



MEMORANDUM

DATE: September 17, 2018
TO: James N. Holgersson, Interim City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into Negotiations For An Exclusive Right To Negotiate Agreement With Orton Development Inc. For The Development And Operation Of An Art Center At 4060 Hollis Street**

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into negotiations for an Exclusive Right to Negotiate Agreement with Orton Development Inc. (“ODI”) for the development and operation of an Art Center on the City-owned property located at 4060 Hollis Street.

BACKGROUND

In March 2006, the Emeryville Redevelopment Agency (“Agency”) purchased 4060 Hollis Street, a property located immediately south of Old Town Hall, northeast of the Hollis Street and 40th Street intersection. The property is 33,697 square feet and is almost completely covered by a one-story brick building formerly occupied by the United Stamping Company. The Agency purchased this site for the purpose of adaptive reuse of the existing building to provide space for the annual Emeryville Celebration of the Arts Exhibit as well as year-round exhibition and performing arts uses. Various plans were contemplated for the facility over the following five years.

In December 2010, the Emeryville Redevelopment Agency entered into an Exclusive Right to Negotiate Agreement (ERN) with Emeryville Center for the Arts (ECA), a non-profit entity created to operate the Art Center. On September 22, 2011, the Planning Commission approved a Conditional Use Permit and Design Review application for adaptive reuse of the property. This plan included a 242-seat theater, 7,600 square foot gallery, 3,900 square feet of office space for ECA staff, a 1,200-square foot exterior courtyard, a 1,700-square foot café, a retail store and support spaces for the theatre, gallery and café spaces. For the purposes of this staff report, this version of the Art Center project is referred to as the “Prior Capital Project”.

In 2012, the State of California dissolved all redevelopment agencies statewide. While ECA had made progress toward funding the Prior Capital Project, a funding gap of \$7,600,000 existed at that time. When the Agency was dissolved, both the funding programmed for the Art Center, as well as the 4060 Hollis Street property itself, were at risk of redirection to other taxing entities. Despite an effort to reduce the scope of work and related costs, the financial uncertainty around the project delayed progress, the ERN

with ECA expired, and the land use entitlements expired. Eventually, ECA was dissolved as an entity.

The City was ultimately able to retain the property at 4060 Hollis Street, as the site was legally transferred to the City on September 5, 2017 in accordance with the Long Range Property Management Plan prepared by the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency. In addition to the property, the City has a total of \$11 million available for the project in the City's current Capital Improvement Program (CIP# CF-08, Project Number 06466107).

On January 16, 2018, the City Council held a study session regarding the Art Center project. Following consideration of a staff presentation of implementation options, the City Council approved a public-private partnership approach to project implementation and approved a Request for Qualifications/Proposals (RFQP) to solicit developer interest in partnering with the city. The RFQP was arranged as a two phase selection process, with the first phase consisting of qualifications review, and the second phase consisting of qualified respondents' submittals of conceptual proposals for the project.

RFQP Phase I Review

Following the release of the RFQP on February 12, 2018, staff held a mandatory pre-submittal meeting on March 1, 2018. The meeting was extraordinarily well attended by over 50 interested parties. It included a presentation, question-and-answer session, and walk-through of the building and site. Attendees were encouraged to network and form teams to include a wide breadth of experts.

The City received nine responses to the RFQP by the April 13, 2018 submittal deadline. A selection panel comprised of staff members from various departments reviewed the Phase I qualifications submittals and held follow-up interviews with the teams, resulting in a determination that a short list of three teams were the most qualified and should be invited to move forward to Phase II of the RFQP process.

Phase II Review

The short-listed teams included Orton Development Inc. ("ODI"), Community Arts Stabilization Trust and Crew ("CAST"), and MSL & Company/Artspace/I.D.E.A. Partners ("MSL"). They submitted their Phase II conceptual proposals on June 29, 2018. Summaries of their proposals are included in Attachments 3-5.

The RFQP included scoring of Phase II submittals by two separate panels: the staff panel that determined the short list, and a panel of subject area experts (the "Blue Ribbon Panel"). It was understood that the results of both panels' scoring were to be reported to the City Council, and the RFQP acknowledged that the scoring of the two panels may be different. Phase II responses required the short listed teams to submit an analysis of the Prior Capital Project to clarify/confirm if there were feasibility and/or funding gaps, and to submit a conceptual plan for a "revised capital project" that is responsive to the City's

goals as enumerated in the RFQP (and discussed further below) and that is fully funded from existing, secured sources.

The City Manager appointed the members of the Blue Ribbon Panel, which included:

- Gail Donaldson, Chair, Emeryville Planning Commission, responsible for City land use review and familiar with planning entitlement processes, and Emeryville resident.
- Melody Kozma-Kennedy, Professional Exhibitor for the San Francisco Museum of Modern Art, member of Emeryville Public Art Committee and Emeryville resident.
- Jim Kennedy, Pixar Vice President of Marketing, familiar with facilities management, Rotten City Emeryville Cultural Arts District Partner and Emeryville business leader.
- Jean Goldman, Emeryville Public Art Committee Vice Chair, contributor to prior Art Center project process, Emeryville business owner and resident.
- Bryce Gaspard, Director, Bullseye Glass Resource Center; professional in arts education, creation and operation of artist studio space, artist residency/exhibit programs, Rotten City Emeryville Cultural Arts District Partner, and Emeryville business leader.
- Elmo Frazer, President, SAE Expression College, school administrator, art studio/production facility management, informal partner to the Rotten City Emeryville Cultural Arts District, and Emeryville arts educator.
- Robert Swatt, Swatt-Miers Architects, American Institute of Architects Fellow (FAIA) recommended by East Bay AIA as familiar with significant civic projects, Emeryville business owner.

Mayor John Bauters served as the Blue Ribbon Panel's meeting facilitator, but did not vote or otherwise participate in the formal scoring process.

Members of the staff panel included those responsible for processing of civic facility projects' technical reviews and financial pro forma analysis and included staff from Public Works, Community Development and the City Attorney's Office.

Concurrent interview sessions of the three short listed teams were held with both panels on July 16, 2018. The interview questions were derived from the RFQP Objectives and Key Elements and the scoring criteria were as set forth in the RFQP.

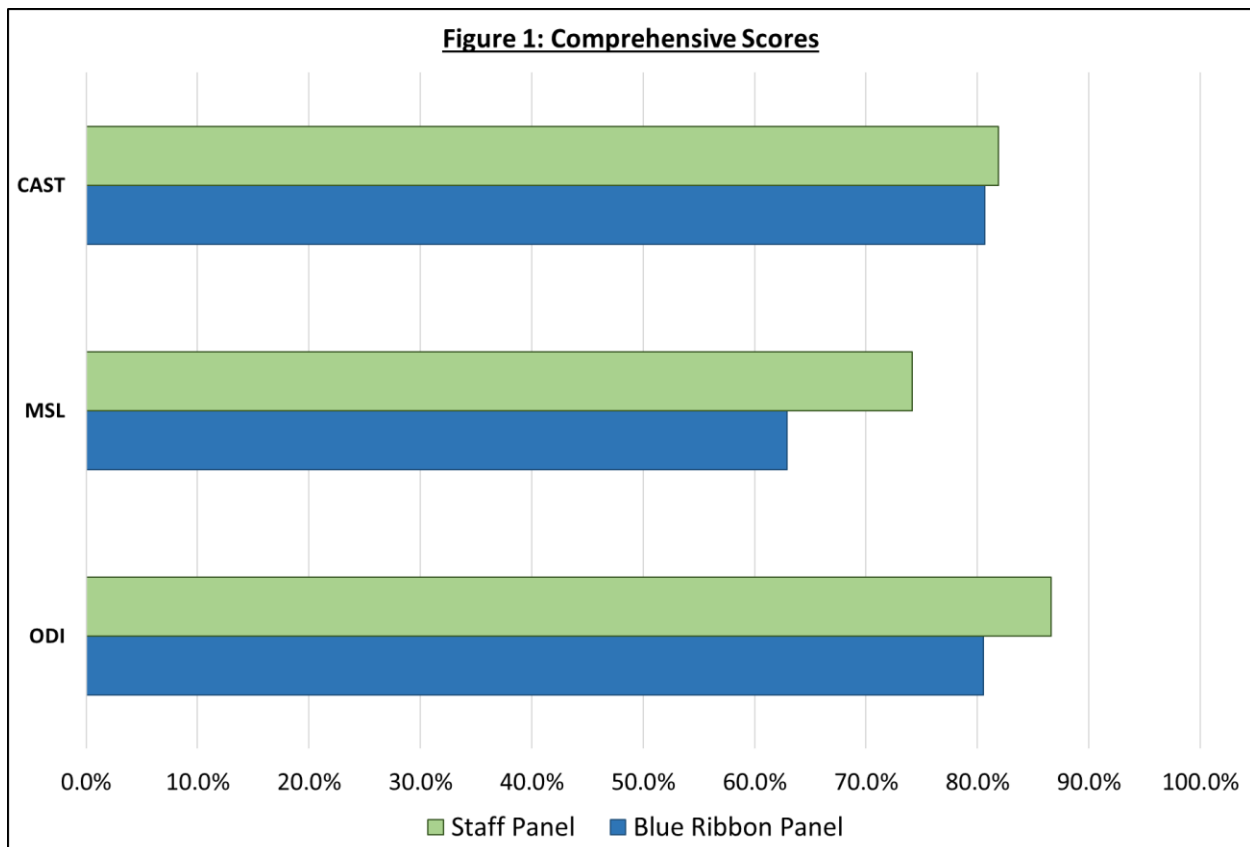
Pursuant to the RFQP, the Blue Ribbon Panel's evaluation focused on the proposed programming, uses and design of the project, while the staff panel's review evaluated the submittals against all of the criteria in the RFQP. Calculations of the two panels' scores were reviewed by project manager Emi Thériault, who invited additional staff to conduct quality control to ensure accuracy of calculations. The maximum points available for each panel's respective comprehensive (cumulative) scoring is different both because of the different focus of the two panels and because of the number of members on each panel

(seven members on the Blue Ribbon Panel and four members on the staff panel). However, the same approach and evaluation methodology was used for all submittals and the scores were therefore determined in an equitable and consistent manner.

The following discussion provides staff's analysis of the two panels' respective recommendations. The recommendations are slightly different due to their respective areas of focus; however, the scores indicate that both panels clearly preferred two of the three teams. Both of these teams are highly qualified and have financial and experiential resources to contribute. At the same time, they are proposing very different approaches to the project. Staff is recommending that the City Council select Orton Development, Inc., the team with the highest two-panel composite score, for execution of an Exclusive Right to Negotiate (ERN) with the City. The following analysis provides an in-depth review of how each team responded to the objectives and key elements in the RFQP in addition to their comprehensive scores.

DISCUSSION

The comprehensive scores of the submittals as determined by both the staff panel and Blue Ribbon Panel are as shown in Figure 1, below. Attachment 2 includes the scoring for all submittals with detailed analysis per the RFQP objectives/key elements and compliance criteria. A summary of how each team was scored for each of these criteria is provided in Figure 2 below.



The Blue Ribbon Interview Panel's focus was on facility design, uses, and art-related programming. The Blue Ribbon Panel's scores were virtually tied for the proposals from ODI and CAST, at 80.5% and 80.7%, respectively, whereas the proposal from MSL scored considerably lower, at 62.9%. Panel members indicated that, while both of the highest scoring teams were very capable, their proposals were very different in scope. It should be noted that the ODI proposal meets the primary intent of the RFQP in providing a proposal that provides an Art Center with a sustainable budget model. The CAST proposal offers these same aspects, but also includes an affordable housing component. Adding this use to the project provides a significant benefit but also increases complexities in project processing, financial modeling and funding, and time to deliver the project. Previously, it had been established that a primary objective is to open the Art Center doors as soon as possible albeit without a reduction in quality or sustainable revenue for Center operations. The Blue Ribbon Panel saw benefits of both proposals and expressed that both options would provide a quality Art Center for the community. They noted the expanded scope of the CAST proposal and potential benefits but expressed some concern regarding how long it might take to complete, given the priority of providing a space for the Emeryville Celebration for the Arts and the practical needs of what would likely be an expanded process.

The staff panel reviewed the proposals based on all RFQP criteria, including those reviewed by the Blue Ribbon Panel (design, uses, arts-programming) plus other more technical aspects such as pro forma financial statements, applicant financial resources, the teams' collective experience with regulatory processes, project complexity, City staffing needed to support each proposal, and timelines. The staff panel's overall scoring resulted in ODI with 86.6%, CAST with 81.9%, and MSL with 74.2%. Both ODI and CAST were in the 80th percentile, and both teams were judged to be clearly capable, whereas, similar to the Blue Ribbon Panel's scoring, MSL fell short. The staff panel scores were ultimately a reflection of more emphasis on project aspects such as process, timelines, and staffing needs. Staff also carefully considered the complexity of the entitlement and permit processes and related schedule impacts. This is further discussed below under "Expanded Process Analysis".

The RFQP Scoring Criteria were based on the following objectives, key elements, and compliance criteria as established by the City Council at the January 16, 2018 study session:

Objectives:

- Minimize City subsidy while ensuring fiscal sustainability of operations (staff panel only)
- Maximize civic and community arts-based uses of the facility
- Expedite completion of the project
- Utilize robust community engagement in developing programming for the facility

Key Elements:

- Dedicated space for annual Emeryville Celebration of the Arts

- Dedicated and managed gallery space for artists
- Dedicated flexible use space suitable for performing arts and other community events

RFQP Compliance Criteria:

- Completeness of submittal (staff panel only)
- Understanding of project
- Development experience
- Management/operations experience
- Clarity of roles

Figure 2: Scores by Specific RFQP Criteria

Team:	ODI			MSL			CAST			Highest Scoring Team		
	Blue Ribbon Panel	Staff Panel	Average	Blue Ribbon Panel	Staff Panel	Average	Blue Ribbon Panel	Staff Panel	Average	Blue Ribbon Panel	Staff Panel	Average
Objective: Minimize City subsidy while ensuring fiscal sustainability of operations	N/A	85.0%	85.0%	N/A	69.7%	69.7%	N/A	74.2%	74.2%	N/A	ODI	ODI
Objective: Maximize civic and community arts-based uses of the facility	75.7%	90.0%	82.9%	61.4%	75.0%	68.2%	81.4%	90.0%	85.7%	CAST	ODI/ CAST TIE	CAST
Objective: Expedite completion of the project	87.1%	92.5%	89.8%	61.4%	75.0%	68.2%	87.1%	72.5%	79.8%	ODI/ CAST TIE	ODI	ODI
Objective: Utilize robust community engagement	77.1%	86.3%	81.7%	67.1%	76.3%	71.7%	79.3%	83.8%	81.5%	CAST	ODI	ODI/ CAST TIE
Composite review of Key elements: Dedicated space for ECA and other arts-related uses	80.0%	90.0%	85.0%	64.3%	77.5%	70.9%	81.4%	87.5%	84.5%	CAST	ODI	ODI/ CAST TIE
RFQP Compliance: Completeness of Submittal; Understanding of Project; Development Experience; Management/Operations Experience; Clarity of Roles	83.0%	85.0%	80.0%	60.6%	74.2%	67.4%	79.8%	83.2%	81.5%	ODI	ODI	ODI
Comprehensive Score	80.5%	86.6%	83.6%	62.9%	74.2%	68.5%	80.7%	81.9%	81.3%	ODI/ CAST TIE	ODI	ODI

As expected, given the qualifications of each of the three teams, candidates could and did propose expanded use and building space considerations to establish a sustainable fiscal model for the Art Center operating budget. However, a proposal that is more limited

in scope could be on equal or potentially stronger footing in meeting the objectives, particularly those related to timeliness of project completion, while preserving needed uses and expected quality in design and operations. It appears that the more discreet scope proposed by ODI reflects the latter consideration.

ODI scored highest or tied with CAST for all but one of the Objectives and Key Elements required for the project. The Objective for which they did not receive the highest score was related to maximizing arts-based uses, due to CAST's proposal to add square footage for affordable artists' housing. In addition to providing expanded use types, the CAST proposal tied for first place with ODI's for their community engagement proposals (both having strong proposals) and for inclusion of other Key Elements related to arts uses. ODI's proposal was particularly strong in the areas of "Minimize(ing) City subsidy while ensuring fiscal sustainability of operations" and "Expedite(ing) completion of the project" while tying with CAST for community involvement and key arts-related uses.

Overall, as noted above, the Blue Ribbon Panel was virtually tied for ODI and CAST (80.5% versus 80.7%), while staff's scores favored ODI (86.6% versus 81.9%), meaning that the average scores of both panels taken together slightly favored ODI (83.6% versus 81.3%). On the whole, therefore, it would appear that ODI's proposal best meets the Objectives and Key Elements established for the project. MSL's proposal received some consideration and they are a very capable team but it was clear that there was a separation between the scoring for their proposal as compared to the two top candidates.

Expanded Process Analysis.

In an effort to provide an early evaluation of potential process requirements and schedules, Economic Development and Housing Division staff requested other City staff members responsible for permit processing and inspections to provide preliminary analyses of the two top-scoring proposals. The request for review included the Planning entitlement process, Building plan check/permit/inspection processes, Fire Department plan checking, and Public Works infrastructure review/inspection schedules. Comments from these reviews are included as Attachment 7. While not directly required by the RFQP process, staff felt that this extra level of analysis could help provide the Council with practical information needed to better evaluate each of the two top-scoring proposals.

In general, comments on both proposals were similar for the Building Division, Fire Department, and Public Works Department. However, the Planning Division concluded that the entitlement process for the ODI project would take about 9 to 12 months, while the entitlement process for the CAST project would take 18 to 24 months. This is because the ODI project would only require a conditional use permit and design review from the Planning Commission, whereas the CAST project would require City Council approval of a General Plan Amendment, rezoning, Planning Regulations Amendment, conditional use permit, and design review.

Summary.

The comprehensive scores and the Objectives-Key Element specific scoring analyses both indicate two top scoring proposals: ODI and CAST. While the two teams were scored roughly equal by the Blue Ribbon Panel, ODI received a higher composite comprehensive score due to a higher staff panel comprehensive score. Where the two top-scoring teams differed was primarily in the scope of uses contemplated and the resultant complexity of process, funding, and construction timelines.

Given this scoring and the additional process, schedule, and staffing considerations provided by the City's technical experts, staff is recommending that the City Council authorize the City Manager to enter into an Exclusive Right to Negotiate Agreement (ERN) with ODI with an aim to develop a long-term ground lease for the development and operation of the Art Center.

FISCAL IMPACT

Staff's recommendation to proceed with negotiation of an ERN represents little direct fiscal impact, since the financial terms applicable to the project are to be negotiated. The City would incur costs related to outside legal counsel related to review and negotiation of the ERN, which is expected to be less than \$45,000 and is fundable by the current CIP budget for the Art Center project.

With respect to the applicants' submittals, staff is unable to forward submittals in their entirety. Significant portions of the submittals are exempt from public disclosure because they contain confidential information about the applicant and owners' financial status. Therefore, staff has included excerpts from the proposals as Attachments 3-5. With the intent to be equitable, a similar amount of material has been provided for each respondent.

Based on the information received in the submitted proposals, all three shortlisted teams would, working with City assistance, generate sufficient funds to both construct the Art Center and provide an ongoing budget for Art Center operations. However, further refinement and analysis of short and long term fiscal implications of the proposals is necessarily depending on the results of negotiations.

STAFF COMMUNICATION WITH THE PUBLIC

Staff received inquiries from business owners and residents regarding the status of submittals in response to the RFQP. Interested parties were directed to review the webpage dedicated to the Art Center, where staff updated the project status at key milestones. Staff also contacted members of the artist community to confirm that they would be made aware of key community meetings and public hearing dates.

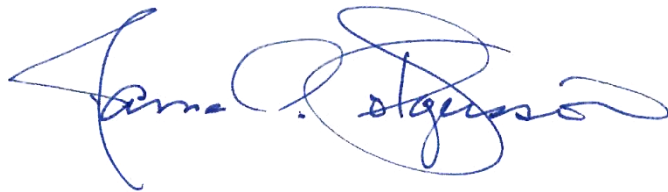
CONCLUSION

Staff recommends that the City Council adopt the attached resolution to authorize the City Manager to enter into negotiations for an ERN with ODI for the Art Center project.

PREPARED BY: Emi Thériault, Community and Economic Development Coordinator II

REVIEWED BY: Chadrick Smalley, Economic Development and Housing Manager

**Approved and Forwarded to the
City Council of the City of Emeryville:**



James N. Holgersson, Interim City Manager

ATTACHMENTS

- Attachment 1: Draft Resolution
- Attachment 2: Interview Scoring Results
- Attachment 3: Excerpts from ODI Proposal
- Attachment 4: Excerpts from MSL Proposal
- Attachment 5: Excerpts from CAST Proposal with follow-up letter
- Attachment 6: RFQP (without attachments)
- Attachment 7: Preliminary Staff Review Comments