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OFFICE OF THE CITY CLERK
OAKLAND

2019 MAR 28 PM 1:26

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, Economic and
Workforce Development
Department

SUBJECT: 2100 Telegraph Plaza – Amendment
to Exclusive Negotiating Agreement

DATE: March 18, 2019

City Administrator Approval

Date:

3/28/19

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing A Fourth 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), Contingent Upon Payment Of A \$25,000 Extension Fee, To Extend The Term By Six Months From April 21, 2019 To October 21, 2019 To Complete Disposition and Development Agreement Negotiations, 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” as shown on Attachment A), merging the Property with adjacent parcels to create a square block development site for a mixed-use commercial project, including office, retail, parking and a possible residential tower in a later phase of the development (the “Project”). Staff recommends an extension of the ENA period to allow more time to negotiate the final terms of a Disposition and Development Agreement (“DDA”) to present to City Council for approval. All other performance benchmarks required by the ENA have been met.

The proposed fourth amendment to the ENA will extend the current expiration date by six (6) months from April 21, 2019 to October 21, 2019. The extension will be contingent upon payment by W/L of a \$25,000 extension fee, which will be nonrefundable and not applicable to the final transaction price.

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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 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 TB2’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, offer a unique opportunity to create a 3.2-acre campus-type office development on a city block bound by Broadway, Telegraph Avenue, 21st Street and 22nd Street (the “Project Site”). Increasing the size of the Project Site will enable W/L to design a cost-effective structural system that will straddle the Bay Area Rapid Transit (“BART”) tunnel beneath the northeastern portion of the block to protect against the impacts of the buildings above. The proposed Project is described in more detail below.

First ENA Amendment: 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.

The original Project concept included the construction of a City public parking garage to replace the 350-space garage currently on the site. City Council directed staff to remove the purchase of replacement parking from the Project and DDA terms because 1) such a move would conflict with the City’s “Transit First” policy, and 2) a source of funding for the estimated \$30.4 million purchase price of the replacement garage could not be identified. This decision prompted revision of many of the Project design and financial assumptions, and required additional time to complete and analyze those changes to maintain a feasible overall project.

Second ENA Amendment: As authorized by Resolution No. 86267 C.M.S. the City Administrator approved a six-month extension of the ENA term to October 21, 2017.

Third ENA Amendment: On October 17, 2017, City Council adopted Resolution No. 86938 C.M.S. approving a Third ENA Amendment to extend the ENA term by another 12-months to October 21, 2018, with an administrative option to extend by an additional six-months. W/L continued performing per the terms of the ENA, including working toward obtaining final planning approvals. At W/L’s request, the City Administrator approved the optional six-month extension, setting the termination date to April 21, 2019.

Proposed Project

The proposed Project Site is an assemblage of five contiguous parcels, with the City site comprising about 53 percent of the total land area. The assembly of adjacent sites will allow the Developer to span the BART tunnels with a steel superstructure to distribute the weight loads of the new construction, adding considerably to Project costs and design complexity. On July 18, 2018, the Oakland Planning Commission certified the Environmental Impact Report for the Project and approved the Final Planned Unit Development (“PUD”) plan dated June 20, 2018.

The Project is entitled for two different development scenarios that fit within the approved PUD plan:

Scheme A (Office/Residential mix): Up to 989,550 gross square feet of large floor-plate office, a 374,000 gross-square-foot residential tower (395 units), 84,520 gross square feet of ground floor retail, 18,500 gross square feet of community space offered at below-market rents, with parking in the basement and the first three building levels above the ground floor; or

Scheme B (All Office): Up to 1,600,000 gross square feet of large floor-plate office, 68,300 gross square feet of ground floor retail, 20,735 gross square feet of community space offered at below-market rents, with parking in the basement and the first three building levels above the ground floor.

Minimum Project: The DDA will require that, at a minimum, the Project include approximately 989,550 gross square feet of large floor-plate office space; 60,000 square feet of ground floor retail, approximately 18,500 square feet community space and four levels of parking. The design and massing of the Minimum Project shall encompass the entire Project Site and be reasonably approved by the City.

ANALYSIS AND POLICY ALTERNATIVES

ENA Term and Compliance

The ENA will expire on April 21, 2019 if this extension is not approved. W/L has worked in good faith and has fulfilled each ENA term, including timely submission to the City of the following:

- Planning documents including approved Final Development Plans and a certified Environmental Impact Report;
- Multiple Project design concepts;
- Letter of commitment from financial partner;
- 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
- Updated Project proformas.

The only outstanding ENA requirement is a final DDA term sheet to present to the City Council for approval. Staff and W/L have been meeting regularly and productively since June 2018 to

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negotiate the DDA terms of this complex project, particularly regarding price and the conditions on development that affect the price.

Staff anticipates negotiations may not be concluded by the time the ENA expires on April 21, 2019. If the City Council does not to extend the ENA term, W/L will have neither an ENA nor a DDA during the roughly two-month lead-time required by City Council agenda processing protocols before an ordinance can be considered by the City Council to approve a DDA term sheet. This creates a substantial risk to W/L, which has invested approximately \$60 million to date to assemble and entitle the Project. W/L is willing to pay a \$25,000 fee for the security a six-month extension will give them.

Staff recommends approval of the extension because the parties are currently finalizing DDA terms for consideration by the City Council. Not extending the ENA would jeopardize over four years of effort, and would be contrary to prior City Council direction to pursue development of this Project.

FISCAL IMPACT

Approval of the resolution will not have a negative impact on the City. W/L will be required to pay the City a \$25,000 extension fee, which will be deposited into the Miscellaneous Capital Projects Fund (Fund 5999); Organization: Central District Redevelopment (Org. 85245); and Project: Telegraph Plz – TB2 (Project 1003328) to offset internal Project costs.

Once built, the Project is expected to yield up to \$13 million in one-time fees, including approximately \$9.6 million for affordable housing. The Project will also generate over \$3 million annually in General Fund tax revenues. The land sale price is still being negotiated.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

COORDINATION

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

- Office of the City Attorney
- 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 met each of the terms of the ENA as outlined above. Regular and productive meetings are held between staff and W/L to negotiate final terms of the DDA.

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 that will patronize restaurants, shops and services.

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: 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.

W/L has committed to use best efforts to negotiate a Project Labor Agreement and will include at least 18,500 square feet of community space in the Project to lease to non-profit organizations at fifty percent (50%) of market-rate rents. Details of additional community benefits are pending final negotiation of the DDA term sheet.

CEQA

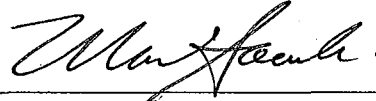
The proposed ENA amendment is exempt from California Environmental Quality Act ("CEQA") review pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution authorizing a fourth 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), contingent upon payment of a \$25,000 extension fee, to extend the term by six months to October 21, 2019, 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,

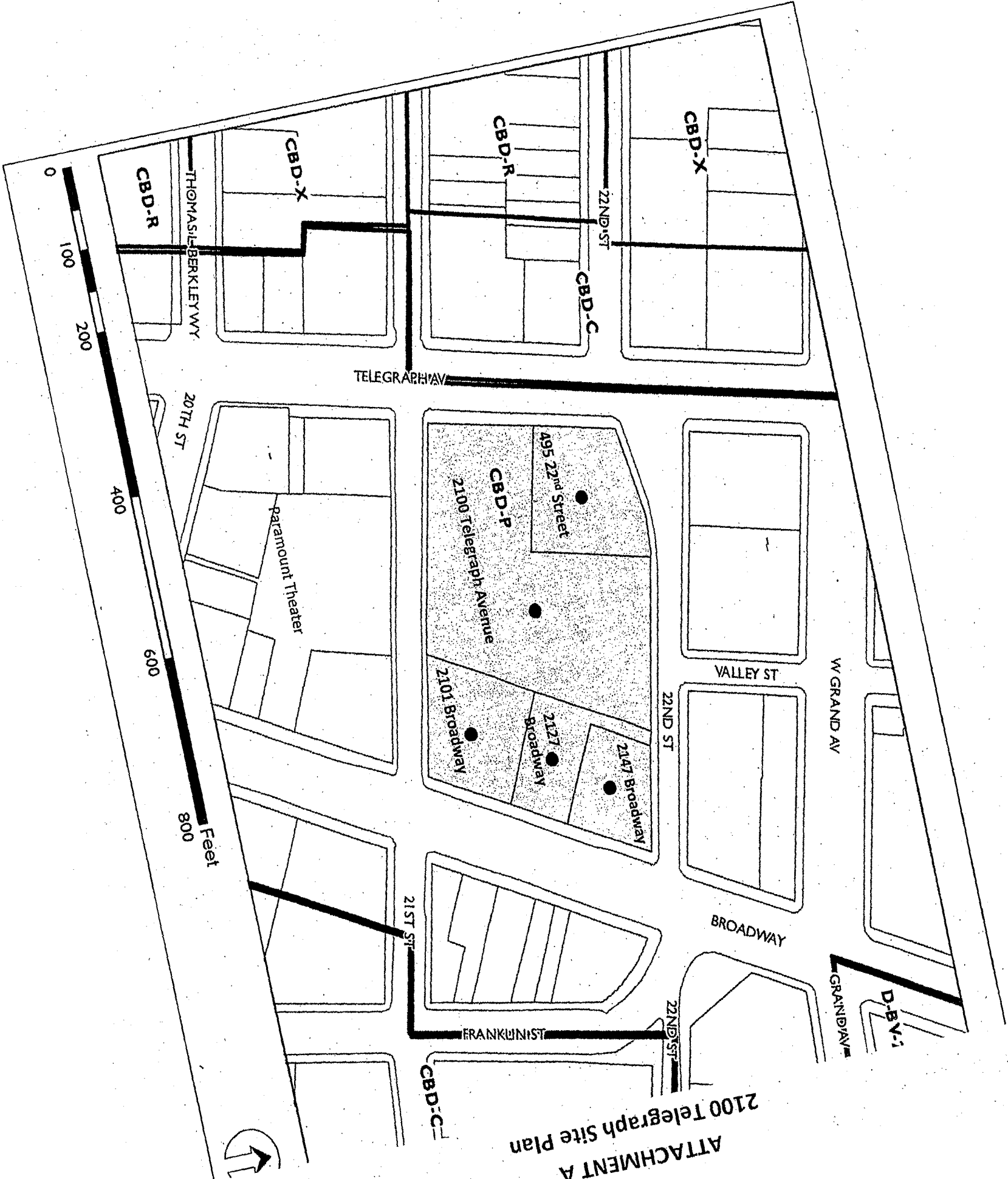


MARK SAWICKI
Director, Economic and
Workforce Development Department

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

Prepared by:
Janice Lang, UEA IV
Project Implementation

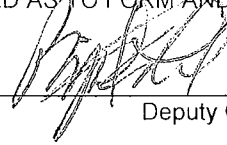
Attachment:
Attachment A: Site Plan



ATTACHMENT A
2100 Telegraph Site Plan

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APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING A FOURTH 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), CONTINGENT UPON PAYMENT OF A \$25,000 EXTENSION FEE, TO EXTEND THE TERM BY SIX MONTHS FROM April 21, 2019 to October 21, 2019 TO COMPLETE DISPOSITION AND DEVELOPMENT AGREEMENT NEGOTIATIONS, 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 adopted 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, on October 17, 2017, the City Council adopted Resolution No. 86938 C.M.S. authorizing a third ENA amendment to extend the ENA term by another 12 months to October 21, 2018, with an administrative option to extend by an additional six months. At W/L's request, the City Administrator approved the optional six-month extension, and issued an extension letter setting the termination date to April 21, 2019; and

WHEREAS, W/L has met all the ENA performance deadlines to date, including obtaining California Environmental Quality Act ("CEQA") and other planning approvals; and

WHEREAS, additional time is required to negotiate and finalize the terms of a Disposition and Development Agreement; and

WHEREAS, the City Council desires to extend the term of the ENA by six months from April 21, 2019 to October 21, 2019; 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 extend the ENA term by an additional six months, or from April 21, 2019 to October 21, 2019; and be it further

RESOLVED: That the City shall require a \$25,000 nonrefundable, non-applicable extension fee from W/L; and be it further

RESOLVED: That the \$25,000 nonrefundable extension fee will be appropriated to Fund: Miscellaneous Capital Projects (Fund 5999), Organization: Central District Redevelopment (Org. 85245), and Project: Telegraph Plz – TB2 (Project 1003328); 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, _____, 2019

PASSED BY THE FOLLOWING VOTE:

AYES- FORTUNATO BAS, GALLO, GIBSON McELHANEY, KALB, REID, TAYLOR, THAO, and CHAIRPERSON KAPLAN

NOES-

ABSENT-

ABSTENTION-

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