



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** MAY 19, 2020

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** KENNETH A. DOMER, CITY MANAGER

**PREPARED BY:** MATT FOULKES, DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

**SUBJECT:** PROPOSED EXCLUSIVE NEGOTIATION AGREEMENT BY AND BETWEEN CITY OF FULLERTON AND NFRED, LLC REGARDING FOX BLOCK DEVELOPMENT POTENTIAL

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### **SUMMARY**

Consideration of Exclusive Negotiation Agreement by and between City of Fullerton and NFRED, LLC to provide exclusive negotiation period to negotiate a development plan for public market style commercial development located on east side of North Harbor Boulevard between Chapman Avenue and Ellis Place.

### **RECOMMENDATION**

1. Approve proposed exclusive negotiation agreement (ENA) by and between City of Fullerton and NFRED, LLC on property located on east side of North Harbor Boulevard between Chapman Avenue and Ellis Place, including the Pomona Parking Lot and Triangle Lot. (APN 029-033-38 and 39/932-41-506 through 510, APN 029-033-09, 27 and 28, APN 29-033-03 through 06 and APN 029-032-21)
2. Authorize City Manager to execute ENA by and between the City of Fullerton and NFRED, LLC for exclusive negotiation period for development of a public market, small format retail and restaurants with outdoor amenities on approximately 3.32 acres.

### **PRIORITY POLICY STATEMENT**

This item matches the following Priority Policy Statements:

- Infrastructure and City Assets
- Fiscal and Organizational Stability.

## FISCAL IMPACT

Pursuant to the Exclusive Negotiation Agreement, the City has no obligation to pay or reimburse the NFRED, LLC ("Developer") for any costs or expenses incurred as a result of the ENA, the preparation and submittal of the development plan, the negotiation of a Disposition and Development Agreement or other agreement, the retention of any consultant, the development of the property or any other matter concerning the property, except as otherwise agreed to by the City in writing prior to costs or expenses being incurred. The City has incurred legal fees for the preparation of the ENA and could incur professional service fees as needed for the review of Developer's proposal.

## DISCUSSION

The properties, generally referred to as the Fox Block are currently developed with the Firestone Building, Tea Room, Pomona Parking Lot and the Triangle Parking Lot and are zoned Commercial General (C-3). Property ownership is split between the Successor Agency to the City of Fullerton and the City of Fullerton. The Department of Finance approved Long Range Property Management Plan identifies these sites for "future economic development". Under the terms of the ENA, the City will provide the developer with a comprehensive review of development plans and identify the necessary steps for project entitlement under the Zoning Code.

NFRED, LLC (Frontier Real Estate) submitted a proposal requesting an ENA for the commercial retail development on the Fox Block and has a Letter of Intent to purchase adjacent non-city owned properties. The concept proposed by NFRED includes partnering with the Fox Theatre Foundation to reconfigure a portion of the Theatre into a concert and / or theatre venue. NFRED has been in regular communication with the Fox Theatre Foundation Board on various development options but has not yet solidified a final concept, nor have the costs associated with the restoration of the theater been included in NFRED's current budget numbers. The ENA provides for an initial negotiation period of twelve months and identifies the following milestones to be completed by the Developer:

- Prepare and submit a preliminary financial feasibility analysis and market study, including development costs and a development pro-forma.
- Prepare and submit a Project Description, adequate in scope to begin environmental analysis of the Project.
- Work with the City / Successor Agency regarding the required appraisals on the Properties.
- Prepare and submit preliminary Project plans, including Site, Floor, Landscape, and Elevation plans.
- Prepare and submit all required Development Applications, including any General Plan Amendment, Specific Plan Amendment, Conditional Use Permit and other Project-specific entitlements.
- Provide a written progress report to City Council on the steps, actions and accomplishments taken by the Developer to meet the Initial Negotiation Period Milestones.

In the event the Developer does not meet the milestones, the ENA automatically terminates. If the Developer meets the Initial Negotiation Period Milestones, the ENA automatically extends for an additional six months, with an optional additional six month extension and includes the following additional milestones:

- Commence the required environmental analysis necessary for the Project CEQA determination.
- Conduct stakeholder and community outreach regarding the Project through various engagement strategies, including holding at least one community meeting.
- Prepare and submit to the City a draft Disposition and Development Agreement or other form of agreement or agreements between the City and Developer concerning the development of the Property.
- Submit to the City sufficient evidence that the Developer has the required equity and / or loan commitments and letters of interest to complete the development of the Property, provided however, that the City understands and acknowledges the proprietary nature of the information contained in the Developer's financial statements and agrees, to the extent permitted by law (including but not limited to the Public Records Act (Government Code Section 6250 et seq.), not to disclose said information contained therein to any person or entity other than representatives of the City or their consultants.
- Provide oral and written reports as requested by City regarding Developer's progress toward meeting its obligations under this Agreement.

While the length of economic impacts related to the COVID-19 pandemic are not known, it is important to ensure that the Developer has specified milestones in which to achieve the City's desired outcomes so as to not require multiple extensions to the ENA. While items beyond either the Developer's or City's control may necessitate additional time, if the Developer has substantially achieved the obligations set forth above, the City Council would have the discretion to extend the Total Negotiation Period.

Attachments:

- Attachment 1 - Presentation
- Attachment 2 - Exclusive Negotiation Agreement
- Attachment 3 - Location Exhibit