

## RESOLUTION NO. 19-126

**Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Second Amendment To The Exclusive Right To Negotiate Agreement With Orton Development Inc. (ERN) For The Purpose Of Negotiating A Lease Disposition And Development Agreement For The Redevelopment And Operation Of 4060 Hollis Street As An Art Center To: (1) Extend The ERN Term To December 16, 2019, (2) Authorize An Additional Sixty Day Extension If Needed, And (3) Authorize The Execution Of Additional Minor Amendments As Necessary To Effectuate The Purpose of The ERN**

**WHEREAS**, in March 2006, the Emeryville Redevelopment Agency purchased the former United Stamping Company building at 4060 Hollis Street ("Site") for the purpose of establishing an arts and cultural facility (the "Art Center"); and

**WHEREAS**, on January 16, 2018, the City Council approved a draft Request for Qualifications/Proposals to solicit developer interest in partnering with the City for development of the Art Center; and

**WHEREAS**, on September 17, 2018 the City Council adopted Resolution No. 18-130 authorizing staff to negotiate an Exclusive Right to Negotiate Agreement ("ERN") with Orton Development Inc. ("ODI") for the construction and operation of an Art Center on the Site; and

**WHEREAS**, on November 13, 2018, the City Council adopted Resolution No. 18-160 authorizing the City Manager to execute an ERN Agreement with ODI for the purpose of negotiating a Lease Disposition and Development Agreement for the redevelopment and operation of the Site as an Art Center; and

**WHEREAS**, the City and ODI entered into an Exclusive Right to Negotiate Agreement dated January 16, 2019, ("Agreement") to set forth the terms and conditions under which the City and ODI would 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; and

**WHEREAS**, pursuant to Section 2.1 of the Agreement, the original term of the Agreement expired on Monday, July 15, 2019; and

**WHEREAS**, on July 5, 2019, pursuant to Section 2.2 of the Agreement, the City Manager and ODI executed the First Amendment to the Agreement extending the term of the Agreement to September 13, 2019; and

**WHEREAS**, substantial progress has been made towards negotiating the terms and conditions of a proposed LDDA for the Art Center; and

**WHEREAS**, the City and ODI desire to extend the term of the Agreement to allow continued negotiations and development of the LDDA for the Art Center; and

**WHEREAS**, a Second Amendment to the Agreement ("Second Amendment") has been prepared to extend the term of the Agreement to December 16, 2019; and

**WHEREAS**, the public interest will be served by this Second Amendment; now, therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute the Second Amendment with ODI in substantial form as attached as Exhibit A to this resolution; and be it further


**RESOLVED**, that the City Council hereby authorizes the City Manager to execute an additional amendment to the Agreement allowing for an additional extension of the Agreement term of up to 60 days if deemed necessary by the City Manager as necessary to complete negotiations and LDDA documents; and be it further

**RESOLVED**, that the City Council hereby authorizes the City Manager to execute minor amendments to the Agreement with ODI as may be necessary to effectuate its purpose.

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 3, 2019 by the following vote:


AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

ATTEST:

  
CITY CLERK

  
MAYOR

APPROVED AS TO FORM:

  
CITY ATTORNEY



# 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:

CITY OF EMERYVILLE

\_\_\_\_\_, 2019

\_\_\_\_\_  
Christine S. Daniel, City Manager

Dated:

7/31  
\_\_\_\_\_, 2019

ORTON DEVELOPMENT, INCORPORATED

  
\_\_\_\_\_  
NICHOLAS ORTON, Partner

(Signature)