



# AGENDA REPORT

**TO:** John A. Flores  
INTERIM CITY ADMINISTRATOR

**FROM:** Claudia Cappio

**SUBJECT:** Supplemental Report - Developer Selection  
and ENA for the Henry J. Kaiser Convention Center

**DATE:** June 1, 2015

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**COUNCIL DISTRICT:** 2

## RECOMMENDATION

Staff recommends that the City Council approve:

**A Resolution Authorizing an Exclusive Negotiating Agreement with Orton Development, Inc. for the Rehabilitation, Adaptive Reuse, and Operation of the Henry J. Kaiser Convention Center, also known as the Oakland Municipal Auditorium.**

## REASON FOR THE SUPPLEMENTAL REPORT

A supplemental report has been prepared to answer questions posed by Councilmember Kaplan at the May 26, 2015 CED Committee meeting.

## DISCUSSION

*Question #1: Are there potential other sites where the hotel proposal from Creative Development Partners could be developed?*

As described in the first Supplemental Report dated May 20, 2015, staff found the hotel project proposed by Creative Development Partners ("CDP") in their response to the Henry J. Kaiser Request for Proposals (RFP) compelling, particularly for the job training programs it would offer in the hospitality and other technical education programs. Creative Development Partners estimates that their hotel project could generate 1,700 permanent jobs and training slots. They have written commitments from the Peralta Community College District, specifically Laney and Merritt Colleges, to help develop training and coursework for the project.

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Therefore, should the Council recommend entering into an Exclusive Negotiating Agreement (“ENA”) with Orton Development, staff recommends that the City Council consider offering assistance in identifying other potential sites that could be better suited to the hotel project proposed by Creative Development Partners.

While additional research and idea generating would be necessary, staff is aware that BART will be issuing a Request for Qualifications this summer or fall for a development project on the Lake Merritt BART parking lot. This site is one block from Laney College. The zoning is quite flexible under the Lake Merritt Station Area Plan, allowing hotels, office and housing.

*Question #2: Describe in more detail Orton Development’s approach to building out the internal space in the Henry J. Kaiser.*

Some possible approaches Orton Development is considering for that design include building a “structure within a structure” as contemplated in the Main Library proposal from 2006 to add seismic stability, minimizing load and remaining single story, or using a system of lightweight structural mezzanines, all while being consistent with Secretary's Standards. The best approach cannot be determined until more information is known. Please see attached summary provided by Orton Development for more detail.

*Question #3: Explain the labor peace provisions.*

The RFP made explicit that the City would like to see labor peace commitments from the developer selected for the ENA. As explained in more detail in the May 4, 2015 council report, staff recommends that during the ENA period, staff and the selected developer negotiate a public benefits plan as part of the LDDA, which among other things, codifies a labor peace commitment. A labor peace agreement would require that the selected developer not resist union organizing efforts at the project.

*Question #4: What is the timeline for activation proposed by both developers?*

Based the schedules provided in the proposals, CDP would complete construction of the Henry J. Kaiser in summer 2019 with occupancy in winter 2019. Construction of the hotel would be complete in summer 2020. Orton Development calls for the Henry J. Kaiser to reopen slightly earlier, by December 2018.

However, staff considers the schedules provided in the proposals as estimates only, and a more detailed schedule of performance will be negotiated and approved by the City Council as part of the final Lease Disposition and Development Agreement (“LDDA”). Ideally, a feasible phasing strategy could be identified by which the Calvin Simmons Theater is completed first, allowing public performances to being while the rest of the building is restored.

In addition, consistent with the RFP, the selected developer will be required to organize and host interim public events on the property to help activate the site before construction is complete and create interest in the project.

*Question #5: Provide a response to appeal statement submitted by CDP.*

The Office of Contracts and Compliance is currently preparing a response to the appeal statement submitted by CDP. It will be distributed to CDP and the Council once complete.

*Question #6: Provide more detail about the financials of each developer.*

Consistent with the RFP, developers were asked to submit confidential financial materials to demonstrate their financial capacity to take on the project. Developers were asked to include their financial statements (including balance statements, income statements, notes etc.), details about their real estate portfolio, and evidence of current relationships with lenders. These confidential financial materials were assessed by the City Controller to determine the relative strength of the developer's financial ability to move the project forward.

The City Controller found that Orton Development demonstrated enough developer equity and liquid assets to finance the entire project, although they do intend to secure debt and Historic Tax Credits to help fund the project. They also provided evidence of an eight figure letter of credit with a major banking institution.

The City Controller found that the financial materials that CDP provided for three partners demonstrated very little equity and a relatively small line of credit from one of the its joint venture partners, Harbinger Development. The line of credit emphasized Harbinger's interest in pursuing projects in the greater Boston area. No other specific commitments of capital were provided by CDP in the proposal they submitted, although they had several letters of interest.

However, the appeal letter distributed by Creative Development Partners on May 26, 2015 describes that they have \$60 million in committed capital. Neither the original proposal nor the appeal letter itself included documentation of this commitment. A commitment is typically demonstrated by a financial statement showing substantial equity, cash reserves, a bank line of credit etc., to spend on the project.

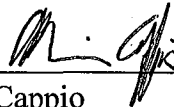
The staff recommendation noted that CDP will be seeking capital and debt from a variety of sources including EB5 funding, bond issuances, foundation investments, New Market Tax Credits, and Historic Tax Credits and that the proposal contained several letters of interest from organizations to collaborate on these efforts. However, there were no formal or specific commitments of funds from these sources contained in the proposal, and in many cases it would be premature for there to be commitments given these types of funding sources. Thus, an assessment of available developer equity or other committed capital becomes important to ensure the project can move forward.

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*Question #7: Explain the upfront payment of \$29 million to the City of Oakland that Creative Development Partners describes in their letter*

The CDP proposal submitted to the City does not appear to propose an upfront \$29 million rent payment to the City of Oakland. The payment is not mentioned in the written financing plan on page 37 of the proposal nor is it listed as an acquisition cost or as an expense in CDP's conceptual proforma on pages 37 – 42. It is unclear that the proforma could support an upfront \$29 million payment to the City or what the sources of this payment would be. CDP states on page 18 of the proposal that they are assuming to pay the City \$1 per year to lease the property.

Respectfully submitted,



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Administrator

Attachment A: Overview of Orton Development's Approach to Build-Out

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## **Attachment A**

***Regarding a request for more clarity with regard to internal build out of HJK:  
how would it work and what is the process?***

***Submitted by Orton Development Inc.***

The ODI approach to development and reconstruction of HJK begins with a set of values, from which we derive function and form.

### **1. Values:**

- History
- Inclusiveness
- Neighborhood
- Art
- Simplicity
- Immediacy

**2. Function:** As described in the RFP and confirmed by the zoning, there are a number of uses the building could appropriately house. ODI has started interviewing stakeholders in the community to better understand the area's needs. If selected, ODI will continue until all stakeholders are heard. Stakeholders include folks from civic, community, arts, business, education and non-profit spheres. We have already begun conversations with Laney College, the Oakland Museum of California, and with the Oakland East Bay Symphony to discuss collaboration. This dialogue will continue throughout the project as better information about building constraints comes in.

**3. Form:** The three biggest issues in determining the form are geology, the structural/seismic systems, and historic constraints imposed by the State Office of Historic Preservation and the Secretary of the Interior.

- **Geology:** HJK sits on piles of unknown condition and construction. Settlement is occurring. In fact, the entire building is sliding slowly towards the estuary. Leveling and arresting the movement of the building are top design concerns.
- **Structural:** The building does not meet current seismic code and the most recent renovation was ad hoc and not engineered to the then existing code. Typically, ODI would model the entire structure (approximately a \$100,000 project) to determine the necessary repair.

- **Historic:** Historic standards and tax credit law are in an unprecedented time of change, evaluation and review. For example, the multi-floor structural scheme proposed by Oakland's Main Library in 2006 may or may not conform to current standards. The standards require maintenance of the historic fabric, massing, and exterior.

#### Possible Approaches

These three issues will inform the final design. Some possible approaches Orton is considering for that design include building a "structure within a structure" as contemplated in the Main Library proposal from 2006 to add seismic stability, minimizing load and remaining single story, or using a system of lightweight structural mezzanines, all while being consistent with Secretary's Standards. The best approach cannot be determined until more information is known.