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OAKLAND
2017 SEP 28 PM 1:27

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: 2100 Telegraph Plaza – Amendment
to Exclusive Negotiating Agreement

DATE: September 18, 2017

City Administrator Approval

Date:

9/27/17

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing An Amendment To The Exclusive Negotiation Agreement (“ENA”) With W/L Telegraph Owner, LLC, Or An Affiliate For Development Of A Mixed-Use Project On City-Owned Property Located At 2100 Telegraph Avenue (Assessor’s Parcel Number: 008-0648-016-03) To: (1) Extend The Term By Twelve Months From October 21, 2017 To October 21, 2018, With An Additional Six-Month Administrative Extension Option, and (2) Extend Performance Deadlines, Relying On A CEQA Exemption Pursuant To Sections 15262, 15306 And Section 15061(B)(3) Of The CEQA Guidelines.

EXECUTIVE SUMMARY

The City has an Exclusive Negotiating Agreement (“ENA”) with W/L Telegraph Owner, LLC (“W/L”) for the sale or lease of City-owned property located at 2100 Telegraph Avenue (the “Property”), and development of a mixed-use commercial project, including office, retail and a possible residential tower in a later phase of the development (the “Project”). Staff recommends an extension of the ENA period to provide more time for the City and W/L to finalize the scope of the project, determine feasibility, complete environmental review pursuant to the California Environmental Quality Act (CEQA), and to negotiate the terms of a Lease and/or Disposition and Development Agreement (LDDA/DDA) for the Property. The proposed third amendment to the ENA will extend the current expiration date by twelve (12) months, or from October 21, 2017 to October 21, 2018, with an additional six-month administrative extension option, for a total of up to eighteen (18) months, through April 21, 2019.

BACKGROUND / LEGISLATIVE HISTORY

On October 21, 2014, the City Council adopted Resolution No. 85220 C.M.S., authorizing an ENA between the City and TB2 Retail Complex, LLC (TB2) for the development of City-owned property located at 2100 Telegraph Avenue. At the time, TB2 proposed to develop a mixed-use

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project consisting of approximately 250 residential units, 15,000 square feet of retail and 570 parking spaces, which included replacement of the 351-space City-owned parking garage currently located on the Property.

In the Fall of 2015, Lane Partners and its investment partner, Walton Street Capital LLC, approached TB2 about expanding the Project site and adding a major office component to TB's proposed Project. After executing a partnership agreement to create W/L, the developer acquired four adjacent properties, 495 22nd Street, 2101 Broadway, 2127 Broadway, and 2147 Broadway, which, if combined with the Property, offers a unique opportunity to create a campus-type office development on a city block measuring 3.2 acres that is surrounded by Broadway, Telegraph Avenue, 21st Street and 22nd Street. Increasing the size of the Project site will also enable W/L to design a cost-effective structural system that must be built on top of the Bay Area Rapid Transit ("BART") tunnel running beneath the northeastern portion of the city block.

On July 5, 2016, City Council adopted Resolution No. 86267 C.M.S. approving (1) an assignment of the ENA from TB2 to W/L, 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, with an administrative option to extend the ENA term by an additional six months from April 21, 2017 to October 21, 2017, while also extending certain performance deadlines.

W/L is proposing to redevelop the Project site with construction of a mixed-use project including the following components:

Office	979,000 sf
<i>Optional Residential</i>	<i>395 units</i>
Retail	48,295 sf
Community Space	24,700 sf
Parking	1,424 spaces

If the Project did not include a residential component, the size of the office space would increase to incorporate the full development site area. Furthermore, the Project's parking component is currently designed to accommodate replacement of 351 public parking spaces now located on the Property, which the City would be expected to buy back from W/L as a condominium interest in the Project.

A final development plan (FDP) and a Draft Environmental Impact Report (DEIR) for the Project have been prepared and reviewed by the City. Work on a modified FDP is currently underway, which will be included in a third draft of the DEIR and submitted to the Bureau of Planning for review and approval. The final EIR is anticipated to be complete in the late Spring or early Summer of 2018.

ANALYSIS AND POLICY ALTERNATIVES

ENA Term and Compliance

The ENA will expire on October 21, 2017. During the 14 months since the ENA was assigned from TB2 to W/L, W/L has worked in good faith and met each ENA term, including timely submission to the City of the following:

- Planning documents including a Final Development Plan, and Draft Environmental Impact Report – both of which are currently underway;
- Multiple Project design concepts;
- Financial statements;
- Market assessments for office, retail and parking components of the Project;
- Written evidence that BART completed a preliminary analysis of the developer's structural design for bridging BART's subway structures, and conditional approval of the plan; and
- Several updated development budgets and financing plans

Outstanding items that would be due over the next several months from W/L under an ENA extension include providing a list of investors approached for financing the Project, and a market strategy for the Project based on the findings of the market assessments. In addition, the proposed ENA term extension will give W/L time to fully analyze the feasibility of the Project without replacement of the existing public parking.

W/L has informed staff that it likely will take most of 2018 to complete planning approvals for the Project, complete all analyses required to assure the economic viability of the Project, and negotiate the price and terms of a LDDA or DDA for the Project. Therefore, W/L has requested a one-year extension of the remaining term of the ENA (from October 21, 2017 to October 21, 2018), with the option to administratively extend that term by six more months (to April 21, 2019), if deemed reasonable by the City Administrator.

During the proposed extension period, the City will continue to generate revenue from the parking garage and it is unlikely that another developer would propose a project with greater economic benefits and feasibility than could be realized by redevelopment of the City parking site alone.

Office Component

W/L proposes to develop a building with twelve stories of very large floor plates totaling approximately 980,000 square feet of Class A office space above ground floor retail and structured parking. The City parking site, combined with the surrounding parcels assembled by W/L, offers a unique opportunity for a campus-style commercial development in the heart of downtown Oakland on major transit corridors.

A recent assessment of the market for office development in the Project prepared by the Hausrath Economic Group ("Hausrath") for W/L finds that asking office rents in downtown Oakland are rising steadily and at a faster pace than in San Francisco. Hausrath projects that

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rents will continue this upward trajectory as employment opportunities continue to grow in the East Bay. Per Jones Lang LaSalle's most recent real estate report on downtown Oakland's office market, the vacancy rate for Class A office space in downtown Oakland was 4.9 percent in the second quarter of 2017. Moreover, several Class A office projects have recently moved towards or started construction after securing large tenants, most notably 1100 Broadway (310,000 sf) and 601 City Center (600,000 sf), and it is likely that these projects will be fully occupied upon completion. Other downtown office renovation projects, Uptown Station (245,000 sf) and 2150 Webster (236,000 sf) are currently under construction.

These are very positive trends and data supporting office development as proposed by W/L for the Project. Per Hausrath, the Project could secure full service rents in the range of \$75 to \$80 per square foot by the time the Project is projected for completion. These rents should support the feasibility of developing the Project in the current high construction cost market environment. Yet, Project success will ultimately depend on identifying a major tenant that appreciates the benefits of the Project and commits to a rent that can justify new construction. W/L continues to market the Project and has received positive feedback from commercial brokers and potential tenants.

FISCAL IMPACT

Approval of a resolution authorizing an amendment to the ENA to extend its term and performance deadlines will not have a fiscal impact on the City. W/L will be required to increase their original \$25,000 Project Expense Payment ("PEP") to the City by an additional \$10,000, which is a nonrefundable good faith deposit, to reimburse the City for third-party expenses such as appraisal and economic consultant costs. To date, the City has expended \$13,665 for an economic consultant. The \$10,000 PEP will be deposited into the Miscellaneous Capital Projects Fund (Fund 5999); Organization: Central District Redevelopment (#85245), and Project: Telegraph Plz – TB2 (#1003328).

If completed, this in-fill development will increase tax generation from currently underutilized parcels. Preliminary estimates of annual net tax and assessment increases generated by the Project as proposed include approximately \$8 million to the City's General Fund, and approximately \$2.3 million in special taxes and assessments. There will also be substantial one-time impact fees to support affordable housing, public art, capital improvements, etc. Specifically, based on the current size of the office component, the Project would generate a job/housing impact fee of approximately \$5.2 million.

For FY 2016/17, the existing parking garage generated \$400,000 in annual net parking revenue and approximately \$160,000 in parking taxes. This would change with the redevelopment of the site, depending on how much public parking is included in the Project.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures. The City Planning Commission conducted a public scoping session for the Draft EIR of the Project on December 21, 2016. The developer also

conducted a community meeting to gather community feedback on the proposed Project on November 28, 2016 at the Hive in downtown Oakland.

COORDINATION

The following City departments were consulted during the preparation of this report:

- Office of the City Attorney;
- Department of Transportation, Off-Street Parking Division;
- Planning and Building Department; and
- Budget Bureau

PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

W/L continues to invest time and financial resources in the Project. During the approximately 14 months since the ENA was assigned to W/L, the developer has worked in good faith and successfully meet each of the terms of the ENA as outlined above

Outstanding items due by W/L over the next several months under an ENA extension include a providing a list of investors approached for financing the Project, and a market strategy for the Project based on the findings of the market assessments.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed Project will result in a mixed-use development that will add to the City's tax base and provide further stimulus to the local economy. The Project's mix of office and ground floor retail opportunities, and proximity to public transit will significantly increase the downtown daytime population who will patronize restaurants, shops and services. The potential 395-unit residential component, if built, will add nighttime economic vitality as well.

Environmental: The proposed Project site is located on or near BART stations, bus lines and bicycle corridors, allowing office commuters a variety of transportation alternatives to cars.

The developer will ensure Project compliance with the City's Green Building Ordinance and endeavor to receive Leadership in Energy and Environmental Design ("LEED") certification.

Social Equity: Whether the Project includes a residential component, and if so, whether affordable housing will be required on-site will be further analyzed during the ENA period, if extended. The office and retail components of the Project will generate approximately \$5.2 million in a jobs/housing fee, payable to the Affordable Housing Trust Fund, which could provide funding for thirty (30) to fifty (50) below market rate homes.

The location of the Project adjacent to a regional transit station and multiple transit nodes will allow for a wide range of access to employment, and accommodate diverse commuters, including those for whom extended auto commuting is unaffordable.

CEQA

The proposed ENA amendment 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.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing an amendment to the ENA with W/L Telegraph Owner, LLC, or an affiliate for development of a mixed-use project on City-owned property located at 2100 Telegraph Avenue (Assessor’s Parcel number: 008-0648-016-03) to: (1) extend the term by twelve months to October 21, 2018, with an additional six-month administrative extension option, and (2) extend performance deadlines, relying on a CEQA exemption pursuant to sections 15262, 15306 and 15061(b)(3) of the CEQA guidelines.

For questions regarding this report, please contact Janice Lang, Urban Economic Analyst IV, at 510-238-6430.

Respectfully submitted,

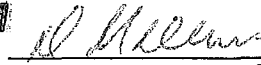


MARK SAWICKI
Director, Economic and
Workforce Development Department

Reviewed by:
Jens Hillmer
Development Manager, Economic and
Workforce Development Department

Prepared by:
Janice Lang, UEA IV
Project Implementation

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Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT A RESOLUTION AUTHORIZING AN AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT ("ENA") WITH W/L TELEGRAPH OWNER, LLC, OR AN AFFILIATE FOR DEVELOPMENT OF A MIXED-USE PROJECT ON CITY-OWNED PROPERTY LOCATED AT 2100 TELEGRAPH AVENUE (ASSESSOR'S PARCEL NUMBER: 008-0648-016-03) TO: (1) EXTEND THE TERM BY TWELVE MONTHS FROM OCTOBER 21, 2017 TO OCTOBER 21, 2018, WITH AN ADDITIONAL SIX-MONTH ADMINISTRATIVE EXTENSION OPTION, AND (2) EXTEND PERFORMANCE DEADLINES, RELYING ON A 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 1.76 acres of property located at 2100 Telegraph Avenue (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 limited liability company comprising 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; and

WHEREAS, on July 5, 2016, the City Council passed Resolution No. 86267 C.M.S., authorizing (1) an assignment of the ENA from TB2 to W/L Telegraph Owner, LLC ("W/L"), or one of its affiliates, a joint venture partnership between TB2 and Lane Partners/Walton Street Capital LLC, to evaluate the feasibility and negotiate the terms for development of a mixed-use office/retail project including alternatives with a residential component and/or replacement of public parking currently on the Property (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, with an administrative option to extend the ENA term by an additional six months from April 21, 2017 to October 21, 2017, while also extending certain performance deadlines; and

WHEREAS, on April 21, 2017, a second amendment to the ENA was executed, employing the six-month administrative option to extend the terms of the agreement to October 21, 2017; and

WHEREAS, W/L has met the ENA performance deadlines to date, including continuing Project review required by the California Environmental Quality Act ("CEQA"); and

WHEREAS, additional time is required for the City and W/L to review and analyze alternative project scenarios and economic feasibility, comply with the California Environmental Quality Act (CEQA), and negotiate transactional terms for the lease or sale and development of the Property; and

WHEREAS, the City Council desires to extend the term of the ENA from 36 to 48 months, or from October 21, 2017 to October 21, 2018, with an administrative option to extend the ENA term by an additional six months, or from October 21, 2018 to April 21, 2019, and

WHEREAS, the requirements of CEQA and the CEQA guidelines as prescribed by the Secretary of Resources have been satisfied to date; now therefore be it

RESOLVED: That the City finds and determines, after independent review and consideration, that this action complies with CEQA because the extension of the ENA term is 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 is hereby authorized to: (1) extend the term of the ENA from 36 to 48 months, changing the termination date from October 21, 2017 to October 21, 2018, with an administrative option, at the sole and absolute discretion of the City Administrator or designee, to extend the ENA term by an additional six months, or from October 21, 2018 to April 21, 2019; and (2) extend certain ENA performance deadlines; and be it further

RESOLVED: That the City shall require a \$10,000 nonrefundable Project Expense Payment from W/L to reimburse the City for third party expenses; and be it further

RESOLVED: That the \$10,000 nonrefundable Project Expense Payment from TB2 will be appropriated to Miscellaneous Capital Projects Fund (Fund 5999), Organization: Central District Redevelopment (#85245), and Project: Telegraph Plz – TB2 (#1003328); 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 is further authorized to take whatever action is necessary with respect to the extension of the ENA term and performance deadlines, and other development scenario considerations consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the amendment to the ENA 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, _____, 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY,
GUILLEN, KALB, KAPLAN, and CHAIRPERSON REID

NOES-

ABSENT-

ABSTENTION-

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