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OFFICE OF THE CITY CLERK
OAKLAND

2016 JUN 17 AM 9: 17

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: 2100 Telegraph Avenue Assignment

DATE: May 27, 2016

City Administrator Approval

Date:

6/16/16

RECOMMENDATION

Staff recommends that the City Council adopt:

A Resolution Authorizing the Assignment of an Exclusive Negotiation Agreement ("ENA") with TB2 Retail Complex, LLC Relating to the Development of City-Owned Property located at 2100 Telegraph Avenue to W/L Telegraph Owner, LLC, or a Related Entity; and Authorizing a Six-Month Extension to the Term of the ENA, and Authorizing Extensions of Performance Deadlines, relying on a California Environmental Quality Act ("CEQA") Exemption Pursuant to Sections 15262, 15306 and Section 15061(b)(3) of the CEQA Guidelines

EXECUTIVE SUMMARY

On March 26, 2015, the City of Oakland ("City") and TB2 Retail Complex, LLC ("TB2") executed an Exclusive Negotiation Agreement ("ENA") for the development of a mixed-use residential/retail project and replacement of a City-owned garage on City-owned property located at 2100 Telegraph Avenue (the "Property").

In November 2015, TB2 submitted a request for 1) an assignment of the ENA from TB2 to W/L Telegraph Owner, LLC ("WL"), a joint venture partnership between TB2 and Lane Partners/Walton Street Capital Partners for development of a mixed-use office/retail project with a potential residential component in a second phase (the "Project"), and 2) an amendment of the ENA to extend the ENA term from 24 to 30 months, or from October 21, 2016 to April 21, 2017, and 3) extending certain performance deadlines.

Staff recommends approval of the proposed legislation for the following reasons:

- WL has the needed experience and financial capacity to undertake the new Project.
- Lane Partners/Walton Street Capital Partners have acquired three properties adjacent to the Property and are currently in contract to purchase the last property on the block bounded by Telegraph Avenue, 21st Street, 22nd Street and Broadway. Combining these parcels with the Property will result in a substantially larger project on an approximately 130,000 square-foot site.

Item: _____
CED Committee
June 28, 2016

- The proposed change in the development program from residential to office use will address the current shortage of available office space in downtown Oakland.
- If a residential tower is developed as a second phase of the Project, it will create additional market rate and affordable housing units since WL's proposed residential component is significantly larger than the housing originally proposed by TB2.
- WL will need more time to satisfy the ENA requirements.

BACKGROUND / LEGISLATIVE HISTORY

The Property

The Property is located at 2100 Telegraph Avenue in the Uptown area. The size of the parcel is approximately 74,000 square feet or 1.76 acres. The Property is improved with a City-owned two-story public parking structure that includes 351 spaces and covers approximately 90 percent of the site. The garage provides parking for the Uptown area, including the Paramount Theater. The Property is encumbered with a subterranean easement held by the San Francisco Bay Area Rapid Transit ("BART") District for a subway tunnel that runs beneath the northeastern portion of the Property.

The ENA

On March 26, 2015, the City and TB2, pursuant to Resolution No. 85220 C.M.S. dated October 21, 2014, executed an ENA to analyze the feasibility of developing a mixed-use project consisting of 250 residential units (including 15 percent of the units affordable to low and moderate income households) and 15,000 square feet of retail, and to negotiate the terms of a Purchase and Sale Agreement ("PSA") for a new garage to be developed as part of the Project to replace the existing public parking facility currently operating on the Property.

The current ENA with TB2 has a term of 24 months with an administrative extension option of six months. Without including the six-month administrative extension option, the ENA will expire on October 21, 2016.

In the early fall of 2015, Lane Partners/Walton Street Capital approached TB2 about adding a major office component to TB2's proposed housing/retail development. Lane Partners' corporate focus is on investing, developing and operating commercial buildings throughout the Bay Area. In Oakland, Lane Partners sold the former Sears Department store to Uber Technologies, Inc. ("Uber"), and is currently rehabilitating and adapting the building for office use by Uber. This effort led Lane Partners to look for nearby sites, such as 2100 Telegraph Avenue, suitable for office development to meet the anticipated eventual office space expansion needs of Uber and/or to provide new space to other technology companies seeking to locate in Uber's vicinity.

Lane Partners/Walton Street Capital Partners also acquired three properties, 495 22nd Street, 2101 Broadway and 2127 Broadway, adjacent to 2100 Telegraph Avenue, and entered into a purchase and sale agreement with the owner of 2147 Broadway, although the transaction has not yet closed. Combining these four parcels with the Property would create a significantly larger Project site suitable for a bigger development bordering on Broadway and Telegraph

Avenue, more retail and a more cost-effective structural system to be built over BART's subway structure beneath the Property.

In November 2015, TB2 submitted a request to the City for 1) an assignment of the ENA to WL, and 2) an amendment of the ENA to extend the ENA term by 6 months and 3) an extension of performance deadlines.

In March 2016, WL presented a new development program for the Property which replaces TB2's original residential/retail combination with a mixed-use project consisting of office and retail, and a possible residential project to be developed in a second phase on the property located at 2147 Broadway.

Since requesting the ENA assignment in November of 2015, TB2 has not made any submissions required by the ENA because these would have to be changed and resubmitted to the City if the proposed assignment of the ENA to WL is approved.

ANALYSIS AND POLICY ALTERNATIVES

Project Scope

The new office project proposed by WL marks a significant change in direction from TB2's original development plan for 2100 Telegraph Avenue. The following Table 1 compares TB2's original to WL's current proposal:

Table 1: PROJECT COMPARISON

	TB2 Retail Complex LLC	W/L Telegraph Owner, L.L.C.
Total Site Area	71,000 sf	130,000 sf
Office	-	550,000 – 600,000 sf
Retail	15,000 sf	80,000 sf
Residential	250 units, incl. 38 affordable (15%)	350-475 units, incl. 53-71 affordable (15%); <i>The residential component is under consideration for possible separate phase.</i>
Residential Parking	220 spaces	175 - 230 spaces
Office Parking	-	550-600 spaces
City Public Parking	350 spaces	350 spaces

Office Development in Downtown Oakland

Development of new office space in downtown Oakland is currently not financially feasible, but market conditions are changing rapidly and may soon support new construction. The vacancy rate for Class A Office space in downtown Oakland during the first quarter of 2016 was 2.0 percent. During the same quarter, Class A office owners were asking for annual rents of up to \$51 per square foot in Oakland's central business district, and commercial brokers are anticipating continued rent increases this year as long as demand for office space remains

Item: _____
CED Committee
June 28, 2016

strong and options for tenants are limited. Supply in downtown Oakland's Class A market is low because no new office buildings have been developed in the Central Business District since the completion of Center 21 at 2100 Franklin Street in 2008.

Nevertheless, despite the low supply of available office space and strong demand, market rents for Class A space are still not supporting the development cost of such office space. Development costs for new Class A space are approximately \$500-550 per square foot (as of 2015), which requires full service rents of approximately \$61 per square foot to be profitable to build. In the 1st quarter of 2016, downtown Oakland asking rents at approximately \$51 per square foot were about 16 percent lower than what is required to make a project financially feasible. Other factors that have been cited by brokers as obstacles to new office development include too few potential anchor tenants to reliably fill new buildings and many institutional investors' view of downtown Oakland as a riskier investment that requires a higher rate of return than more proven markets like downtown San Francisco or the South Bay.

However, there are indications that some of these market circumstances may be changing. First, the recent surge in investment for the development of residential properties in downtown Oakland may signal a change in investor perception. Second, Class A office rents increased almost 25 percent between the first quarter of 2015 and 2016. Third, given these improved market conditions, office developers are beginning to consider new construction in downtown Oakland. For example, City staff is working with the Shorenstein Company on the resumption of construction of a stalled 600,000 square-foot office development at 601 12th Street. At the same time, CIM Realty is planning to develop a 200,000 square-foot office building at 323 22nd Street, which is another positive sign that the current high demand for new office space in downtown may translate into new office development. Lastly, brokers also indicate that buildings that deliver large floor plates, such as the proposed new Project at 2100 Telegraph Avenue, are likely to garner higher demand and rents. Because of these trends in Oakland's downtown office market, it is in the City's best interest to pursue exclusive negotiations with WL for an office development at 2100 Telegraph Avenue.

If the proposed assignment of the ENA and change in project scope is approved, staff will ask the developer to provide a project feasibility analysis and market study for the proposed office development as early as possible during the extended ENA terms.

ENA Term

The current ENA with TB2 has a term of 24 months with an administrative extension option of 6 months. Without including the 6-month administrative extension option, the ENA will expire on October 21, 2016. Since authorization of the ENA in October 21, 2014, 19 months have passed, and even if the original 24-month term is extended administratively by six months to April 21, 2017, WL has informed staff that the remaining time will be insufficient for WL to comply with the California Environmental Quality Act ("CEQA"), to secure BART approval for bridging its subway structures, and to negotiate all agreements with the City for the proposed transaction. It is therefore reasonable to extend the ENA term from 24 to 30 months with an administrative option to extend the new term by an additional 6 months.

ENA Negotiations

Aside from determining project feasibility during the ENA period, staff will also negotiate the following deal terms for incorporation into the DDA.

Public Parking. Staff will reevaluate whether there is a long-term need to replace all of the 350 parking spaces currently located in the Telegraph Plaza Garage and consider a potential reduction in the number of needed replacement parking spaces in a new public garage.

Paramount Theatre. Staff will request that WL work with the Board of Directors of the City-owned Paramount Theatre to ensure that theater management will continue to be able to use 22nd Street, which borders the Property and the theater, as a loading zone, and that the theater will have adequate parking in the Project once the existing City Garage at 2100 Telegraph Avenue has been replaced.

Affordable Housing. Staff recommends that if a residential project proceeds, the amount of affordable housing remain set at 15 percent of all residential units in the project and that the affordability level be set at 6 percent of the units at or below 50 percent of Area Median Income (AMI) and 9 percent at or below 80 percent of AMI, which is consistent with the prior understanding with TB2 regarding the incorporation of an affordable housing component in the Project.

Retail Strategy. Staff will ask that WL coordinate its retail program and marketing effort with OliverMcMillan-SUDA Uptown Oakland, LLC, the prospective developer of City-owned property located at 1911 Telegraph Avenue, as well as with Uber, the new owner of Uptown Station, to market all retail space to a mix of national, regional and local tenants.

Cultural Arts Space. Staff will work with WL to determine if the developer is prepared to set aside space in the retail component of the Project that can be made available to local artists or arts organizations, particularly those under pressure of displacement.

Project Labor Agreement (PLA). Staff will attempt to negotiate with WL that they enter into a PLA with one or more labor organizations for the construction of the Project.

Policy Alternative

Alternative 1	Keep the current ENA with TB2 for a mixed-use residential/retail project in place.
Pros	<ul style="list-style-type: none">• TB2's project approval and development process will be shorter than for WL's proposed project.• TB2's project consisting of residential and retail alone may be more marketable than WL's proposed office project in the near term.• The substantial new office component proposed by WL may be financially infeasible in the near term, although market conditions for office development are improving, and the new space would be developed on larger floorplates than those provided by traditional high-rise office buildings, and conform more closely to "creative office space" design guidelines.

<p>Cons</p>	<ul style="list-style-type: none"> • The City would forego the opportunity to partner with WL, an experienced development team that has more development experience and financial capacity than TB2, and that has made an effort to assemble additional parcels around the Property to build a larger mixed-use project. • TB2's proposal does not include any new office space. Oakland's Office market is in need of more Class A office space as many technology companies from San Francisco are seeking space and cheaper rents in Oakland. • WL's proposed project will provide fiscal benefits that exceed those of the original proposal by TB2 and/or provide additional community benefits, including payment of the jobs/ housing impact fee. • If the residential tower is developed as a potential second phase of WL's project, it will add additional affordable housing units to the area since WL's proposed residential component is significantly larger than the housing originally proposed by TB2. • The larger project site assembled by WL will enhance the constructability and financial feasibility associated with building over the BART tunnel that passes directly underneath the northeastern section of the Property.
<p>Reason for not recommending</p>	<p>Retaining the current ENA with TB2 does not offer the benefits provided by WL's proposal for the site.</p>

FISCAL IMPACT

The proposed legislation does not commit the City to any new expenditure of funds beyond staff time to continue negotiations. WL will bear sole responsibility for all costs associated with development of the Project, including land acquisition costs, consultant fees, permitting fees, legal fees, financing expenses, etc.

If ENA negotiations are successful and the parties enter into a Purchase and Sale Agreement for the acquisition of a new public garage to replace the parking facility currently operating on the Property, the City will have to use a combination of land sale proceeds and redevelopment bond funds to acquire the replacement parking.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures. The developer has held one community meeting on the project and is planning to conduct several additional community meetings during the ENA term.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: The Project would transform underutilized land into more productive economic use. The sale or lease of the Property to WL would generate land sale or rent proceeds that the City would use to acquire the new public parking garage inside the Project to support existing and new commercial and retail activities in the Uptown Area. The Project is in the pre-development phase, and projections for the number of jobs and tax benefits generated as a result of this Project will be assessed during the ENA phase.

Environmental: By developing in an established older urban area, this Project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl. The location of the Project in proximity to major public transportation nodes may encourage project employees, residents and retail customers to use BART and AC Transit. The developer will have to comply with City Ordinance No. 13040 C.M.S., which provides comprehensive green building requirements for private development projects.

Social Equity: If the Property is not sold at its fair market value or if the City Council approves the development and acquisition of a public parking garage, WL must comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program for either the entire Project or only for the public parking component of the Project. All of the workers performing construction work for a City-funded Project component must be paid prevailing wages. The developer will also be subject to the Living Wage Ordinance in the event that a City subsidy is required for the affordable housing proposed for a second project phase, which by itself constitutes another community benefit. Lastly, the Project will include payment of the housing linkage fee with the proceeds being deposited in the City's Housing Trust Fund. The fee is currently set at \$5.44 per square foot, which would translate into approximately \$3.1 million based on the proposed size of the office building.

CEQA

The City has determined, after independent review and consideration, that the proposed assignment of an ENA from TB2 to WL is exempt from California Environmental Quality Act ("CEQA") review pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines.

Item: _____
CED Committee
June 28, 2016

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing the assignment of an ENA with TB2 Retail Complex, LLC for development of a mixed-use project on City-owned property located at 2100 Telegraph Avenue to W/L Telegraph Owner, LLC, or a related entity; and authorizing a six-month extension, from 24 to 30 months, to the term of the agreement, and authorizing extensions of performance deadlines.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator at 238-3317.

Respectfully submitted,



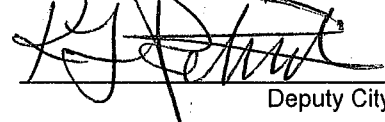
Mark Sawicki
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Reviewed by:
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Project Implementation Division

Prepared by:
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2016 JUN 17 AM 9:17

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AN EXCLUSIVE NEGOTIATION AGREEMENT ("ENA") WITH TB2 RETAIL COMPLEX, LLC RELATING TO THE DEVELOPMENT OF CITY-OWNED PROPERTY LOCATED AT 2100 TELEGRAPH AVENUE TO W/L TELEGRAPH OWNER, LLC, OR A RELATED ENTITY; AND AUTHORIZING A SIX-MONTH EXTENSION TO THE TERM OF THE ENA, AND AUTHORIZING EXTENSIONS OF PERFORMANCE DEADLINES, RELYING ON A CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") EXEMPTION PURSUANT TO SECTIONS 15262, 15306 AND SECTION 15061(B)(3) OF THE CEQA GUIDELINES

WHEREAS, the City of Oakland (the "City") owns approximately 74,000 square feet or 1.76 acres of property located at 2100 Telegraph Avenue, Oakland, California (the "Property"), which is improved with a two-story public parking structure that includes 351 parking spaces (the "City Garage"); and

WHEREAS, on March 26, 2015, pursuant to Resolution No. 85220 C.M.S. dated October 21, 2014, the City and TB2 Retail Complex, LLC ("TB2"), a California limited liability company comprised of the Strategic Urban Development Alliance ("SUDA") and Hensel Phelps Construction Company ("HPCC"), executed an Exclusive Negotiation Agreement ("ENA") for development of a mixed-use project on the Property, consisting of at least 250 rental residential units (with 15 percent of the units to be affordable to low and moderate income households), approximately 220 residential parking spaces, at least 15,000 square feet of ground floor retail, and a new public garage to replace the current City Garage on the Property (the "Original Project"); and

WHEREAS, in November 2015, TB2 submitted a request for (1) an assignment of the ENA from TB2 to W/L Telegraph Owner, LLC ("WL"), or a related entity, a joint venture partnership comprised of TB2 and Lane Partners/Walton Street Capital Partners for development of a mixed-use office/retail project with a potential residential component in a second phase (the "New Project"), and (2) an amendment of the ENA to extend the ENA term six months, from 24 to 30 months from October 21, 2016 to April 21, 2017, and (3) an extension of certain performance deadlines; and

WHEREAS, WL proposes to acquire, by sale or long term lease, the Property from the City for development of the New Project; and

WHEREAS, the City desires to assign the ENA to WL or a related entity, as the prospective developer, and provide for additional time for the preliminary feasibility study and exclusive negotiations of the proposed New Project, with the understanding that such study and negotiations do not constitute a binding commitment on the part of the City to the proposed New Project or WL for the Property; and

WHEREAS, the requirements of the California Environmental Quality Act ("CEQA") and the CEQA guidelines as prescribed by the Secretary of Resources have been satisfied; now therefore be it

RESOLVED: That the City Administrator or designee is hereby authorized to 1) assign the ENA to WL, or a related entity; (2) extend the term of the ENA by 6 months, from October 21, 2014 to April 21, 2017, with an administrative option, at the sole and absolute discretion of the City Administrator or designee, to extend the ENA term by an additional 6 months from April 21, 2017 to October 21, 2017 and (3) extend certain performance deadlines; and be it further

RESOLVED: That the City finds and determines, after independent review and consideration, that this action complies with CEQA because the assignment of the ENA, extension of the ENA term and extending certain performance deadlines are exempt from CEQA pursuant to Sections 15262 (feasibility and planning studies), 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it further

RESOLVED: That the City Administrator or designee shall cause to be filed with the County of Alameda a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That the City Administrator or designee is further authorized to take whatever action is necessary with respect to the assignment of the ENA term, extension of the ENA term and extending certain performance deadlines consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the assignment of the ENA, extension of the ENA term and extending certain performance deadlines pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON McELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California