 31, 2014; and
- D. WHEREAS, on August 25, 2014, and effective on January 1, 2015, Lessor and Lessee entered into the First Amendment to Commercial Lease to extend the term of said Commercial Lease for an additional six (6) month period to June 30, 2015, in order to afford the parties an opportunity to explore a longer term arrangement; and
- E. WHEREAS, effective July 1, 2015, pursuant to the terms of the Commercial Lease, Lessee became a month- to month tenant; and
- F. WHEREAS, the parties have agreed upon terms and wish to amend the Commercial Lease to provide for an extension of term, adjustment to the monthly rental amount, and Lessor s repainting of the exterior of the Premises.

NOW THEREFORE, in consideration of the mutual promises and conditions as set forth herein, Lessor and Lessee agree as follows:

1. Section 3.4 of the Commercial Lease is hereby added to read as follows:

**3.4 THIRD OPTION TO EXTEND**

Lessor grants to Lessee the right and option to extend the term of this Lease for an additional three (3) year period, commencing on September 1, 2015 and ending August 31, 2018, subject to all of the provisions of this Lease. This option to extend shall

be considered exercised upon the execution of this Second Amendment to Commercial Lease.

2. Section 6 (d) of the Commercial Lease is hereby added to read as follows:

(d) Monthly Rent During the Third Option Period. Lessee shall pay to Lessor as monthly rent, without deduction, setoff, prior notice or demand, the sum of Four Thousand Dollars (\$4,000.00) per month for each month of the Third Option period, said payment of rent to be made as set forth in the Commercial Lease.

3. Section 17 of the Commercial Lease is hereby amended to read as follows:

**17. IMPROVEMENTS TO BE MADE BY LESSOR**

Lessor agrees to repaint the exterior of the Premises by no later than four months from the execution of this Second Amendment to Lease weather permitting.

4. Except as amended as set forth in this Second Amendment to Commercial Lease, the terms and conditions of the Commercial Lease and First Amendment to Commercial Lease shall remain in full force and effect.

LESSOR:

LESSEE

JABA LLC

CITY OF MARTINEZ

  
BY PAMELA BIBO

ROB BRAUUK

CITY MANAGER

DATE

8/19/15

DATE

  
BY PAMELA BIBO DESPRES

ATTEST

DATE

8/19/15

CITY CLERK

APPROVED AS TO FORM

APPROVED AS TO FORM

JONATHAN DANIEL ADAMS

CITY ATTORNEY

Attorney for Lessor

**RESOLUTION NO. 097-15**

**APPROVING A SECOND AMENDMENT TO COMMERCIAL SUBLEASE AGREEMENT WITH ONSTAGE REPERTORY THEATER (“ONSTAGE”) FOR USE OF THE PREMISES LOCATED AT 636 WARD STREET AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME**

**WHEREAS**, the City of Martinez (“City”) entered into a lease on January 1, 2005 (“Master Lease”) for a building of approximately 5,700 square feet (“Campbell Theater”) on a lot of approximately 10,000 square feet with 12 parking spaces located at 636 Ward Street (collectively, the “Premises”) from the Bart and Jane Bisio Revocable Trust, later succeeded in interest by JaBa, LLC (“Lessor”); and

**WHEREAS**, the term of the Master Lease expired on December 31, 2014, and was extended to June 30, 2015, via a First Amendment to Commercial Lease Agreement between the City and Lessor adopted by the City Council on July 16, 2014; and

**WHEREAS**, the City entered into a sublease agreement (“Sublease”) with Onstage Repertory Theater (“Onstage”) on October 17, 2013, for a term to run concurrent with the Master Lease; and

**WHEREAS**, the City and Onstage similarly extended the Sublease to June 30, 2015, via a First Amendment to Commercial Sublease Agreement adopted by the City Council on July 16, 2014; and

**WHEREAS**, the City negotiated with the Lessor and Onstage over the past several months to reach terms which would allow the City to continue providing a performing arts theater available to the public at the Premises; and

**WHEREAS**, because terms were not finalized by June 30, 2015, both the Master Lease and Sublease rolled into a month-to-month status following the expiration of the extended term; and

**WHEREAS**, the City and Lessor have reached terms and desire to enter into a Second Amendment to Commercial Lease Agreement for the Premises, adopted by separate action of the City Council; and

**WHEREAS**, the City and Onstage have reached terms and desire to enter into a Second Amendment to Commercial Sublease Agreement for the Premises, attached hereto as Attachment B; and

**WHEREAS**, the City has shared a copy of said Second Amendment to Commercial Sublease Agreement with Lessor as required under the Master Lease.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Martinez hereby approves a Second Amendment to Commercial Sublease Agreement with Onstage Repertory Theater for use of the Premises located at 636 Ward Street, in the form substantially as set forth in Attachment B, attached hereto and as approved by the Lessor, and further authorizes the City Manager to execute same.

**BE IT FURTHER RESOLVED**, a Councilmember or staff member shall be appointed to serve on Onstage's Board.

\* \* \* \* \*

**I HEREBY CERTIFY** the foregoing is a true and correct copy of a resolution duly adopted by the City council of the City of Martinez at an Adjourned Regular Meeting of said Council held on the 19<sup>th</sup> day of August, 2015, by the following vote:

AYES: Councilmembers AnaMarie Avila Farias, Debbie McKillop, Lara DeLaney, Vice Mayor Mark Ross and Mayor Rob Schroder

NOES: None

ABSENT: None



  
RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

## ATTACHMENT B

### SECOND AMENDMENT TO COMMERCIAL SUBLEASE AGREEMENT (ONSTAGE REPERTORY THEATER)

This Second Amendment to Commercial Sublease is made as effective as of September 1, 2015, by and between the City of Martinez, a municipal corporation, hereafter referred to as "City", and the Onstage Repertory Theater, hereafter referred to as "Onstage" ("Onstage"), a non-profit corporation.

#### Recitals

- A. WHEREAS, the City entered into that certain Commercial Lease by and between Bart A. Bisio and Jane L. Bisio, Trustees of the Bart and Jane Bisio Revocable Trust ("Lessor") dated as of January 1, 2005 ("Master Lease"), whereby City did lease from Lessor that certain parcel of real property commonly known as 636 Ward Street, Martinez, CA, as more particularly described in Exhibit A, attached to said Master Lease and incorporated therein by reference (the "Premises"); and
- B. WHEREAS, pursuant to Section 3.1 of said Master Lease, the Term thereof was set to expire on December 31, 2009; and
- C. WHEREAS, by letter dated June 17, 2009, City did, pursuant to Section 3.2 of said Master Lease, exercise the option to extend for an additional five (5) year period, extending the Term of said Master Lease to December 31, 2014; and
- D. WHEREAS, on October 13, 2013, City, with the consent of Lessor, did enter into a Commercial Sublease Agreement with Onstage Repertory Theater ("Onstage") whereby Onstage subleased from City the Premises ("Commercial Sublease"); and
- E. WHEREAS, Lessor and City did extend the term of the Master Lease for an additional six (6) month period to June 30, 2015, by execution of the First Amendment to Commercial Lease between the City and successor Lessor, JaBa, LLC, effective as of January 1, 2015 ("First Amendment to Commercial Lease"), in order to afford the parties an opportunity to explore possibilities for a longer term arrangement by Lessee; and
- F. WHEREAS, City and Onstage did subsequently extend the term of the Commercial Sublease for an additional six (6) month period to June 30, 2015, to remain concurrent with the Master Lease; and
- G. WHEREAS, effective July 1, 2015, pursuant to the terms of the Master Lease, City became a month- to month tenant; and
- H. WHEREAS, effective July 1, 2015, pursuant to the terms of the Sublease Onstage became a month to month sub-tenant; and

- I. WHEREAS, City and Lessor have agreed on terms and desire to extend the Master Lease for a period of three (3) years, from September 1, 2015 to August 31, 2018, subject to the terms and conditions as negotiated between the parties and specified in the Second Amendment to Commercial Lease effective as of September 1, 2015 ("Second Amendment"); and
- J. WHEREAS, City and Onstage desire to enter into this Second Amendment to Commercial Sublease Agreement to extend the Term of the Commercial Sublease to be concurrent with the extended term of the Master Lease as set forth in the Second Amendment and to amend the rental terms as set forth herein.

NOW THEREFORE, in consideration of the mutual promises and conditions as set forth herein, City and Onstage agree as follows:

1. Section 1 of the Commercial Sublease is hereby amended to add subsection D to read as follows:

D. The Premises has not undergone inspection by a Certified Access Specialist (CASp), and, as such it has not been determined whether the Premises meet all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53.

2. Section 2 of the Commercial Sublease is hereby amended to read as follows:

2. Term.

The Term of this Agreement shall be for the period commencing on October 17, 2013, and ending on June 30, 2015. In the event that the Term of the Master Lease is extended to August 31, 2018 in accordance with the Second Amendment to Commercial Lease, the Term of this Agreement shall likewise be extended to August 31, 2018, unless sooner terminated in accordance with this Agreement.

3. Section 3 of the Commercial Sublease is hereby amended to replace subsection C to read as follows:

C. Notwithstanding subsections 3. A. and 3. B. above, Onstage shall pay to City as Rent the following amounts on the following schedule:

For the period of September 1, 2015 to August 31, 2016: \$600 per month.  
For the period of September 1, 2016 to August 31, 2017: \$800 per month.  
For the period of September 1, 2017 to August 31, 2018: \$1,000 per month.

Payment shall be made in advance, no later than the 15th day of the month.

4. Section 5 of the Commercial Sublease is hereby amended to add subsection F, to read as follows:

F. Onstage may apply to the City to schedule other theater companies, shows and performances not performed or produced by Onstage pursuant to terms and conditions that may be proposed by the Managing Director(s) of Onstage. Such other or additional performances shall be subject to the written approval of the City, which approval may be conditioned upon the provisions of insurance and indemnification to the City associated with such other activities by third parties. The parties hereto understand that the artistic production company of Onstage may from time to time undertake production at locations other than the Premises. Onstage shall endeavor to provide use of premises to other groups during times when Onstage is not utilizing said premises.

5. Section 7 of the Commercial Sublease is hereby amended to add the language as follows:

Onstage acknowledges that the Alterations, Repairs or Improvements to the Premises to be performed by Onstage may be considered a Public Work pursuant to Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000 and therefore subject to the payment of prevailing wages to all workers engaged to perform said work. Onstage shall comply with all applicable laws with regard to same and shall indemnify the City in accordance with the provisions of Section 18 below. Onstage's obligation to indemnify shall be interpreted broadly to apply to any legal or administrative proceeding, arbitration, or enforcement action. City may, in its sole and absolute discretion, request a written prevailing wage compliance plan prior to Onstage's undertaking any work of improvement to the Premises and require Onstage to use a third-party recordkeeping/compliance firm for the purpose of establishing prevailing wage compliance. Said third party firm shall be at Onstage's sole cost and expense.

The parties hereto understand that Onstage as a 501(c)(3) non-profit organization desires and intends to utilize volunteer labor to perform a portion of improvements which Onstage may propose for the Premises. The City may approve the use of volunteer labor for such activities, provided that all insurance, bonding and indemnity provisions as set forth above are met.

Onstage may receive the donation of volunteer labor or materials from outside vendors acting in accordance with any applicable tax or other regulations regarding charitable contributions.

6. Except as set forth in this Second Amendment to Commercial Sublease, the terms and conditions of the Commercial Sublease shall remain in full force and effect.

DATED: \_\_\_\_\_

CITY OF MARTINEZ

By: \_\_\_\_\_

Rob Braulik  
City Manager

Attest: \_\_\_\_\_

DATED: \_\_\_\_\_

SUBLESSEE:  
ONSTAGE REPERTORY THEATER

By: \_\_\_\_\_

Mark G. Hinds, Managing Director