



City of Emeryville

CALIFORNIA

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT 4060 Hollis Street, Emeryville, CA

SECOND AMENDMENT

THIS SECOND AMENDMENT TO THE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT 4060 HOLLIS STREET, EMERYVILLE, CA ("Amendment") is effective as of this _____ day of _____, 2019, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **ORTON DEVELOPMENT, INCORPORATED** ("Developer"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, the City and Developer entered into an Exclusive Right to Negotiate Agreement dated January 16, 2019, ("Agreement") for the purpose to set forth the terms and conditions under which the City and Developer exclusively negotiate the terms and conditions of a proposed Lease Disposition and Development Agreement ("LDDA") for the construction, establishment and operation of the Art Center, located at 4060 Hollis Street, Emeryville, CA ("Art Center") ; and

WHEREAS, pursuant to Section 2.1 of the Agreement, the term of the Agreement is set to expire on Monday, July 15, 2019; and

WHEREAS, pursuant to Section 2.2, the City Manager may extend the term of the Agreement for an additional 60 days if the City Manager determines the Developer has made substantial progress; and

WHEREAS, on July 5, 2019, the City Manager and Developer executed the First Amendment to the Agreement extending the term of the Agreement to September 13, 2019; and

WHEREAS, on September 3, 2019, the City Council adopted Resolution No. 19-160 authorizing the City Manager to further extend the term of the Agreement to allow for continuation of the negotiations; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. RECITALS

The foregoing recitals are true and correct and incorporated by reference.

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

REV 06/2019

Exhibit A

2. AMENDMENT

The Parties agree to amend Section 2.1 of the Agreement to extend the term of the Agreement to **December 16, 2019**.

3. CONTINUING EFFECT OF AGREEMENT

Except as amended by this Amendment, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

4. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment

5. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect

6. WAIVER

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

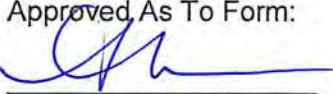
SIGNATURES ON FOLLOWING PAGE

7. SIGNATURE PAGE TO EXCLUSIVE RIGHT TO NEGOTIATE 4060 HOLLIS STREET, EMERYVILLE, CA, SECOND AMENDMENT

IN WITNESS WHEREOF the City and the Developer have executed this Agreement, which shall become effective as of the date first written above.

Approved As To Form:

Asst.



City Attorney

Dated:

_____, 2019

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

7/31
_____, 2019

ORTON DEVELOPMENT, INCORPORATED



NICHOLAS ORTON, Partner

(Signature)