

## **ORDINANCE NO. 19-20**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE APPROVING A FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (AGR. NO. 4545.OC) BY AND BETWEEN THE CITY OF ORANGE AND ORANGE COUNTY HEALTH AUTHORITY D.B.A. CALOPTIMA FOR A DEVELOPMENT PROJECT ON THE "605 BUILDING SITE," LOCATED ON THE SOUTHEAST CORNER OF LEWIS STREET AND CITY PARKWAY WEST (605 CITY PARKWAY WEST)**

**WHEREAS**, Section 65864 et seq. of the California Government Code authorizes cities to enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property; and

**WHEREAS**, the City Council ("City Council") of the City of Orange ("City") has adopted Chapter 17.44 of the Orange Municipal Code ("OMC"), which establishes procedures for the processing and approval of Development Agreements; and

**WHEREAS**, by the adoption of Ordinance No. 19-04 on September 28, 2004, the City Council approved that certain Development Agreement by and between the City and CA-The City Limited Partnership, a Delaware limited partnership ("Original Developer"), relating to certain real property located in the City of Orange commonly referred to as the "City Plaza Two Site" and the "605 Building Site," which are more particularly described in the Development Agreement, recorded in the Official Records of the County of Orange ("Official Records") on January 6, 2005, as Instrument No. 2005000013339 ("Original Development Agreement"); and

**WHEREAS**, by the adoption of Ordinance No. 20-05 on January 10, 2006, the City Council of the City of Orange approved a First Amendment to the Original Development Agreement, which was recorded in the Official Records on January 24, 2006, as Instrument No. 2006000051175; and

**WHEREAS**, by the adoption of Ordinance No. 13-06 on September 12, 2006, the City Council approved a Second Amendment to the Original Development Agreement, which was recorded in the Official Records on October 17, 2006, as Instrument No. 2006000698031; and

**WHEREAS**, the Orange County Health Authority, doing business as CalOptima, is the assignee and successor-in-interest to the Original Development Agreement as it relates to the 605 Building Site only and the City Council memorialized that assignment by the adoption of Ordinance No. 06-14 on November 25, 2014, approving that certain Amended and Restated Development Agreement by and between the City of Orange and CalOptima, the original of which was recorded in the Official Records on December 11, 2014, as Instrument No. 2014000535189, City Agreement No. 4545.OC ("Amended and Restated Development Agreement"); and

**WHEREAS**, CalOptima has made an application to the City to enter into a First Amendment to the Amended and Restated Development Agreement to extend the Term of the Amended and Restated Agreement by six years; and

**WHEREAS**, Section 65868 of the California Government Code and OMC Section 17.44.160 permit the amendment of the Amended and Restated Agreement by mutual consent of the parties to the agreement, pursuant to the same procedure as for entering into a Development Agreement, namely that a noticed public hearing must be held by both the Planning Commission and the City Council and such amendment, if approved, must be approved by ordinance; and

**WHEREAS**, an environmental review was conducted by the City, as the "lead agency," under the California Environmental Quality Act ("CEQA") to evaluate the projects described in the Original Development Agreement, together with development projects for two other separate development sites owned by the Original Developer or its affiliates. As a result of the environmental review, Final Environmental Impact Report 1612-01 ("Final EIR") was prepared and certified by the City Council in accordance with CEQA on October 9, 2001; and

**WHEREAS**, further environmental review was conducted by the City at the time the Original Developer applied for the Original Development Agreement. In compliance with CEQA and the State CEQA Guidelines, the City prepared an Addendum to the Final EIR because "none of the conditions described in Section 15162 (of the State CEQA Guidelines) calling for the preparation of a subsequent EIR or negative declaration had occurred" in connection with the Developer's application for the Development Agreement; and

**WHEREAS**, due to the nature of the proposed First Amendment to the Amended and Restated Development Agreement, this City Council again finds and determines that "none of the conditions described in Section 15162 (of the State CEQA Guidelines) calling for the preparation of a subsequent EIR or negative declaration have occurred" in connection with the proposed First Amendment to the Amended and Restated Development Agreement; and

**WHEREAS**, in accordance with State and local law, on October 19, 2020, the Planning Commission of the City of Orange conducted a duly noticed public hearing on the proposed First Amendment to the Amended and Restated Development Agreement in substantially the form attached to this Ordinance as Exhibit "A," considered information presented by City staff and public testimony regarding the proposed First Amendment to the Amended and Restated Development Agreement, and, by a vote of not less than a majority of its total membership, recommended that the City Council approve the First Amendment to the Amended and Restated Development Agreement; and

**WHEREAS**, in accordance with State and local law, on November 10, 2020, the City Council conducted a duly noticed public hearing on the proposed First Amendment to the Amended and Restated Development Agreement, reviewed and considered proposed First Amendment to the Amended and Restated Development Agreement, and information presented by City staff and heard public testimony regarding the proposed First Amendment to the Amended and Restated Development Agreement.

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

**SECTION I:**

The City Council finds that a public hearing has been held before this City Council pursuant to the procedures described in Chapter 17.44 of the Orange Municipal Code. At the hearing, the City Council has considered testimony presented by the public and the Planning Commission's recommendation to approve the First Amendment to the Amended and Restated Development Agreement between the City of Orange and CalOptima.

**SECTION II:**

The City Council hereby finds that the First Amendment to the Amended and Restated Development Agreement between the City of Orange and CalOptima:

- A. Is consistent with the objectives, policies, general land uses, and programs specified in the General Plan; and
- B. Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the 605 Building Site is and will be located, and is consistent with the City's Zoning Code; and
- C. Is in conformity with and will promote public necessity, public convenience, general welfare, and good land use practices; and
- D. Will be beneficial to the health, safety, and general welfare; and
- E. Will not adversely affect the orderly development of property or the preservation of property values; and
- F. Will promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

**SECTION III:**

The City Council approves and incorporates by reference the First Amendment to the Amended and Restated Development Agreement attached hereto as Exhibit "A." Within ten (10) days after this Ordinance takes effect and provided that CalOptima has first executed the First Amendment to the Amended and Restated Development Agreement in recordable form and delivered same to the City, the Mayor shall execute the First Amendment to the Amended and Restated Development Agreement in recordable form.

**SECTION IV:**

Within ten (10) days after the execution of the First Amendment to the Amended and Restated Development Agreement by all parties, the City Clerk is authorized and directed to record the First Amendment to the Amended and Restated Development Agreement in the Official Records.

**SECTION V:**

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mark A. Murphy, Mayor, City of Orange

**ATTEST:**

\_\_\_\_\_  
Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     )  
CITY OF ORANGE         )

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2020, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_ day of \_\_\_\_\_, 2021 was duly passed and adopted by the following vote, to wit:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:  
ABSTAIN:       COUNCILMEMBERS:

\_\_\_\_\_  
Pamela Coleman, City Clerk, City of Orange