

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK
2006 FEB 15 PM 9:01

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: February 28, 2006

RE: **A REPORT AND RESOLUTIONS GRANTING PPD MERRITT I, LLC, REVOCABLE AND CONDITIONAL PERMITS FOR BUILDINGS AT 320 23rd STREET TO ALLOW:**

- o **VAULTS AND ELECTRICAL TRANSFORMERS TO ENCROACH UNDER THE SIDEWALK ALONG 23rd STREET AND WEBSTER STREET, AND TO ALLOW**
- o **ORIEL WINDOWS TO ENCROACH OVER THE SIDEWALK ALONG 23rd STREET AND VALDEZ STREET**

SUMMARY

Two resolutions have been prepared granting PPD Merritt I, LLC, a Delaware limited liability company doing business in California (no. 200429010011), and owner of adjoining properties at 320 23rd Street, 2330 Webster Street, and 2315 Valdez Street, separate conditional and revocable permits that will allow:

- concrete vaults with electrical transformers to be installed under the sidewalk along Webster Street and 23rd Street, and allow
- residential oriel windows to project over the sidewalk along 23rd Street and Valdez Street.

The 1.7 acre site, bounded by Webster Street, 23rd Street, and Valdez Street, is being developed with three building towers (twenty-two story maximum height), which will have 281 residential condominium units, 10,400 square feet of ground floor retail space, and 535 parking spaces, of which 242 will be allocated for public use. The Planning Commission granted a Major Conditional Use Permit on December 7, 2005. A parcel map for condominium subdivision has been submitted for approval, and the building permit applications have not been submitted.

The below-sidewalk electrical vaults will be approximately 5.5 feet wide by 9.5 feet long. The transformers, which will be maintained by Pacific Gas and Electric, will be accessed through removable covers set flush with the pedestrian walking surface. The oriel windows for the residential living rooms will project four feet over the sidewalk and have twenty-three feet minimum clearance above the sidewalk. The encroachments will not interfere with the public's use of the public right-of-way nor with the maintenance of underground public utilities.

FISCAL IMPACT

Staff costs for processing the proposed encroachments permit will be covered by fees set by the Master Fee Schedule and paid by the developer and will be deposited in the General Purpose Fund (1010), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured.

SUSTAINABLE OPPORTUNITIES

Economic

The new mixed-use project will provide opportunities for professional services and construction related

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jobs for the Oakland community. In addition, 281 new residential units, public parking, and 10,600 feet of commercial space would be added to the downtown tax base.

Environmental

Land use approvals and construction permits for real property improvements and new buildings require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and storm drainage pollutant runoff.

Social Equity

The mixed-use project will assist the economic revitalization of the uptown commercial district.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction permits for new buildings will conform with State and City requirements for handicapped accessibility.

RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution authorizing a conditional and revocable permit for underground PG&E transformer vaults to encroach under Webster Street and 23rd Street and oriel windows of a new building to encroach into 23rd Street and Valdez Street at 320-23rd Street.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution approving a conditional and revocable encroachment permit for PPD Merritt I, LLC, to allow underground PG&E transformer vaults to encroach under Webster Street and 23rd Street and oriel windows of a new building at 320 23rd Street to encroach into 23rd Street and Valdez Street.

Respectfully submitted,



CLAUDIA CAPIO
Development Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
Interim City Engineer
Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

Attachments: Resolutions approving transformer vault and oriel window encroachments

Introduced by

Councilmember

OFFICE OF THE CITY CLERK

2008 FEB 15 PM 9:01

Approved for Form and Legality

F. Faiz

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION GRANTING PPD MERRITT I, LLC, A REVOCABLE AND CONDITIONAL PERMIT TO ALLOW ELECTRICAL TRANSFORMER VAULTS FOR A NEW BUILDING AT 320 23rd STREET TO ENCROACH UNDER THE PUBLIC SIDEWALK ALONG WEBSTER STREET AND 23rd STREET

Whereas, PPD Merritt I, LLC, a Delaware limited liability company ("Permittee") doing business in California (no. 200429010011), and owner of the properties described in Grant Deeds recorded November 1, 2004, Series No. 2004487336, and recorded December 20, 1994, Series 94388618, at the Office of the County Recorder, Alameda County, California, commonly known as 320 23rd Street (APN 008-0668-004, 008-0668-005, 008-0668-006, 008-0668-009-07) and more particularly described in Exhibit A attached hereto, has made application to the Council of the City of Oakland for a conditional permit to allow the installation of concrete vaults and electrical transformers under the public sidewalk along Webster Street and 23rd Street, **and**

Whereas, the transformers are necessary to provide electrical power for a new building and will be maintained by the Pacific Gas And Electric Company (PG&E); **and**

Whereas, the location of the encroachment has been approved by PG&E; **and**

Whereas, the limit of the encroachment is delineated in Exhibits B and C attached hereto; **and**

Whereas, the encroachment and its location will not interfere with the use by the public of the roadway or sidewalk or buried utilities; **and**

Whereas, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Section 15332 (Class 32: Infill Projects) and Section 15301 (Minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

Resolved, that the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; **and** be it

Further Resolved, that the encroachment, as conditioned herein and delineated in Exhibits B and C, is hereby granted for a revocable permit to allow the installation of concrete vaults and electrical transformers under the public sidewalk along Webster Street and 23rd Street for a new building at 320 23rd Street; **and** be it

Further Resolved, that the encroachment permit is hereby conditioned by the following special requirements:

1. the Permittee is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; **and**

2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insureds the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five years; and
5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland, its directors, agents, officers, employees, representatives, assigns, successors, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and
7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be solely liable for the expenses connected therewith; and
8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and
9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and

10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits B and C; and

11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR" ; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

Further Resolved, that this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

Further Resolved, that the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Office of the Alameda County Recorder

IN COUNCIL, OAKLAND, CALIFORNIA, _____, **2006.**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Exhibit A-1

Lands of PPD Merritt I, LLC

Those parcels of land in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

Lots 15, 16 and 17, Block 2256, Map of the "Subdivision of Blocks 2256, 2257 and 2258 of the Valdez Tract", filed April 8, 1978, Map Book 5, Page 15, Alameda County Records.

BEGINNING at the southeasterly corner of said parcel one; thence along the southerly line of said parcel, westerly, 100.00 feet to the southwesterly corner of said parcel; thence along the westerly line, at right angles northerly, 109.50 feet; thence continuing along said westerly line, at right angles westerly, 25.00 feet; thence continuing along said westerly line, at right angles northerly, 50.00 feet to the northwesterly corner of said parcel; thence along the northerly line of said parcel, at right angles easterly, 125.00 feet to the northeasterly corner of said parcel; thence along the easterly line, at right angles southerly 159.50 feet to the POINT OF BEGINNING and containing an area of 17,200 square feet, more or less.

PARCEL TWO:

Lots 4, 5, 12, 13 and 14, and a portion of Lots 3, 6, 9, 10 and 11, in Block 2256, "Map of the Subdivision of Blocks 2256, 2257 and 2258, Valdez Tract", filed April 8, 1978 in Book 5 of Maps, Page 15, Alameda County Records, described as follows:

Beginning at a point on the eastern line of Webster Street, distant thereon Northerly 140.75 feet from the Northern line of 23rd formerly Locust Street; and running thence along said line of Webster Street Northerly 136 feet; thence at right angles Easterly 125 feet; thence at right angles Northerly 42.25 feet; thence at right angles Easterly 125 feet to the Western line of Valdez Street; thence along the last named line Southerly 159.50 feet; thence at right angles Westerly 125 feet; thence at right angles Southerly 18.75 feet; thence at right angles Westerly 125 feet to the point of beginning.

Excepting therefrom the Northern 32.75 feet of the Western 25 feet of Lot 12 and the Southern 9.5 feet of the Eastern 25 feet of Lot 9, as conveyed to John B. Torchio, et ux, by deed recorded October 31, 1975, Reel 4151, Image 617, Official Records.

Exhibit A-2

Lands of PPD Merritt I, LLC

PARCEL THREE:

Lots 2 and 3, Block 2256, Map of the "Subdivision of Blocks 2256, 2257 and 2258 of the Valdez Tract", filed April 8, 1978, Map Book 5, Page 15, Alameda County Records.

BEGINNING at the southwesterly corner of said parcel three; thence along the westerly line of said parcel northerly 81.25 feet to the northwesterly corner of said parcel; thence along the northerly line of said parcel, at right angles easterly 125.00 feet to the northeasterly line of said parcel; thence along the easterly line of said parcel, at right angles southerly, 31.25 feet; thence continuing along said easterly line, at right angles westerly, 25.00 feet; thence continuing along said easterly line, at right angles southerly 50.00 feet to the southeasterly corner of said parcel; thence along the southerly line of said parcel, at right angle westerly 100.00 feet to the POINT OF BEGINNING and containing an area of 8,906 square feet, more or less.

Excepting therefrom that portion of Lot 3 lying within the above described Parcel 2.

APN:008-0668-004, 009-7

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

Parcel one:

Lot 1, Block 2256, Valdez Tract, filed April 8, 1978, in Book 5, Page 15, of Maps, Alameda County Records.

Beginning at the intersection of the Northern line of 23rd Street, formerly Locust Street with the Eastern line of Webster Street, as said streets are shown on the map herein referred to; running thence Northerly along said line of Webster Street, 59 feet 6 inches; thence at right angles Easterly 100 feet; thence at right angles Southerly 59 feet 6 inches to said line of 23rd Street and thence Westerly along said last named line 100 feet to the point of beginning.

Parcel two:

Lot 18, Block 2256, Valdez Tract, April 8, 1978, in Book 5, Page 15, of Maps, Alameda County Records.

Beginning at a point on the Northern line of 23rd Street formerly Locust Street, distant thereon Westerly 100 feet from the point of intersection thereof with the Western line of Valdez Street; running thence Westerly along said line of 23rd Street 50 feet; thence at right angles Northerly 109 feet 6 inches thence at right angles Easterly 50 feet; thence at right angles Southerly 109 feet 6 inches to the point of beginning.

APN: 008-0668-005, 006

Exhibit B

Locations of Electrical Transformer Vaults

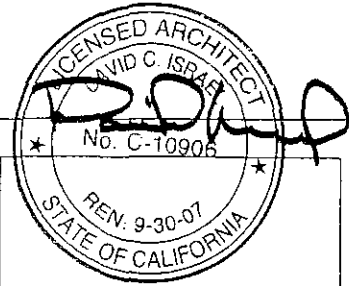
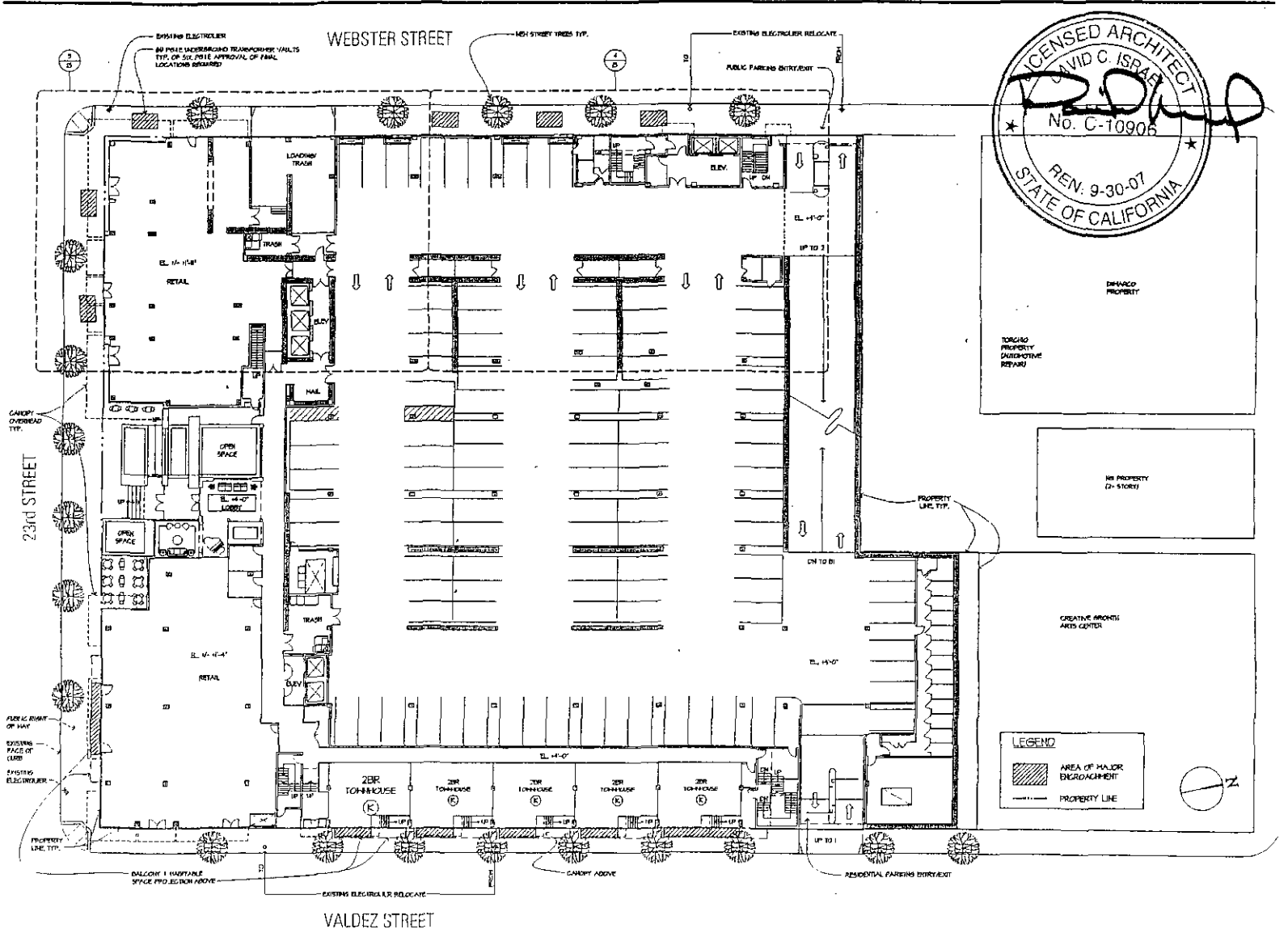
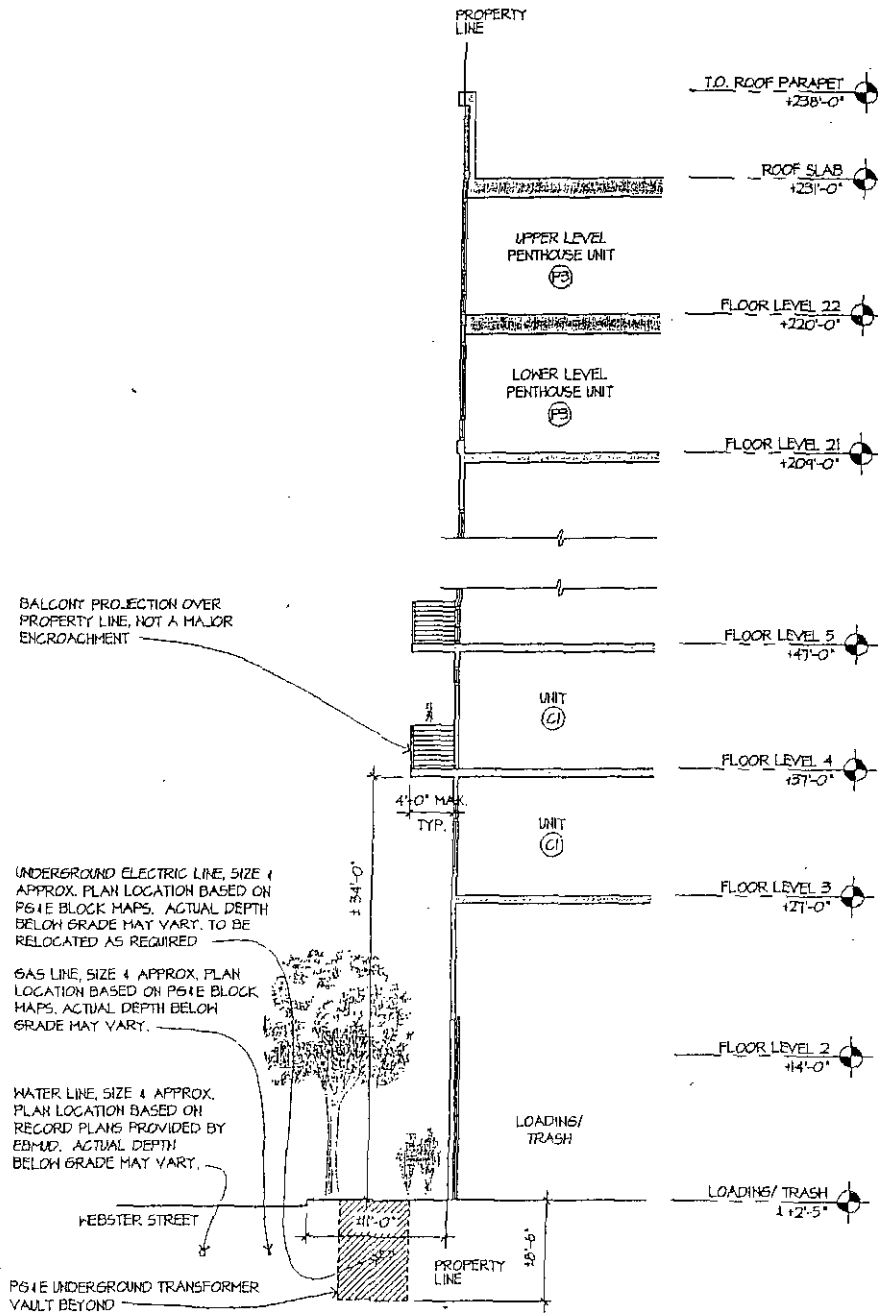
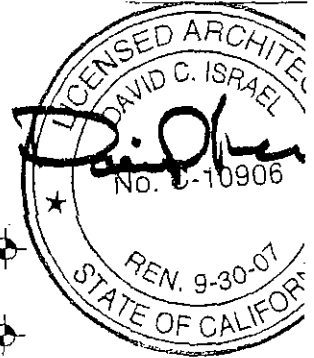


Exhibit C

Section View of Electrical Transformer Vaults



LEGEND	
	AREA OF MAJOR ENCROACHMENT
	PROPERTY LINE

Introduced by

OFFICE OF THE CITY CLERK

Approved for Form and Legality

2009 FEB 16 PM 9:01

F. FAUZ

Councilmember

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION GRANTING PPD MERRITT I, LLC, A REVOCABLE AND CONDITIONAL PERMIT TO ALLOW ORIEL WINDOWS FOR A NEW BUILDING AT 320 23rd STREET TO ENCROACH OVER THE PUBLIC SIDEWALK ALONG 23rd STREET AND VALDEZ STREET

Whereas, PPD Merritt I, LLC, a Delaware limited liability company ("Permittee") doing business in California (no. 200429010011), and owner of the properties described in Grant Deeds recorded November 1, 2004, Series No. 2004487336, and recorded December 20, 1994, Series 94388618, at the Office of the County Recorder, Alameda County, California, commonly known as 320 23rd Street (APN 008-0668-004, 008-0668-005, 008-0668-006, 008-0668-009-07) and more particularly described in Exhibit A attached hereto, has made application to the Council of the City of Oakland for a conditional permit to allow the encroachment of oriel windows over the public sidewalk along 23rd Street and Valdez Street, and

Whereas, the limits of the encroachment in area and dimension and its projection into and clearance above the public right-of-way are delineated in Exhibits B and C attached hereto; and

Whereas, the encroachment will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

Whereas, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Section 15332 (Class 32: Infill Projects) and Section 15301 (Minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

Resolved, that the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

Further Resolved, that the encroachment, as conditioned herein and delineated in Exhibits B and C, is hereby granted for a revocable permit to allow oriel windows for a new building at 320 23rd Street to encroach over the public sidewalk along 23rd Street and Valdez Street; and be it

Further Resolved, that the encroachment permit is hereby conditioned by the following special requirements:

1. the Permittee is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and

3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public sidewalk area, good and sufficient Commercial General Liability insurance in an amount not less than \$1,000,000.00 for each occurrence/ \$2,000,000.00 annual aggregate with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insured the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days written notice to said City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts state above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five (5) years; and
5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland, its directors, agents, officers, employees, representatives, assigns, successors, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and
7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be solely liable for the expenses connected therewith; and
8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and
9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and
10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits B and C; and

11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR" ; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

Further Resolved, that this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

Further Resolved, that the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Office of the Alameda County Recorder

IN COUNCIL, OAKLAND, CALIFORNIA, _____, **2006.**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Exhibit A-1

Lands of PPD Merritt I, LLC

Those parcels of land in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

Lots 15, 16 and 17, Block 2256, Map of the "Subdivision of Blocks 2256, 2257 and 2258 of the Valdez Tract", filed April 8, 1978, Map Book 5, Page 15, Alameda County Records.

BEGINNING at the southeasterly corner of said parcel one; thence along the southerly line of said parcel, westerly, 100.00 feet to the southwesterly corner of said parcel; thence along the westerly line, at right angles northerly, 109.50 feet; thence continuing along said westerly line, at right angles westerly, 25.00 feet; thence continuing along said westerly line, at right angles northerly, 50.00 feet to the northwesterly corner of said parcel; thence along the northerly line of said parcel, at right angles easterly, 125.00 feet to the northeasterly corner of said parcel; thence along the easterly line, at right angles southerly 159.50 feet to the POINT OF BEGINNING and containing an area of 17,200 square feet, more or less.

PARCEL TWO:

Lots 4, 5, 12, 13 and 14, and a portion of Lots 8, 6, 9, 10 and 11, in Block 2256, "Map of the Subdivision of Blocks 2256, 2257 and 2258, Valdez Tract", filed April 8, 1978 in Book 5 of Maps, Page 15, Alameda County Records, described as follows:

Beginning at a point on the eastern line of Webster Street, distant thereon Northerly 140.75 feet from the Northern line of 23rd formerly Locust Street; and running thence along said line of Webster Street Northerly 136 feet; thence at right angles Easterly 125 feet; thence at right angles Northerly 42.25 feet; thence at right angles Easterly 125 feet to the Western line of Valdez Street; thence along the last named line Southerly 159.50 feet; thence at right angles Westerly 125 feet; thence at right angles Southerly 18.75 feet; thence at right angles Westerly 125 feet to the point of beginning.

Excepting therefrom the Northern 32.75 feet of the Western 25 feet of Lot 12 and the Southern 9.5 feet of the Eastern 25 feet of Lot 9, as conveyed to John R. Torchio, et ux, by deed recorded October 31, 1975, Reel 4151, Image 617, Official Records.

Exhibit A-2

Lands of PPD Merritt I, LLC

PARCEL THREE:

Lots 2 and 3, Block 2256, Map of the "Subdivision of Blocks 2256, 2257 and 2258 of the Valdez Tract", filed April 8, 1978, Map Book 5, Page 15, Alameda County Records.

BEGINNING at the southwesterly corner of said parcel three; thence along the westerly line of said parcel northerly 81.25 feet to the northwesterly corner of said parcel; thence along the northerly line of said parcel, at right angles easterly 125.00 feet to the northeasterly line of said parcel; thence along the easterly line of said parcel, at right angles southerly, 31.25 feet; thence continuing along said easterly line, at right angles westerly, 25.00 feet; thence continuing along said easterly line, at right angles southerly 50.00 feet to the southeasterly corner of said parcel; thence along the southerly line of said parcel, at right angle westerly 100.00 feet to the POINT OF BEGINNING and containing an area of 8,906 square feet, more or less.

Excepting therefrom that portion of Lot 3 lying within the above described Parcel 2.

APN:008-0668-004, 009-7

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

Parcel one:

Lot 1, Block 2256, Valdez Tract, filed April 8, 1978, in Book 5, Page 15, of Maps, Alameda County Records.

Beginning at the intersection of the Northern line of 23rd Street, formerly Locust Street with the Eastern line of Webster Street, as said streets are shown on the map herein referred to; running thence Northerly along said line of Webster Street, 59 feet 6 inches; thence at right angles Easterly 100 feet; thence at right angles Southerly 59 feet 6 inches to said line of 23rd Street and thence Westerly along said last named line 100 feet to the point of beginning.

Parcel two:

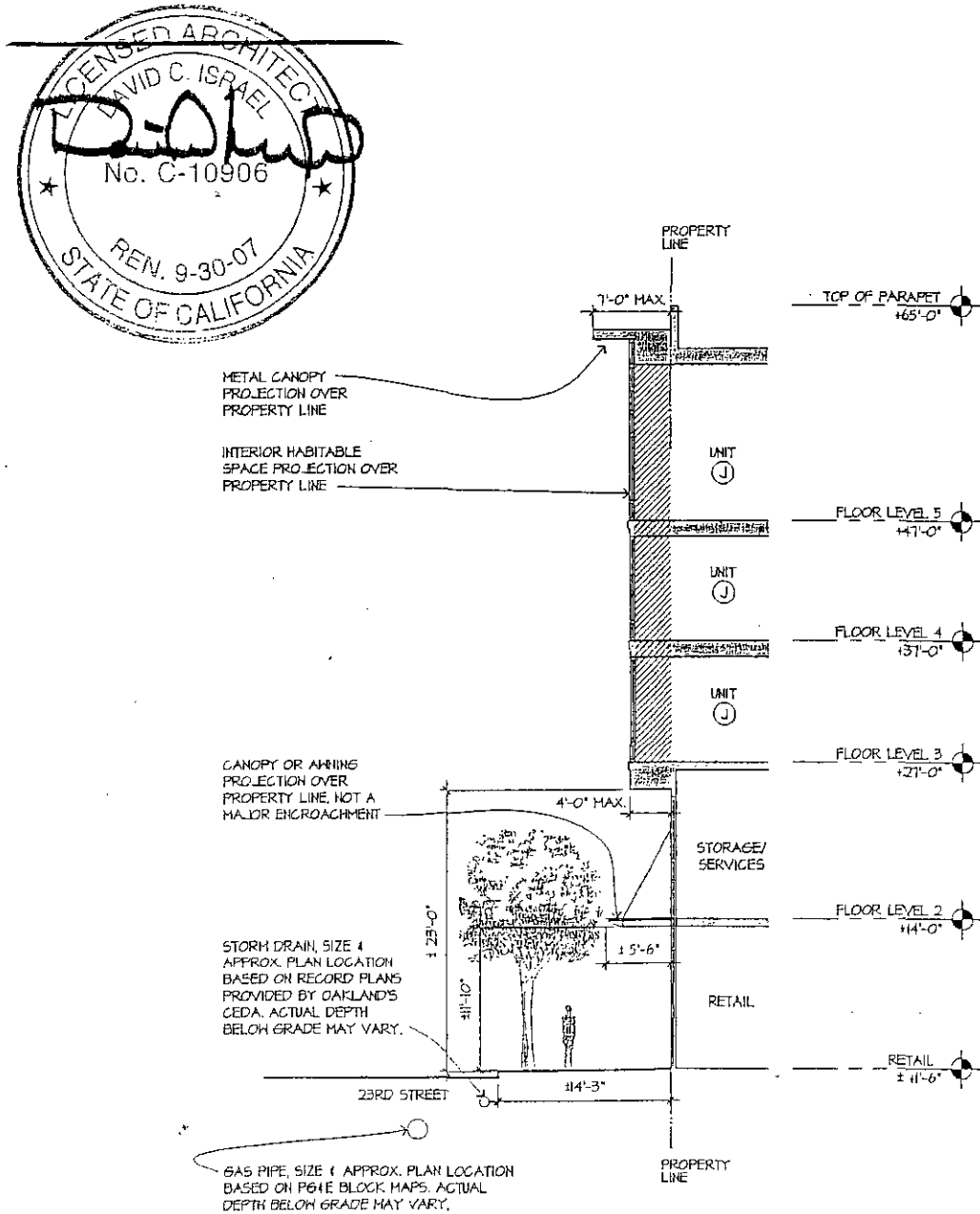
Lot 18, Block 2256, Valdez Tract, April 8, 1978, in Book 5, Page 15, of Maps, Alameda County Records.

Beginning at a point on the Northern line of 23rd Street formerly Locust Street, distant thereon Westerly 100 feet from the point of intersection thereof with the Western line of Valdez Street; running thence Westerly along said line of 23rd Street 50 feet; thence at right angles Northerly 109 feet 6 inches thence at right angles Easterly 50 feet; thence at right angles Southerly 109 feet 6 inches to the point of beginning.

APN: 008-0668-005, 006

Exhibit C

Section View Of Oriel Windows



**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE CITY CLERK
2006 FEB 15 PM 9:02

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: February 28, 2006

RE: **A Resolution Authorizing an Exclusive Negotiated Agreement with Paramount Village, LLC, a Joint Venture of the Hahn Family and Toll Brothers, Inc., to Develop a Mixed-Use Project Including Residential, Retail and Public Parking on the Telegraph Plaza Garage Site Located on the West Side of the Block Bounded by Telegraph Avenue, Broadway, 22nd Street, and 21st Street (see Exhibit A, Parcel Map).** unt
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SUMMARY

It is recommended that the Agency Board approve a resolution authorizing a 15-month exclusive negotiating agreement (“ENA”) with Paramount Village, LLC, a joint venture of the Hahn Family and Toll Brothers, Inc., to develop a mixed-use project including residential, retail and public parking on the Telegraph Plaza Garage site located on the west side of the block bounded by Telegraph Avenue, Broadway, 22nd Street, and 21st Street (see Exhibit A, Parcel Map). The resolution also authorizes the Agency Administrator to extend the ENA for up to 6 months if the developer is diligently pursuing the project, but is unable to complete the entitlements and negotiate a disposition and development agreement (“DDA”) within 15 months. The basic terms of the deal are: (1) for the City/Agency to trade a 20,225 square foot portion of the Telegraph Plaza Garage site for the 20,225 square foot site at 20th and Telegraph that the Redevelopment Agency is in the process of acquiring through eminent domain from the Hahn Family; (2) for the City/Agency to sell the remaining portion of the Telegraph Plaza Garage site and the vacated portion of 22nd Street for their fair market value; and (3) for the Agency to purchase a 650-space public parking garage at its estimated development costs (without developer profit or developer fee, but including a possible administrative fee to the developer) upon project completion (see Exhibit B, Term Sheet).

FISCAL IMPACT

The ENA will not have a fiscal impact on the City or Redevelopment Agency, but the future approval of a DDA based on the ENA will. Purchase of the public parking will cost the Agency approximately \$19.5 million plus the value of the City site (see Financial Estimate table below). The Redevelopment Agency’s Fiscal Years 2005-07 Capital Budget includes \$17.5 million for Central District Parking Garage Development to fund the development or purchase of the public parking. The Agency will also be reimbursed the \$1.6 million plus interest from the funds placed on deposit with the State of California for the eminent domain proceedings with the Hahn Family. The developer will also need to purchase additional land located in the project area for the housing portion of the proposed project, currently estimated at \$1.3 million. It is estimated

Item: _____
Community and Economic Development Committee
February 28, 2006

that this purchase will cover about 10,000 square feet, although an exact area measurement will not be available until the developer has completed the schematic designs for the project. The available funds should cover the purchase costs of the parking and allow the Agency to reimburse the City for lost revenue from the Telegraph Plaza Garage while the new garage is under construction, approximately \$575,000 for two years, with \$325,000 remaining. The revenue from the new garage will then be split by the City (which will receive the revenue from 350 replacement spaces, approximately \$321,000 per year starting in FY 2009-10) and the Agency (which will receive the remaining revenue, approximately \$275,000 per year starting in FY 2009-10). The proposed project does not require additional budget authority.

BACKGROUND

As part of the purchase of the Sears property for the development of the Uptown project, the Redevelopment Agency was required to provide an alternative location for the Sears Auto Center. The Redevelopment Agency sought to acquire the site at 20th Street and Telegraph Avenue from the Hahn Family for this use. The Agency was unable to reach a mutually acceptable purchase agreement with the Hahn Family and therefore approved a Resolution of Necessity, Resolution No. 2004-60 C.M.S. adopted November 16, 2004, to acquire the site through an eminent domain action. The Agency now controls the site through an order for possession and has deposited \$1.6 million, the appraised fair market value of the property, with the State of California's Condemnation Fund. The Agency is taking all legal steps necessary to conclude the eminent domain litigation and obtain clear title.

The Hahn Family has proposed to trade, square foot for square foot, the 20th Street and Telegraph Avenue site, for a portion of the site at 21st Street and Telegraph Avenue in order to facilitate the Paramount Village project. The Agency would receive back the \$1.6 million now on deposit with the State. Staff has been working diligently with the Hahn Family to put together a team and project that works for both the City/Agency and the developer.

When Council approved the Resolution of Necessity, the Council also directed staff to work with the Hahn Family to develop its remaining property in the area. The Agency issued a letter to the Hahn Family regarding development of a parking garage, retail, etc. In response the Agency received a proposal from Paramount Village LLC, a joint venture of the Hahn Family and Toll Brothers, to develop the Telegraph Plaza Garage Site and adjacent property.

KEY ISSUES AND IMPACTS

There are two major issues to consider with this project: (1) Parking availability in the central business district has recently been dramatically reduced by the loss of the Sears Garage and other parking displaced by 10K Housing projects. The Redevelopment Agency anticipated this loss and funded public parking in the Fiscal Year 2005-07 Budget; and (2) the proposed project would settle the eminent domain litigation on the 20th Street and Telegraph Avenue site owned by the Hahn Family.

In 1999 the Redevelopment Agency began the 10K Housing Program. From the start, the Agency targeted underdeveloped sites, primarily parking lots, for redevelopment into housing. The Agency has also purchased the Sears Garage, which was demolished to make room for

Item: _____

Forest City's Uptown Project. Counting projects completed and in process, the 10K Program will cause the elimination of almost 2,000 public parking spaces. The financial strength of the downtown office and retail market depends on the availability of hourly, daily and monthly parking for employees and visitors. Convenient parking is even more critical to retail, restaurant, and entertainment activities in the area. The Redevelopment Agency has therefore targeted parking development in the Central District Capital Budget for 2005-07. The Redevelopment Agency's budget includes funds for Central District Parking Garage Development; \$500,000 in FY 05-06 for planning and design, and \$17,000,000 in FY 06-07 for design and construction. The Uptown area is the highest priority, with Old Oakland and Chinatown as future target areas. The available funds are enough to expand the Telegraph Plaza Garage to 650 spaces.

The Agency's other long term parking strategies are to further increase parking availability, optimize parking and transit use, and facilitate short-term retail parking. Specific strategies may include: building additional public parking, by including a land swap for parking in the Fox block condominium project and/or by using future Central District capital funds; reviving the downtown shuttle and expanding it to cover the morning/afternoon commute to outlying parking areas; using tax increment financing to encourage inclusion of public parking, either daily or hourly fee parking, within mixed-use projects downtown; publishing information on available parking; and reinstating low cost validation programs for retail businesses. The Paramount Village Project will be the first of several projects needed to meet long term parking demand downtown, but it will also have a short term impact on parking when the existing garage is demolished. The Agency's short term parking strategy will be to identify available parking, either in underutilized garages and lots or by expanding capacity with valet parking, and to provide access through shuttle service if needed.

Selecting Paramount Village LLC as the developer will also resolve the eminent domain action with the Hahn Family for the two parcels at 20th Street and Telegraph Avenue that are being acquired for Sears Auto Center. There are four reasons why approving this project and settling the eminent domain action will benefit the Redevelopment Agency: (1) the Agency will not incur additional legal costs and staff time related to the eminent domain action; (2) it will eliminate exposure to possible jury award of higher land price and it is an equitable settlement for the Hahn Family; (3) the exchange is fair to the City, especially given that the 20th Street corner is more prominent and has better access to BART than the 21st Street corner; and (4) the City will receive fair market value for any additional land required for the residential and retail components of the project.

PROJECT DESCRIPTION

Paramount Village LLC has committed to develop a mixed-use project that will include at least 200 residential condominiums with associated parking, at least 10,000 square feet of neighborhood serving retail/commercial space with associated parking, and a 650 space public parking garage that will be sold to the City/Redevelopment Agency. Paramount Village LLC has demonstrated that it is willing to significantly expand the retail, but it is not willing to commit to a larger retail component until tenants are identified. Paramount Village LLC has begun introducing the area and the project to potential tenants.

Item: _____

The project will be built on portions of the block bounded by Telegraph Avenue, Broadway, 21st Street and 22nd Street and includes three properties: (1) the City-owned 74,000 square foot Telegraph Plaza Garage site, (2) the 21,000 square foot Giant Burger site owned by the Hahn Family, and (3) a 3,064 square foot triangular portion of 22nd Street that once allowed trolleys to turn right at this intersection (see Exhibit A, Parcel Map).

The deal would be structured as a fair market sale of land and a purchase of public parking at the cost of development. The basic terms of the deal are (1) for the City/Agency to trade a 20,225 square foot portion of the Telegraph Plaza Garage site for the 20,225 square foot site at 20th and Telegraph that the Redevelopment Agency is in the process of acquiring through eminent domain from the Hahn Family; (2) for the City/Agency to sell the remaining portion of the Telegraph Plaza Garage site and the vacated portion of 22nd Street for their fair market value; and (3) for the Agency to purchase a 650-space public parking garage at its estimated development costs (without developer profit or developer fee, but including a administrative fee to the developer) upon project completion (see Exhibit B, Term Sheet). The table below provides an estimate of the financial cost of the project to the Agency based on the terms.

Financial Estimate

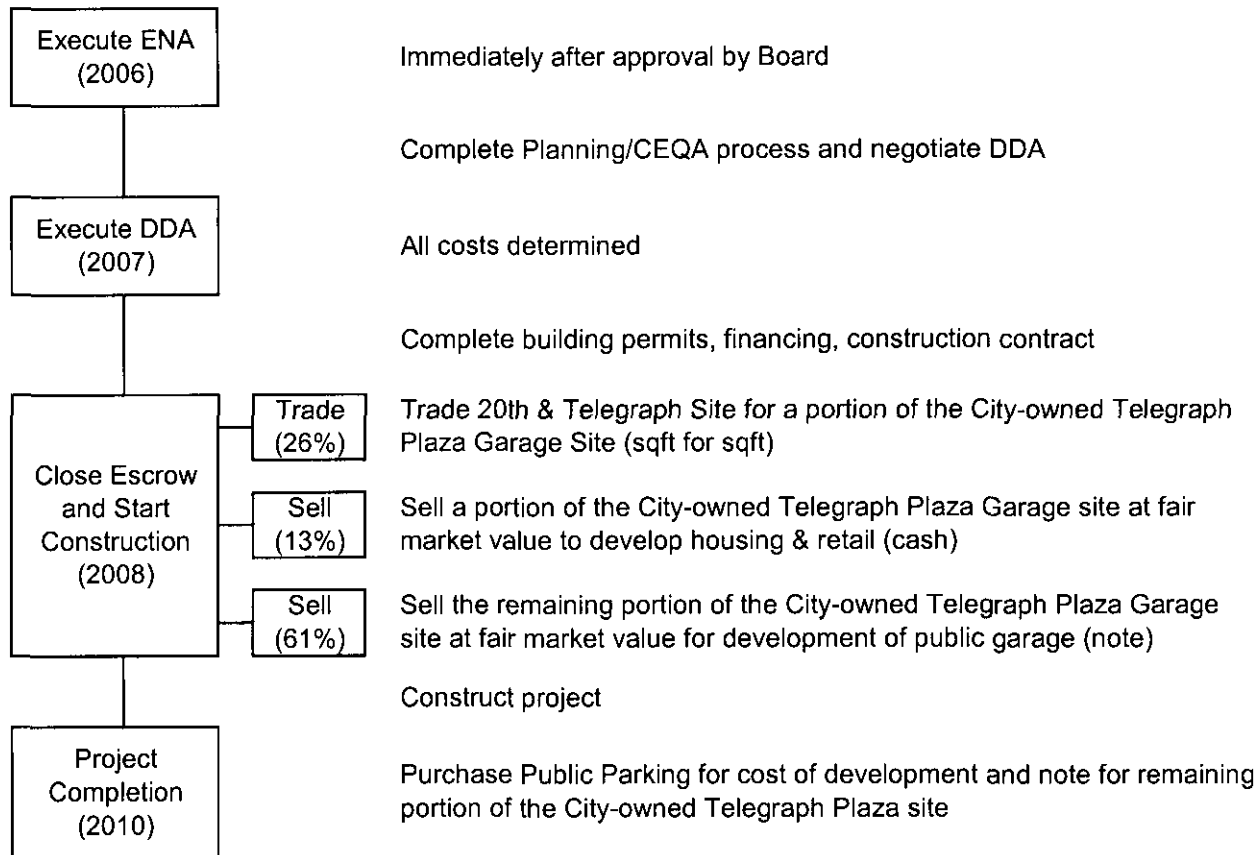
Revenue and Funds Available	
\$17,500,000	Agency budget for Central District Parking Garage Development
\$1,600,000	Trade a portion of City Site at 21st & Telegraph for Site at 20th & Telegraph - release Agency funds from eminent domain
\$1,300,000	Sale of an additional portion of City site to accommodate the residential/retail portion of the project - Estimated based on 10,000 sqft at \$130/sqft, will depend on project design
\$6,089,070	Sale remaining City Site to accommodate public parking (Agency will repurchase this land with the parking) - Estimated based on 46,839 sqft at \$130/sqft, will depend on project design
\$26,489,070	Total Revenue and Funds Available
Costs to Develop Public Parking	
(\$19,500,000)	Cost to develop parking condominium – Estimated based on 650 parking spaces at \$30,000/space
(\$6,089,070)	Land to accommodate public parking (Agency will repurchase this land with the parking condominium) - Estimated based on 46,839 sqft at \$130/sqft, will depend on project design
(\$575,000)	Reimbursing City for lost revenue during construction – Estimated based on 2002-03 Audit Report of net revenue with 7.5% growth per year and closure in 2007-09
\$26,164,070	Total Costs to Develop Public Parking
\$325,000	Estimated funds available for other parking projects - Agency will also have revenue from sale of UCOP Garage and other land for additional parking projects

Item: _____

Community and Economic Development Committee

February 28, 2006

The ENA and future DDA will be structured to the follow sequence:



SUSTAINABLE OPPORTUNITIES

Economic

The public parking will support existing and new commercial, retail and entertainment activities in Downtown Oakland. The retail space will provide opportunities for new businesses and the housing will provide customers for new and existing businesses.

Environmental

Staff is negotiating with the developer to incorporate as many “environmental sustainability” features into the design and construction of the project as are practical and financially feasible. The DDA will include specific requirements for these features.

Social Equity

Paramount Village LLC has agreed to a project goal of 50% S/LBE participation on the Agency’s expenditures for professional services and construction services. The S/LBE participation will be prorated throughout the whole project.

DISABILITY AND SENIOR CITIZEN ACCESS

The DDA will require that any development on the Project site comply with all applicable local, state and federal regulations including Federal ADA Accessibility Guidelines, the Fair Housing Act and the State of California's Title 24 accessibility regulations. These regulations will require the project to provided access and make units available for people with disabilities.

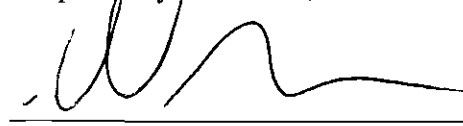
RECOMMENDATION (S) AND RATIONALE

Staff recommends that the Agency adopt the attached resolution authorizing the Agency Administrator to execute an ENA to explore the feasibility of the proposed project. The ENA will allow the developer and Agency staff to explore project feasibility and determine if the proposal is the best option for the development of public parking in the Uptown area. This project uses the Telegraph Plaza Garage site as leverage to settle an outstanding eminent domain issue. By combining the properties, we create a more efficient site and lower the costs of building parking for the City/Agency. The project will also improve the neighborhood character and enhance the Uptown Project and other City/Agency projects in the area.

ACTION REQUESTED OF THE REDEVELOPMENT AGENCY

Staff recommends that the Redevelopment Agency Board approve the attached resolution authorizing an exclusive negotiating agreement ("ENA") with Paramount Village, LLC, a joint venture of the Hahn Family and Toll Brothers, Inc. to develop a mixed-use project including residential, retail and public parking on the Telegraph Plaza Garage site on the west side of the block bounded by Telegraph Avenue, Broadway, 22nd Street, and 21st Street.

Respectfully submitted,



Dan Vanderprien
Director of Redevelopment, Economic
Development, Housing and Community
Development

Prepared by:
Patrick Lane
Redevelopment Manager - West

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



OFFICE OF THE AGENCY ADMINISTRATOR

WILCOX PLACE (Bk. 36 Deeds Pg. 173) ; PM. 1290 (Bk. 80 Pg. 89)

648

Scale: 1" = 50'

Exhibit A Parcel Map

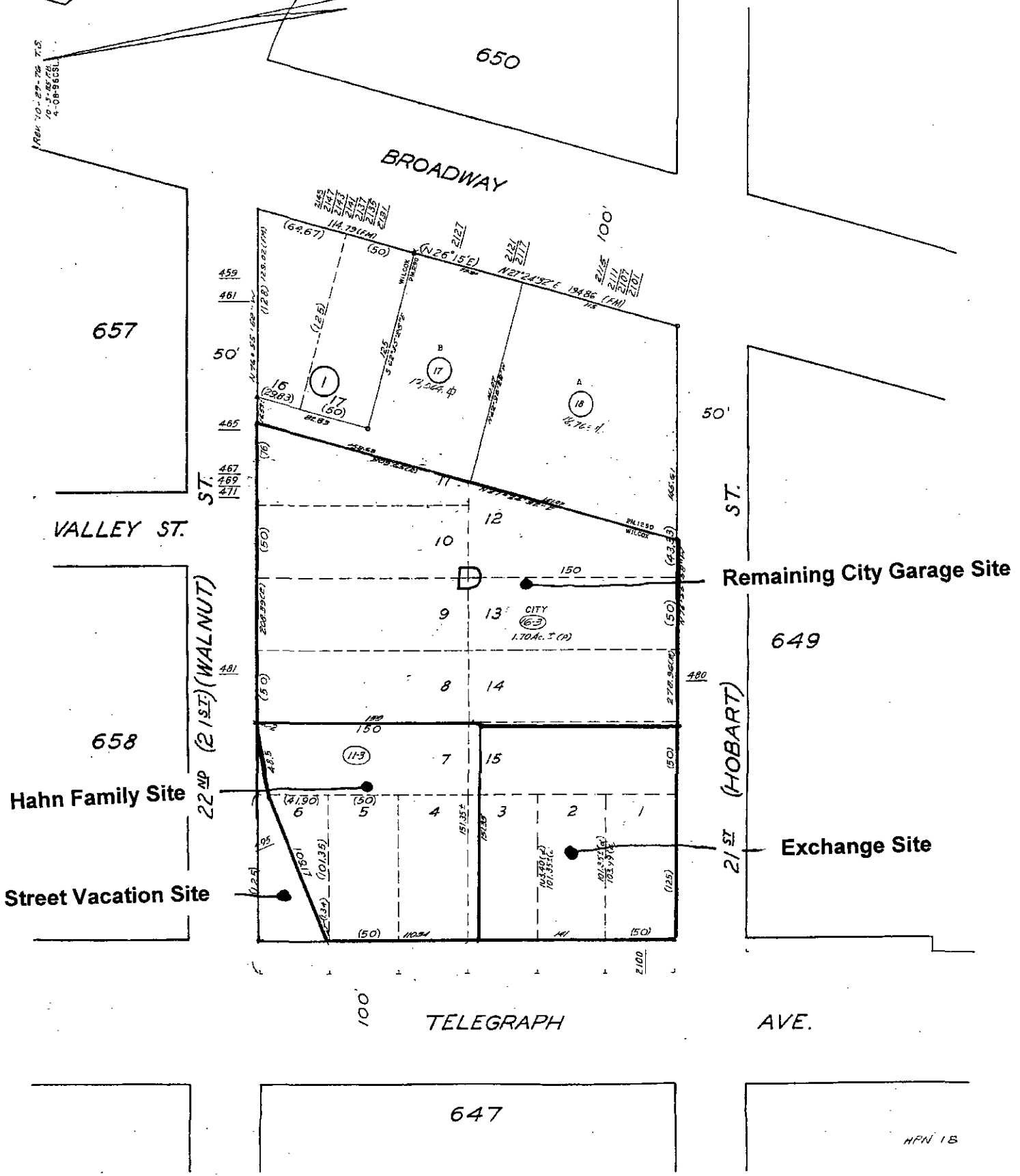


EXHIBIT B
TERM SHEET
Paramount Village

The following terms will be the starting point for negotiation of a Disposition and Development Agreement (“DDA”) between the Redevelopment Agency of the City of Oakland (the “Agency”) and Paramount Village, LLC, a joint venture between the Hahn Family and Toll Bros., Inc., along with related agreements, for the Paramount Village Mix-Use Project. The Hahn Family has been represented by Paramount Development Group (PDG) as their development consultants to negotiate this development proposal since March of 2005. Per the terms of a joint venture agreement with the Hahn Family, PDG created a Concept Owner Participation Proposal which was submitted to the Agency on October 15th, 2005. PDG has also negotiated a Letter of Intent (LOI) between the Hahn Family and Toll Brothers. Under the terms and conditions of the LOI, PDG will continue in its role as development consultant to Paramount Village LLC through the predevelopment period of the Project.

The proposed project includes the development of public parking, residential condominiums, retail/commercial, and parking for these uses. These terms will be first used to draft an Exclusive Negotiating Agreement (“ENA”), which will be taken to the City Council/Redevelopment Agency Board for approval. During the 15-month ENA period, the development team will complete land use entitlements, California Environmental Quality Act (“CEQA”) review, and negotiate the DDA and other agreements. The DDA and other agreements will then be brought to the City Council/ Redevelopment Agency Board for final approval. The initial terms of the project are:

1. Site assembly

- 1.1. The site for the Project is approximately 98,000 square feet on the western portion of the block bounded by 21st, 22nd, Telegraph, and Broadway.
- 1.2. The site consists of the following three parcels:
 - 1.2.1. A 21,000 square foot parcel at 22nd and Telegraph Avenue (APN 008-0648-011-03) now owned by the Hahn Family and occupied by a hamburger restaurant.
 - 1.2.2. An approximately 74,052 square foot parcel at 21st and Telegraph (APN 008-0648-016-03) now owned by the City and occupied by a parking garage. This parcel will be conveyed to Paramount Village, LLC, by the City/Agency on the following terms:
 - 1.2.2.1. The Agency will exchange a 20,225 square foot portion of this parcel along Telegraph and 21st for a 20,225 square foot property at 20th Street and Telegraph Avenue now owned by the Hahn Family, currently the subject of an eminent domain action brought by the Agency and held by the Agency under an order for possession. The Agency and the Hahn Family will

Item: _____

enter into a Settlement Agreement dismissing the eminent domain action, providing for the return to the Agency of the \$1.6 million on deposit with the State in connection with the action, and providing the appropriate releases and other provisions.

1.2.2.2. The Agency will sell the remaining approximately 54,000 square foot portion of this parcel to Paramount Village, LLC, in exchange for (1) an interest-bearing short-term promissory note in a principal amount equal to the appraised fair market value of the City-owned property, and (2) a contractual commitment by Paramount Village, LLC, to construct and sell to the Agency at least 650 public parking spaces (see below). The note will be secured by a deed of trust on the property subordinated to Paramount Village, LLC's loan financing for the Project in a maximum amount to be negotiated.

1.2.3. An approximately 3,065 square foot triangular portion of 22nd Street, to be vacated by the City that will square off the block. The Agency will sell this property in exchange for adding the appraised fair market value of this property to the note referred to above and adding this property to the security under the deed of trust.

1.3. The properties currently owned by the City will be transferred to the Agency prior to their conveyance to Paramount Village, LLC.

1.4. The City/Agency properties will be sold or traded to Paramount Village, LLC, in their "as-is" condition subject to Paramount Village LLC's satisfactory completion of their due diligence process.

1.5. The properties sold by the City/Agency to Paramount Village, LLC, will be appraised at their fair market value, at their highest and best use, in their unimproved and unentitled condition.

2. **Project development**

2.1. Paramount Village, LLC, will design, construct and sell or operate the following improvements (together known as the "Project"):

2.1.1. Paramount Village, LLC, will develop at least 650 structured parking spaces to be sold to the Redevelopment Agency or the City as a fully-equipped turnkey public parking garage facility (see below).

- 2.1.2. Paramount Village, LLC, will develop at least 200 residential condominiums with a minimum of one parking space per condominium. Current plans are for 225 to 250 large condominium units (an average of 1,000 to 1,400 square feet). The exact density will depend on the construction type, either mid-rise or high-rise.
- 2.1.3. Paramount Village, LLC, will develop at least 10,000 square feet of neighborhood serving retail/commercial space along Telegraph Avenue.
- 2.2. Paramount Village, LLC, will be responsible at its sole expense for any environmental remediation and any demolition and removal of existing structures associated with the Project subject to Paramount Village LLC's satisfactory completion of their due diligence process.
- 2.3. Paramount Village, LLC, will comply with the City's employment and contracting programs(including prevailing wage, Small/Local Business Enterprise, Local Employment, Apprenticeship, Living Wage, First Source, and Equal Benefits) for the Public Parking Garage Facility portion of the Project.
- 2.4. Paramount Village will be required to reach a goal of 50% S/LBE participation on the Agency's expenditures for professional services and construction services prorated throughout the whole project.
- 2.5. Paramount Village, LLC, will not require public financing to complete development of the Project.
- 2.6. The DDA will grant the Agency the option to repurchase the entire Project site, should the Project not begin construction within 15 months of DDA execution or be completed within 52 months of DDA execution, subject to negotiated force majeure provisions and negotiated mortgagee protections. The option price shall be (1) \$1.6 million, for the property exchanged to settle the eminent domain action, (2) the face amount of the promissory note, for the properties sold to Paramount Village, LLC, by the Agency under sections 1.2.2.2 and 1.2.3, and (3) fair market value, for the 21,000 square foot property currently owned by the Hahn Family, as appraised at the time the option is exercised.

3. Purchase of public parking

- 3.1. Upon completion of the Project, the Agency or the City will purchase the fee interest in the public parking garage facility containing a minimum of 650 structured public parking spaces and ancillary facilities and equipment. The Agency or City will operate the public parking.

- 3.2. The public parking facility will be purchased for a price equal to the estimated development cost of the facility (approximately \$19.5 million, or \$30,000 per space). Development cost will include hard and soft costs (including the City's pro rata share of any and all pre-development costs), as prorated to the public parking portion of the Project, plus an administrative fee not to exceed 3% of the development cost but will not include profit or developer fee. The exact price will be negotiated during the ENA period. The purchase price will be paid to Paramount Village, LLC, in the form of (1) a cash payment in the amount of the purchase price less the face value of the promissory note, and (2) the return of the promissory note.
- 3.3. The Agency or City and Paramount Village, LLC, will enter into a Purchase and Sale Agreement upon conveyance of the Agency properties to Paramount Village, LLC. The Purchase and Sale Agreement will incorporate the terms for the construction of the public parking facility by Paramount Village, LLC, and its purchase by the Agency or City.

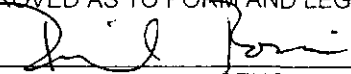
4. Performance milestones

- 4.1. Within 15 months of execution of the ENA, Paramount Village, LLC, will complete the schematic design, participate with the Agency to complete the CEQA review, and obtain land use entitlements for the Project. The Agency and Paramount Village, LLC, will negotiate the terms of the DDA, Settlement Agreement, and Purchase and Sale Agreement during this period. These actions will all be requirements under the ENA.
- 4.2. Within 15 months of execution of the DDA, Paramount Village, LLC, will complete the construction documents, obtain permits and other governmental approvals, secure financing, and begin construction of the Project. These actions will be requirements under the DDA.
- 4.3. Within 52 months of execution of the DDA, Paramount Village, LLC, will complete construction of the Project subject to negotiated extensions for force majeure provisions.

OFFICE OF THE CITY CLERK

2006 FEB 16 PM 9:02

APPROVED AS TO FORM AND LEGALITY:

BY: 
AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH PARAMOUNT VILLAGE, LLC, A JOINT VENTURE OF THE HAHN FAMILY AND TOLL BROTHERS, INC., TO DEVELOP HOUSING, RETAIL SPACE, AND PUBLIC PARKING TO BE PURCHASED BY THE CITY/AGENCY, ON PORTIONS OF THE BLOCK BOUNDED BY TELEGRAPH AVENUE, BROADWAY, 22ND STREET, AND 21ST STREET

WHEREAS, the Mayor has initiated the 10K Downtown Housing Program in order to bring ten thousand new residents into downtown Oakland and create a 24-hour downtown; and

WHEREAS, the Redevelopment Agency has determined that the best way to encourage development is to make City- and Agency-owned land available and to work with developers to consolidate land; and

WHEREAS, and the Uptown Project and other 10K Projects have reduced the availability of public parking in the downtown; and

WHEREAS, the Redevelopment Agency has determined that public parking is critical to the viability of the downtown Oakland office market and has set aside \$17.5 million for replacement parking in the Fiscal Year 2005-07 Capital Budget; and

WHEREAS, the Redevelopment Agency found it necessary to acquire two parcels for the Uptown Project from the Hahn Family through eminent domain and have not yet settled these actions; and

WHEREAS, the Agency has received an unsolicited proposal from Paramount Village, LLC, a joint venture of the Hahn Family and Toll Brothers, Inc., for a mixed-use redevelopment project, including residential, retail and public parking, on the City's Telegraph Plaza Garage site and adjoining property located on portions of the block bounded by Telegraph Avenue, Broadway, 21st Street, and 22nd Street; and

WHEREAS, the proposal is (1) for the Agency to trade a portion of the Telegraph Plaza Garage site for a site at 20th and Telegraph that the Agency is in the process of acquiring through eminent domain from the Hahn Family; (2) for the Agency to sell the remaining portion of the Telegraph Plaza Garage site and the vacated portion of 22nd Street for their fair market value; and (3) for the Agency to repurchase a 650-space public parking garage at its estimated development costs upon project completion; and

WHEREAS, the City and Redevelopment Agency have determined that the Redevelopment Agency is the proper entity to prepare the site for development and enter into an Exclusive Negotiating Agreement ("ENA"); now, therefore, be it

RESOLVED: That the Agency Administrator is authorized to negotiate and enter into an ENA with Paramount Village, LLC, for purposes of studying and evaluating the feasibility of, and negotiating terms and conditions for, the transfer of the Telegraph Plaza Garage site and adjoining property, its development for housing and other uses, and the repurchase of the public parking developed as part of the project; and be it

FURTHER RESOLVED: That the exclusive negotiating period will be for fifteen months from the date of this Resolution, with the option to extend said period by an additional six months with the approval of the Agency Administrator in her sole discretion; and be it

FURTHER RESOLVED: That the ENA shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and be it

FURTHER RESOLVED: That the Agency finds and determines, after independent review and consideration, that this action complies with the California Environmental Quality Act ("CEQA") because it is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection), and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment
Agency of the City of Oakland