



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: November 13, 2018
TO: Christine Daniel, 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 Execute An Exclusive Right To Negotiate Agreement With Orton Development Inc. For The Purpose Of Negotiating A Lease Disposition And Development Agreement For The Redevelopment And Operation Of 4060 Hollis Street As An Art Center**

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute an Exclusive Right to Negotiate Agreement (“ERN”) 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 the former United Stamping Company building at 4060 Hollis Street for the purpose of establishing an arts and cultural facility. The 30,000 square foot building and associated property was purchased for \$3.6 million. It contains a one-story brick warehouse located on the northeast corner of 40th and Hollis Streets, directly adjacent to City Hall. The site is located in the heart of the Park Avenue District and has been designated in the *Park Avenue District Plan* as an ideal location for arts and cultural uses.

The Agency purchased the building for adaptive reuse to provide space for the annual Emeryville Celebration of the Arts Exhibition as well as year-round exhibit and performing arts uses. Various plans were contemplated for the facility over the following five years. In December 2010, the 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, and on September 22, 2011, the Planning Commission approved a Conditional Use Permit and Design Review application for adaptive reuse of the property.

In 2012, the State of California dissolved all redevelopment agencies statewide. This, in addition to an identified capital project funding gap of \$7.6 million, led to a temporary postponement of the Art Center project implementation until adequate funds could be identified. Shortly after the Agency was dissolved, ECA was dissolved as an entity. The City was ultimately able to retain the property at 4060 Hollis Street and the site was legally transferred to the City on September 5, 2017 in accordance with the *Long Range Property Management Plan* prepared by the 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 implementation options to re-start the Art Center project. The Council directed staff to pursue a public-private partnership approach and approved a draft 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.

Following the release of the RFQP on February 12, 2018, staff held a mandatory pre-submittal meeting on March 1, 2018. The City received nine responses to the RFQP by the April 13, 2018 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 three teams were the most qualified and should be invited to move forward to the second phase of the RFQP process.

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 conceptual proposals pursuant to the RFQP on June 29, 2018. The RFQP included scoring of the second phase submittals by two separate panels: the staff panel that had determined the short list, and a panel of community members who were subject area experts (the "Blue Ribbon Panel"). The results of both panels' scoring was then reported to the City Council at their regular meeting of September 17, 2018. The Council received presentations from staff and all three finalists, and then adopted Resolution No. 18-130 authorizing staff to negotiate an ERN with ODI for the construction and operation of an Art Center on the subject property.

DISCUSSION

The City Attorney has prepared the attached ERN (Exhibit A to the attached resolution), signed by Orton, for the Council's consideration. The proposed ERN outlines timeframes for negotiating a *Lease Disposition and Development Agreement* (LDDA), provides for developer exclusivity, the production and sharing of information to develop the project (i.e. conduct due diligence), and the identification of the budget framework to inform the terms of LDDA. At the end of the term of the ERN, staff will present a proposed LDDA for the Council's consideration. The LDDA will set forth the terms and conditions for the construction, establishment and operation of the Art Center and funding for the Art Center.

The key terms of the ERN are summarized below:

Negotiations: The City and ODI will negotiate a Term Sheet for a LDDA during the term of the ERN. The City will not negotiate with any other entity regarding redevelopment of the site during the term of the ERN. Provision for termination of negotiations is identified.

Duration (Term) of Agreement: The Negotiation Period is 180 days from the Effective Date, with an additional 60 day extension available, provided that substantial progress toward an LDDA has been made. Additional ERN extensions and provisions for termination are also addressed.

Developer Responsibilities: Developer is required to make full disclosure of partnerships for both the construction and operational phases of the project and all related material information. The ERN provides for regular reporting regarding specified topical areas such as the findings of the Developer's due diligence efforts (studies, reports, technical data necessary for environmental review etc.), operational structure and key individuals, updates of preliminary budgets and financing plans. Costs for preparation of environmental review documents shall be the responsibility of the Developer. Format of required communiques and related submittal sufficiency requirements are addressed.

City Responsibilities: The City agrees to prepare any and all environmental documents required for the proposed development under the California Environmental Quality Act. The City will notify Developer whether preparation of any environmental document will be required and agrees to cooperate with ODI with regard to providing information needed to redevelop the property.

Right of Entry: This is attached as Exhibit B to the ERN and provides ODI access to the site for needed survey, studies, etc. Provisions related to third party access and construction staging are addressed.

General Provisions: The ERN addresses typical real property negotiating matters such as real estate commissions, ownership of work products, defaults and remedies, legal requirements and attorneys' fees, as well as limitations of the ERN to an exclusive period of negotiation.

FISCAL IMPACT

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 and financial consulting services related to review and negotiation of the LDDA, which is expected to be less than \$45,000 (i.e. within the City Manager's authority to approve) and is fundable by the current CIP budget for the Art Center project.

STAFF COMMUNICATION WITH THE PUBLIC

Staff received an inquiry from an online real-estate reporter, and general inquiries from business owners and residents regarding the status of the Art Center project. Interested parties were directed to review the project web page and were provided links to the September 17, 2018 City Council staff report, in addition to general background information regarding the Art Center proposal.

CONCLUSION

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute 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:



Christine Daniel, City Manager

Attachments:

- Draft Resolution Authorizing City Manager to Execute an Exclusive Right to Negotiate
- Exhibit A, Exclusive Right to Negotiate Agreement