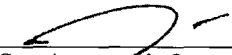


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2021 APR 22 PM 4:31

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. ~~13558~~ **13646** C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR HIS OR HER DESIGNEE TO NEGOTIATE AND EXECUTE A PURCHASE AND SALE AGREEMENT FOR THE SALE OF THE VACATED PORTION OF THE PUBLIC RIGHT-OF-WAY OF 22ND STREET AT THE SOUTHEAST CORNER OF ITS INTERSECTION WITH TELEGRAPH AVENUE OVER TWO PARCELS OWNED BY THE CITY OF OAKLAND TO W/L TELEGRAPH OWNER LLC FOR SEVEN HUNDRED NINETY-TWO THOUSAND DOLLARS (\$792,000) FOR DEVELOPMENT OF THE 2100 TELEGRAPH PROJECT; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, The City and the project developer, W/L Telegraph Owner, LLC (Developer), entered into a Disposition and Development Agreement (DDA) effective as of July 16, 2019, as authorized by City Council Ordinance No. 13558 C.M.S., which defines the terms for the sale and development of City-owned property located at 2100 Telegraph, which Developer intends to merge with surrounding parcels owned by Developer to create the square-block development site; and

WHEREAS, Section 3.1(a)(iii)(C) of the DDA requires Developer to satisfy Planned Unit Development (PUD) Condition of Approval 19 to address the 22nd Street Right of Way; and

WHEREAS, the portion of public right-of-way to be vacated will leave two existing parcels, as shown in **Exhibits A and B** attached hereto (collectively, the Property), which will be merged with the adjoining parcels on the block bound by 22nd Street, Broadway, 21st Street, and Telegraph Avenue to create a square-block development site to facilitate the 2100 Telegraph development project; and

WHEREAS, the City through a separate resolution will conditionally vacate a portion of the public right of way over the Property; and

WHEREAS, the City of Oakland is the current owner of the Property and intends to sell it to Developer; and

WHEREAS, pending City Council authorization, the City and Developer have

tentatively agreed to the terms of a Purchase and Sale Agreement attached hereto as **Exhibit C** (PSA) to purchase the vacated Property for a combined fair market value of \$792,000; and

WHEREAS, City staff has determined that the Property is exempt surplus land pursuant to Sections 54221(f)(1)(B) and 54221(f)(1)(E) of the California Surplus Lands Act (Government Code Section 54220 *et seq.*) because the Property is a former right of way, less than 5,000 square feet in area, and will be conveyed to the adjacent owner; and

WHEREAS, the vacated Property is to be sold in "AS-IS" condition and the City shall make no representations or warranties regarding land use or other permitting issues that may affect the property; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Administrator or his or her designee is hereby authorized to negotiate and execute the PSA with Developer for the sale of the Property for the price of \$792,000 and on substantially the terms and conditions set forth in the PSA as are acceptable to the City Administrator, or his designee.

SECTION 2. The sale of the Property will add property to the tax base for the City, decrease the cost of street maintenance, and will allow the 2100 Telegraph Avenue development project to move forward as approved, which will create construction jobs and long term, permanent jobs. The sale of the Property will generate \$792,000 in revenue to the City.

SECTION 3. The City Administrator or his or her designee is further authorized to negotiate and execute the deed conveying the Property and to enter into other agreements and take whatever action is necessary consistent with this Ordinance and its basic purposes.

SECTION 4. The City Administrator is hereby authorized to accept and deposit land sales proceeds in the amount of \$792,000 into the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land Revenue Account (48111), DP850 Administrative Project (1000019), Real Estate Program (PS32).

SECTION 5. The PSA and any other documents necessary for the sale of the Property shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

SECTION 6. The City Council hereby finds and determines, on a separate and independent basis, that the Property is exempt surplus land pursuant to Sections 54221(f)(1)(B) and 54221(f)(1)(E) of the California Surplus Lands Act (Government Code Section 54220 *et seq.*) because the Property is a former right of way, less than 5,000 square feet in area, and will be conveyed to the adjacent owner.

SECTION 7. The City Council hereby finds and determines, on a separate and independent basis, that the anticipated environmental effects of the project have been adequately evaluated by the Eastline Project - 2100 Telegraph Final Environmental Impact Report (EIR),

certified by the City Planning Commission on July 18, 2018; and none of the circumstances necessitating preparation of additional review under the California Environmental Quality Act (CEQA) as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163 are present.

SECTION 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 9. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

MAY 04 2021

PASSED BY THE FOLLOWING VOTE:

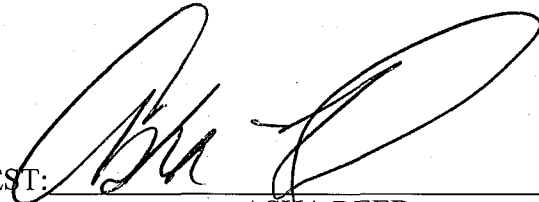
AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS - 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation:

May 14, 2021

NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR HIS OR HER DESIGNEE TO NEGOTIATE AND EXECUTE A PURCHASE AND SALE AGREEMENT FOR THE SALE OF THE VACATED PORTION OF THE PUBLIC RIGHT-OF-WAY OF 22ND STREET AT THE SOUTHEAST CORNER OF ITS INTERSECTION WITH TELEGRAPH AVENUE OVER TWO PARCELS OWNED BY THE CITY OF OAKLAND TO W/L TELEGRAPH OWNER LLC FOR SEVEN HUNDRED NINETY-TWO THOUSAND DOLLARS (\$792,000) FOR DEVELOPMENT OF THE 2100 TELEGRAPH PROJECT; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

An Ordinance authorizing the negotiation and execution of a Purchase and Sale Agreement for the sale of the vacated portion of the public right-of-way of 22nd Street at the southeast corner of its intersection with Telegraph Avenue over two parcels owned by The City of Oakland (City) to W/L Telegraph Owner LLC (Developer) for Seven Hundred Ninety-Two Thousand Dollars (\$792,000) for development the 2100 Telegraph pursuant to a Disposition and Development Agreement between the City and Developer.

EXHIBIT A
Metes and Bounds of the 22nd Street Vacation

EXHIBIT "A"
PARCEL ONE
LEGAL DESCRIPTION
22ND STREET VACATION

BEING A PORTION OF LOT 7 IN BLOCK "D", WILCOX PLACE, AS DESIGNATED AND DELINEATED ON THAT CERTAIN MAP ENTITLED "MAP OF WILCOX PLACE", RECORDED SEPTEMBER 19, 1868 IN LIBER 36 OF DEEDS, PAGE 173, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA, DESCRIBED AS FOLLOWS:

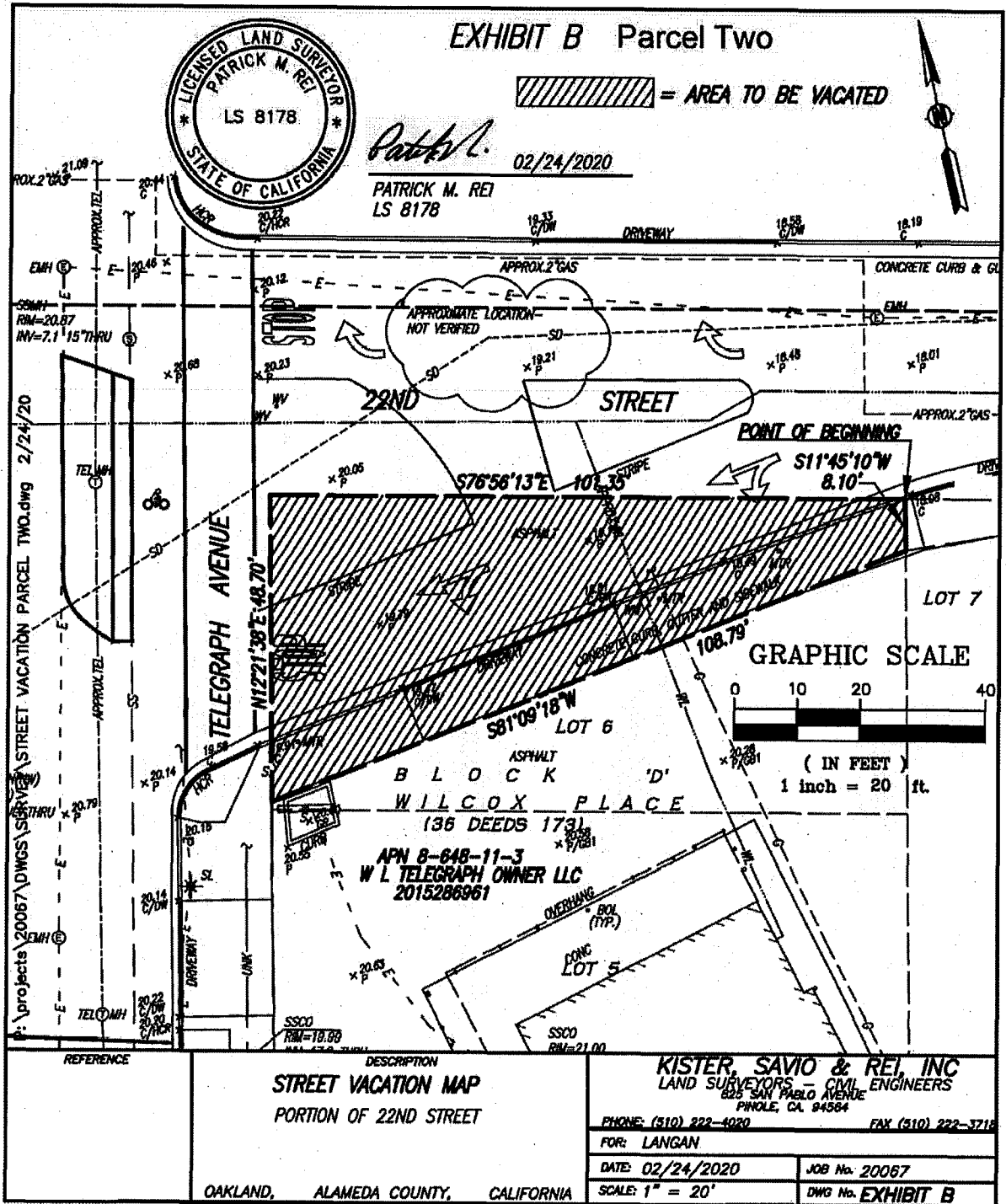
BEGINNING AT THE NORTHWEST CORNER OF LOT 7 OF BLOCK "D", WILCOX PLACE, SAID CORNER BEING 101.35 FEET EASTERLY ALONG THE SOUTHERLY LINE OF 22ND STREET, FORMERLY WALNUT STREET, FROM THE EASTERLY LINE OF TELEGRAPH AVENUE; THENCE EASTERLY ALONG SAID LINE OF 22ND STREET, 48 FEET TO A POINT; THENCE SOUTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 9° 37', WITH SAID LINE OF 22ND STREET, 48.5 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT; THENCE NORTHERLY ALONG SAID LINE OF LOT 7, 8.1 FEET TO THE POINT OF BEGINNING.

EXHIBIT "A"
PARCEL 2
LEGAL DESCRIPTION
22ND STREET VACATION

BEING A PORTION OF LOT 6 IN BLOCK "D", WILCOX PLACE, AS DESIGNATED AND DELINEATED ON THAT CERTAIN MAP ENTITLED "MAP OF WILCOX PLACE", RECORDED SEPTEMBER 19, 1868 IN LIBER 36 OF DEEDS, PAGE 173, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6, SAID CORNER BEING 101.35 FEET EASTERLY ALONG THE SOUTHERLY LINE OF 22ND STREET, FORMERLY WALNUT STREET, FROM THE EASTERLY LINE OF TELEGRAPH AVENUE; THENCE ALONG THE EASTERLY LINE OF SAID LOT 6, SOUTH 11° 45' 10" WEST, 8.10 FEET; THENCE LEAVING SAID EASTERLY LINE, SOUTH 81° 09' 18" WEST, 108.79 FEET TO A POINT ON THE EASTERLY LINE OF TELEGRAPH AVENUE; THENCE ALONG SAID EASTERLY LINE, NORTH 12° 21' 38" EAST, 48.70 FEET TO A POINT ON THE SOUTHERLY LINE OF 22ND STREET, FORMERLY WALNUT STREET; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 76° 56' 13" EAST, 101.35 FEET TO THE POINT OF BEGINNING.+

EXHIBIT B (continued)
Map of 22nd Street Vacation



**PURCHASE AND SALE AGREEMENT
(22nd Street Sliver and Triangle)**

THIS PURCHASE AND SALE AGREEMENT (22nd Street Triangle) (the “**Agreement**”) is dated as of _____, 2020 (“**Effective Date**”) by and between W/L Telegraph Owner, L.L.C., a Delaware limited liability company (the “**Purchaser**”) and the City of Oakland, a municipal corporation (the “**City**”).

RECITALS

This Agreement is entered into upon the following facts, understandings and intentions of the City and Purchaser, sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**”:

A. On August 28, 2019, the City filed a quiet title action in the (*City of Oakland v. Gladys Van Sander et al.* (Case No. RG19032928)) to acquire title to that certain real property located on 22nd Street, City of Oakland, County of Alameda, State of California, colloquially referred to as the “22nd Street Sliver,” located within the public right of way (the “**Sliver**”) as more particularly described as Parcel One on **Exhibit A** attached hereto and incorporated herein by this reference, and as depicted on the drawing attached as **Exhibit B** attached hereto and incorporated by this reference.

B. Pursuant to that certain Judgment Quieting Title (Case No. RG19032928) recorded on March 6, 2020 in the Official Records of Alameda County, California as Instrument No. 2020055771, the City acquired title to the Sliver.

C. The Sliver is adjacent to that certain real property owned by the City located at the corner of Telegraph Avenue and 22nd Street, City of Oakland, County of Alameda, State of California, colloquially referred to as the “22nd Street Triangle,” located within the public right of way (the “**Triangle**”) as more particularly described as Parcel Two on **Exhibit A** attached hereto and incorporated herein by this reference, and as depicted on the drawing attached as **Exhibit B** attached hereto and incorporated by this reference.

D. The Sliver and the Triangle (jointly, the “**Property**”) is located adjacent to certain real property, commonly known as 495 22nd Street as identified and depicted on **Exhibit C** attached hereto and incorporated herein by this reference, which Purchaser acquired as part of an assemblage of properties located on a portion of an entire City block, including the properties identified as 2101 Broadway, 2127 Broadway, and 2147 Broadway, which are also identified and depicted on **Exhibit C** (collectively, the “**Developer Properties**”).

E. Purchaser intends to (1) acquire from the City the property identified and depicted on **Exhibit C** as 2100 Telegraph Avenue (the “**2100 Telegraph Property**”) pursuant to a Disposition and Development Agreement between the City and Purchaser (“**DDA**”) and (2) pursuant to the DDA, develop a project on the 2100 Telegraph Property, Developer Properties, and the Property, all of which Developer intends to merge pursuant to a Vesting Tentative Parcel Map (“**VTPM**”) an application for which has already been submitted to City, and a recorded Parcel

Map consistent with the VTPM.

F. Purchaser desires to purchase the Property from the City on the terms and conditions set forth below.

G. Resolution No. _____ C.M.S. adopted by the City Council of City on _____ (the "**Vacation Resolution**"), authorized the vacation of the Property such that it shall no longer considered public right of way.

H. Ordinance No. _____ C.M.S. adopted by the City Council of the City on _____ (the "**Sale Ordinance**") authorized the execution of this Agreement and the sale of the Property to Purchaser pursuant hereto.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, the City and Purchaser agree as follows:

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

1.1 "**Closing Date**" and "**Closing**" each mean the date the Deed (as defined below) is recorded in the Official Records of Alameda County, California. The Closing shall occur on the date that is thirty (30) days after the date that both (a) the Vacation Resolution has been adopted and recorded, and (b) the Sale Ordinance has been adopted and this Agreement has been executed (collectively, the "**Closing Prerequisite**"), , or such earlier date mutually agreed to by the Parties provided the Closing Prerequisite has been met.

1.2 "**Escrow**" means an escrow account established by Purchaser and City, at the Title Company, for the purpose of consummating the transactions contemplated by this Agreement.

1.3 "**Escrow Holder**" or "**Title Company**" means First American Title Company, 101 Mission Street, San Francisco, California 94105, Attn: Ted Bigornia.

1.4 "**Immediately Available Funds**" means a bank wire transfer or a certified bank or cashier's check.

1.5 "**Preliminary Report**" means that certain preliminary title report issued by the Title Company, Order No. NCS-793774ST-SC, updated as of _____, 2020.

2. Purchase and Sale of the Property.

2.1 Purchase and Sale of the Property. In consideration of the mutual covenants set forth in this Agreement, and on the terms and conditions set forth herein, the City agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from the City.

2.2 Purchase Price. The purchase price of the Property is Seven Hundred

Ninety-Two Thousand Dollars (\$792,000) (the “**Purchase Price**”), payable in lawful money of the United States of America as follows: (a) deposit of Seventy-Nine Thousand Two Hundred Dollars (\$79,200) (the “**Deposit**”) deposited into Escrow within five (5) business days after Purchaser’s execution of this Agreement, and (b) the balance of the Purchase Price of Seven Hundred Twelve Thousand Eight Hundred Dollars (\$712,800) to be paid at Closing. Except for the independent consideration to the City in the amount of One Hundred Dollars (\$100) (“**Independent Consideration**”), which is nonrefundable to Purchaser, the Deposit less the Independent Consideration shall be refundable to Purchaser, if Purchaser elects to terminate this Agreement pursuant to Section 4.4 hereof. All payments from Purchaser are to be delivered to Escrow Holder in Immediately Available Funds.

3. Pre-Closing Obligations and Conditions Precedent.

3.1 Pre-Closing Obligations. For the period between the Effective Date and the Closing Date, the Parties will execute and deliver all documents, and will take and perform (as applicable) all steps, reasonably necessary to give effect to the terms and conditions of this Agreement. Prior to the Closing Date, the City shall not enter into any contracts, easements, leases or other agreements that would be binding on the Property after the Closing.

3.2 Purchaser’s Conditions Precedent to Closing. Purchaser’s obligations to purchase the Property are expressly contingent upon the satisfaction of the following conditions (“**Purchaser’s Conditions Precedent**”), and Purchaser shall not be required to close under this Agreement unless each of the following conditions has been satisfied or waived by Purchaser.

3.2.1 Purchaser shall not have exercised its right under Section 4.4 to terminate this Agreement.

3.2.2 The City shall have duly and timely executed, acknowledged where appropriate, and delivered to Purchaser, or timely deposited into Escrow, all items described in Section 5.3 of this Agreement.

3.2.3 The Closing Prerequisite has been met.

3.2.4 The Title Company shall be irrevocably committed to issue a CLTA Owner’s Policy of title insurance in favor of Purchaser, providing coverage to Purchaser in the amount of the Purchase Price, with only those exceptions to coverage to which Purchaser has not objected in writing during the Due Diligence Period (the “**Title Policy**”).

3.2.5 There has been no material change in the physical condition of the Property prior to the Closing.

3.3 City’s Conditions Precedent to Closing. The City’s obligation to convey the Property to Purchaser is expressly contingent upon satisfying each of the following conditions (“**City’s Conditions Precedent**”), and the City shall not be required to close under this Agreement unless the following condition has been satisfied or waived by the City:

3.3.1 The Closing Prerequisite has been met.

3.3.2 Purchaser shall have delivered to the Escrow Holder, in the manner, and at the times, specified elsewhere in this Agreement, all funds required to be delivered by Purchaser hereunder.

3.3.3 Purchaser shall have duly and timely executed, acknowledged where appropriate, and delivered to the City, or timely deposited into Escrow, all items described in Section 5.4 of this Agreement.

4. Due Diligence Period; Disclosures.

4.1 Due Diligence Investigation. Purchaser and its agents, employees, contractors, consultants, and representatives may enter upon the Property at any time during the period commencing on the Effective Date and continuing until the date which is ten (10) days after the Effective Date (the “**Due Diligence Period**”) to inspect the Property; review the Preliminary Report; inspect, confirm, review, and investigate any and all other matters deemed necessary by the Purchaser in its sole discretion, to Purchaser’s satisfaction. Purchaser shall complete all investigations, inspections, and review of all matters relating to the purchase of the Property within the Due Diligence Period.

4.2 Testing and Restoration. Purchaser shall not alter the Property except as needed to conduct the testing and other activities thereon as authorized by this Agreement, and Purchaser agrees upon completion of any testing or other activity hereunder, to remove all debris, litter, equipment, and other materials placed on the Property by the Purchaser and its agents, employees, contractors, consultants, and representatives, and to restore the Property as much as reasonably possible to its original condition.

4.3 Indemnification. Purchaser shall indemnify, defend, and hold the City, and its council members, commissioners, officials, directors, employees, and agents (collectively, “**Indemnitees**”), harmless from any and all claims, demands, damages, losses, actions, liabilities, causes of action, or judgments, including reasonable attorneys’ fees, which the City or any other indemnified party may incur or be required to pay by reason of entry onto the Property, and activities thereon conducted, by Purchaser or Purchaser’s agents, employees, contractors, consultants, and representatives.

4.4 Termination Right. Purchaser shall have the right to terminate this Agreement upon written notice to the City prior to expiration of the Due Diligence Period. Purchaser shall further have the right to terminate this Agreement upon any failure of City to timely deposit into Escrow the items required by Section 5.3. Upon any such termination, Escrow Holder shall return the Deposit to Purchaser, with the exception of the Independent Consideration.

4.5 Disclosures.

4.5.1 Purchaser acknowledges that the City is required to disclose if the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area (any

type Zone “A” or “V”) designated by the Federal Emergency Management Agency (Cal. Gov. Code §8589.3); (b) an area of potential flooding shown on a dam failure inundation map designated pursuant to Cal. Gov. Code §8589. (Cal. Gov. Code §8589.4); (c) a very high fire hazard severity zone designated pursuant to Cal. Gov. Code §51178 or §51179 (in which event the owner maintenance obligations of Cal. Gov. Code §51182 would apply) (Cal. Gov. Code §51183.5); (d) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to Cal. Pub. Resources Code § 4125 (in which event the property owner would be subject to the maintenance requirements of Cal. Pub. Resources Code §4291 and it would not be the state’s responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to Cal. Pub. Resources Code §4129 or pursuant to a cooperative agreement with a local agency for those purposes pursuant to Cal. Pub. Resources Code §4142) (Pub. Resources Code §4136); (e) an earthquake fault zone (Pub. Resources Code §2621.9); or (f) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Pub. Resources Code §2694).

4.5.2 The parties acknowledge that they shall employ, at the City’s cost, the services of Escrow Holder (or such other company as designated by the City) (which, in such capacity is herein called “**Natural Hazard Expert**”), to examine the maps and other information specifically made available to the public by government agencies for the purpose of enabling the party owning the applicable property to fulfill its disclosure obligations with respect to the natural hazards referred to in California Civil Code Section 1103(c) and to report the result of its examination to the parties in writing.

4.5.3 As contemplated in California Civil Code Section 1103.2(b), if an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone or wildland fire area map or accompanying information is not of sufficient accuracy or scale for the Natural Hazard Expert to determine if the applicable property is within the respective natural hazard zone, then for purposes of the disclosure the applicable property shall be considered to lie within such natural hazard zone.

4.5.4 The written report (the “**Natural Hazard Disclosure**”) prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges the City from its disclosure obligations referred to herein, and, for the purpose of this Agreement, the provisions of Civil Code Section 1102.4 regarding the non-liability of the City for errors or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. Without limitation, in no event shall the City have any responsibility for matters not actually known by the City.

THESE HAZARDS MAY LIMIT PURCHASER’S ABILITY TO DEVELOP THE PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT THE PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. PURCHASER MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER

HAZARDS THAT MAY AFFECT THE PROPERTY.

5. Closing and Conveyance.

5.1 Place of Closing. The Closing will take place on the Closing Date at the offices of the Escrow Holder.

5.2 Fee Simple Title. On the Closing Date, the City shall cause the execution, acknowledgement, and delivery to Purchaser (through Escrow) of a quitclaim deed in the form attached as **Exhibit D** (the “**Deed**”), subject to any and all liens and encumbrances described in the Preliminary Report other than those disapproved by Purchaser during the Due Diligence Period.

5.3 Deposits into Escrow by the City. The City shall, at least one (1) business day prior to the Closing Date, deposit or cause to be deposited into Escrow the following items, duly executed by the City where required, acknowledged where appropriate, and in recordable form:

5.3.1 Deed conveying fee simple title subject to permitted exceptions to the Property.

5.3.2 Such additional documents as Escrow Holder may reasonably deem necessary or proper to carry out this Agreement.

5.4 Deposit of Documents into Escrow by Purchaser. Purchaser shall, at least one (1) business day prior to the Closing Date, deposit or cause to be deposited into Escrow the following items, duly executed by Purchaser where required, acknowledged where appropriate, and in recordable form:

5.4.1 Such additional documents as the City or Escrow Holder may reasonably deem necessary or proper to carry out this Agreement.

5.4.2 The balance of the Purchase Price and costs and expenses provided for in this Agreement, including the City Fees (as defined below).

5.5 Additional Costs. In addition to the Purchase Price, Purchaser agrees to pay all closing costs and expenses, including but not limited to, any recording fees; notary fees; transfer taxes; any delinquent Alameda County (the “**County**”) real property taxes or liens, or any other fees or charges imposed by the County; escrow fees; premiums for title insurance policy; and any other related expenses. Purchaser shall also deposit into Escrow an administrative processing fee for surplus property in the amount of Two Thousand Nine Hundred Four Dollars (\$2,904) and a processing fee for the appraisal of commercial properties in the amount of One Thousand Four Hundred Thirty-Six Dollars (\$1,436) (collectively, the “**City Fees**”). The balance of the Purchase Price plus the closing costs and the City Fees shall be deposited into Escrow on or before the Closing Date. The City Fees shall be paid to the City of Oakland at Closing. Escrow for the sale of the Property shall close upon the Closing Date.

5.6 Escrow Instructions. The City and Purchaser agree to execute any additional or supplemental escrow instructions which the Escrow Holder may reasonably request to comply with the terms of this Agreement. If there is any conflict between the provisions of this Agreement and any escrow instructions, however, the terms of this Agreement shall control.

5.7 Recording. On the Closing Date, Escrow Holder shall cause the Deed to be recorded in the Official Records of Alameda County, California, and shall provide each party with written notice of the respective recording dates and conformed copies of the Deed and other closing documents.

6. Condition of Property.

6.1 As-Is. Purchaser shall accept the Property in an “as-is, where-is, and with all faults” condition and hereby specifically acknowledges such acceptance. Neither the City, nor its representatives have made any promises or warranties of any kind relating to the improvements on the Property or any other matters relating to the condition, usability, or buildability of the Property.

6.2 No Representations or Warranties. Purchaser acknowledge that no representations or warranties of any kind whatsoever, express or implied, have been made by the City except those expressly set forth herein. Without limiting the foregoing, PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT PURCHASER IS ACCEPTING THE REAL PROPERTY ON AN “AS-IS, WHERE-IS, AND WITH ALL FAULTS” BASIS, AND THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER (EXCEPT FOR THOSE EXPRESSLY CONTAINED HEREIN), EXPRESS OR IMPLIED, FROM THE CITY, ITS AGENTS OR EMPLOYEES, AS TO ANY MATTERS CONCERNING THE REAL PROPERTY.

6.3 Release. As part of its agreement to accept the Property in its “AS-IS, WHERE-IS, AND WITH ALL FAULTS” condition, effective upon Closing Date, Purchaser on behalf of itself and its predecessors, successors, assigns, representatives, employees, agents, contractors, and insurers (collectively the “**Releasing Parties**”) waives any right to recover from, and forever releases, acquits, and discharges the City and its successors, assigns, representatives, employees, agents, contractors, and insurers (collectively the “**Released Parties**”) from all claims, demands, causes of action, obligations, damages, losses, subrogation rights, attorneys’ and consultants’ fees and costs, of every kind and nature whatsoever, known or unknown, fixed or contingent (collectively, “**Losses**”), arising from, or in connection with, (a) the physical, geotechnical, or environmental condition of the Property, including, without limitation, presence of lead, asbestos, other hazardous materials, any groundwater contamination, soils, zoning, land use regulations, development, use, operation, and enjoyment of the Property, and (b) any Federal, state, or local statute, rule, ordinance, or law applicable thereto.

6.4 Waiver. Purchaser agrees that the release contemplated by this Section includes unknown claims in connection with the above. Purchaser acknowledges that it is familiar with California Civil Code Section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

By: _____
PURCHASER'S INITIALS

Purchaser waives the benefits of Civil Code Section 1542, and any benefits under any other statute or common-law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Agreement, the foregoing release will survive the termination of this Agreement.

7. Notices. All notices under this Agreement shall be in writing, addressed to the parties at the addresses set forth below, and delivered by personal service, Federal Express or other overnight delivery service, or registered or certified mail, postage prepaid, return receipt requested:

City: City of Oakland
Office of Economic and Workforce Development
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attn: Real Estate Manager

With copy to: Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attention: Supervising City Attorney for Real Estate

Developer: W/L Telegraph Owner, L.L.C.
c/o Drew Haydel, Lane Partners, LLC
644 Menlo Avenue, Suite 204
Menlo Park, CA 94025

Any such notice shall be deemed delivered as follows: (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if sent by Federal Express or other courier service, the date of delivery to the street address of the person to receive such notice; (c) if sent by facsimile transmission on a business day, the date transmitted to the person to receive such notice if sent by 5:00 p.m. (Pacific Standard Time), or the next business day if sent after 5:00 p.m. (Pacific Standard Time); (d) if sent by facsimile transmission on a weekend or holiday, the next business day; or (e) if mailed, upon the date confirmed as delivered by certified or registered mail. Any notice sent by facsimile transmission must be confirmed by personally delivering or mailing a copy of the notice sent by facsimile transmission. Any Party

may change its address for notice by written notice given to the other at least five (5) days before the effective date of such change in the manner provided in this Section.

8. Brokers and Finders. Purchaser and the City each represent and warrant to the other that it has not engaged any real estate broker or finder in connection with this transaction. Neither Party shall pay any broker's fee, finder's fee, commission, or similar compensation in connection with this transaction. Each Party hereby agrees to indemnify, defend, protect, and hold the other harmless against any and all liability, loss, cost, damage, or expense (including reasonable attorneys' fees and costs) which the other Party may sustain or incur by reason of any claim for a brokers fee, finder's fee, commission, or other similar compensation in connection herewith, arising out of any claim by reason of services alleged to have been rendered to, or at the request of, the indemnifying Party. The provisions of this Section 8 shall survive the termination of this Agreement and the Closing Date.

9. General Provisions.

9.1 Survival; No Merger. This Agreement, including without limitation, all representations, warranties, covenants, agreements, indemnities, or other obligations of the Parties shall survive the Closing and shall not be merged with the Deed or any other documents.

9.2 Enforceability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

9.3 No Waiver. No waiver, or any breach, of any covenant or provision herein contained shall be deemed a waiver of any other covenant or provision herein contained, and no waiver shall be valid unless in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

9.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Purchaser and the City and their respective successors and assigns; provided, however, that this Agreement may not be assigned without the express written consent of the other Party to this Agreement, except that City agrees that Purchaser may assign this Agreement to any entity approved by City as an assignee with respect to the DDA.

9.5 Amendments. This Agreement may be amended or modified only by a written instrument executed by Purchaser and the City.

9.6 Captions. The captions in this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.8 Time of the Essence. Time is of the essence of this Agreement.

9.9 No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Purchaser and the City and their respective successors and assigns, any rights or remedies.

9.10 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other agreement between Purchaser and the City.

9.11 Exhibits and Recitals. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are hereby incorporated in this Agreement by this reference.

9.12 Indemnity. Except as otherwise provided in Section 4.3, notwithstanding any other provision of this Agreement, Purchaser shall indemnify, defend and hold harmless the Indemnitees from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) arising from Purchaser's performance or non-performance under this Agreement. The provisions of this Section 9.12 shall survive the termination of this Agreement and the Closing Date.

9.13 Entire Agreement. This Agreement, and the Exhibits attached hereto, contain all agreements, representations, and understandings between Purchaser and the City in connection with the Property, and all prior or contemporaneous understandings, agreements, and representations, whether oral or written, are entirely superseded by this Agreement.

9.14 Authority. The persons signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

9.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City and Purchaser have executed this Agreement as of the Effective Date.

CITY:

CITY OF OAKLAND,
a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and legality:

By: _____
Name: _____
Title: _____

[Signatures Continue on Following Page]

PURCHASER:

W/L Telegraph Owner, L.L.C.,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Property

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

BEING A PORTION OF LOT 7 IN BLOCK "D", WILCOX PLACE, AS DESIGNATED AND DELINEATED ON THAT CERTAIN MAP ENTITLED "MAP OF WILCOX PLACE", RECORDED SEPTEMBER 19, 1868 IN LIBER 36 OF DEEDS, PAGE 173, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 7 OF BLOCK "D", WILCOX PLACE, SAID CORNER BEING 101.35 FEET EASTERLY ALONG THE SOUTHERLY LINE OF 22ND STREET, FORMERLY WALNUT STREET, FROM THE EASTERLY LINE OF TELEGRAPH AVENUE; THENCE EASTERLY ALONG SAID LINE OF 22ND STREET, 48 FEET TO A POINT; THENCE SOUTHWESTERLY ALONG A LINE MAKING AN ANGLE OF 9° 37', WITH SAID LINE OF 22ND STREET, 48.5 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT; THENCE NORTHERLY ALONG SAID LINE OF LOT 7, 8.1 FEET TO POINT OF BEGINNING.

PARCEL TWO:

BEING A PORTION OF LOT 6 IN BLOCK "D", WILCOX PLACE, AS DESIGNATED AND DELINEATED ON THAT CERTAIN MAP ENTITLED "MAP OF WILCOX PLACE", RECORDED SEPTEMBER 19, 1868 IN LIBER 36 OF DEEDS, PAGE 173, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE NOW EXISTS, WITH THE SOUTHERN LINE OF LOT 6 IN BLOCK "D", AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF "WILCOX PLACE", RECORDED SEPTEMBER 19, 1868 IN LIBER 36 OF DEEDS, PAGE 173, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF ALAMEDA, CALIFORNIA; AND RUNNING THENCE EASTERLY ALONG SAID SOUTHERN LINE OF LOT 6, A DISTANCE OF 101.35 FEET, MORE OR LESS, TO THE EASTERN LINE OF SAID LOT 6; THENCE NORTHERLY ALONG THE EASTERN LINE OF SAID LOT 6, A DISTANCE OF 50 FEET TO THE SOUTHERN LINE OF 22ND STREET, FORMERLY WALNUT STREET AS SHOWN ON THE AFORESAID MAP OF "WILCOX PLACE"; THENCE WESTERLY ALONG SAID LINE OF 21ST STREET, 101.35 FEET, MORE OR LESS, TO SAID EASTERN LINE OF TELEGRAPH AVENUE; AND THENCE SOUTHERLY ALONG SAID LINE OF TELEGRAPH AVENUE, 50 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED BY THE CITY OF OAKLAND, A MUNICIPAL CORPORATION TO BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION IN DEED RECORDED JUNE 23, 1944 AS BOOK 4519, PAGE 498 OF OFFICIAL RECORDS.

APN: NOT ASSESSED (SHOWN ON ASSESSOR'S BOOK 8, PAGE 648)

Exhibit C

Depiction of Developer Properties and 2100 Telegraph Property

[Attached]

Exhibit D

Form of Quitclaim Deed

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Oakland
Economic & Workforce Development
Department
Real Estate Services Division
250 Frank H. Ogawa Plaza, 4th Floor
Oakland, CA 94612
Attention: Real Property Asset Manager

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned grantor(s) declare(s):
County transfer tax: Exempt
City transfer tax: Exempt
Survey monument fee: Exempt
 computed on full value of property conveyed, or
 computed on full value less value of liens and
encumbrances remaining at time of sale
 Unincorporated area; or County of Alameda

QUITCLAIM DEED
(22nd Street Sliver and Triangle)

The City of Oakland, a municipal corporation (“Grantor”), hereby quitclaims to W/L Telegraph Owner, L.L.C., a Delaware limited liability company (“Grantee”), all of its rights, title, and interest in and to that certain real property located in the City of Oakland, County of Alameda, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed on _____, 2020.

GRANTOR:

THE CITY OF OAKLAND,
a municipal corporation,

By: _____
Name: _____
Title: _____

Approved as to form and legality

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
 COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 Name: _____
 Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY