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OFFICE OF THE CITY CLERK  
OAKLAND

2014 OCT -2 PM 2:02

# AGENDA REPORT

**TO:** HENRY L. GARDNER  
INTERIM CITY ADMINISTRATOR

**FROM:** Rachel Flynn

**SUBJECT:** Exclusive Negotiation Agreement  
with TB2 Retail Complex, LLC for  
2100 Telegraph Avenue

**DATE:** September 25, 2014

City Administrator  
Approval

Date 9.29.14

**COUNCIL DISTRICT:** 3

## RECOMMENDATION

Staff recommends that the City Council approve:

**A Resolution Authorizing An Exclusive Negotiating Agreement With TB2 Retail Complex, LLC, or a Related Entity, For Development of A Mixed-Use Project on City-Owned Property located at 2100 Telegraph Avenue; and Authorizing an Exclusive Negotiating Period of Two Years and One Optional Six-Month Administrative Extension**

## EXECUTIVE SUMMARY

Staff is recommending that the City Council adopt legislation authorizing the Interim City Administrator (the "City Administrator") to enter into an Exclusive Negotiating Agreement ("ENA") with TB2 Retail Complex, LLC ("TB2"), or a related entity, to develop a mixed-use project on City-owned property located at 2101 Telegraph Avenue (the "Property"). The proposed exclusive negotiation period is for a term of two years with one optional six month administrative extension.

TB2 is proposing to develop at least 250 rental residential units, with 15 percent of the units to be affordable to low and moderate income households, approximately 220 residential parking spaces, at least 15,000 square feet of ground floor retail, and at least 350 public parking spaces to be purchased by the City of Oakland ("City") (collectively, the "Project"). The new garage will replace Telegraph Parking Plaza, an existing City-owned 351-space public garage that is currently located at the Property. At this time, TB2 has not requested financial assistance from the City for the affordable units, although this may change during the Disposition and Development Agreement ("DDA") negotiations.

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TB2 is also evaluating the development of a larger project at the Property that would include approximately 400 rental housing units, with 15 percent of the units to be affordable to low and moderate income households, approximately 365 residential parking spaces, up to 50,000 square feet of ground floor retail space and at least 350 public parking spaces to be owned by the City.

Feasibility of the larger project alternative depends on the costs associated with building over the Bay Area Rapid Transit (BART) tunnel that passes directly beneath the northeastern section of the Property.

### **OUTCOME**

Approval of the proposed legislation will authorize the City Administrator to enter into an ENA with TB2 to evaluate the feasibility of the Project and the alternative larger project, refine the Project program and design with input from BART, the community and City staff, and comply with the requirements of the California Environmental Quality Act ("CEQA"). During the ENA period, the City will have an appraisal and reuse appraisal completed for the Property and negotiate with TB2 the terms and conditions of 1) a DDA for a long-term ground lease or sale of the Property, and 2) a Purchase and Sales Agreement ("PSA") for the City's purchase of the new 350-space parking garage at the Project.

Entering into this ENA does not constitute a binding commitment of the City to the Project or TB2 for the Property.

### **BACKGROUND/LEGISLATIVE HISTORY**

#### **The Long-Range Property Management Plan**

Per Assembly Bill 1484 ("AB 1484"), before successor agencies of former redevelopment agencies are allowed to move ahead with the sale or lease of property, they are first required to prepare and obtain approval from the California Department of Finance ("DOF") of a "long-range property management plan" (the "Plan") addressing the disposition and use of real properties previously owned by the redevelopment agency. AB 1484 allows the successor agency to propose in the Plan that certain properties be transferred to its sponsoring city for future development. On May 29, 2014, DOF approved the Oakland Redevelopment Successor Agency's ("ORSA") Plan, which lists the Property as property to be transferred from ORSA to the City for future development. The Plan was also approved by ORSA and the Oversight Board.

The disposition of the Property is currently subject to a compensation agreement among the taxing entities whereby net unrestricted proceeds from a sale or lease must be remitted to the

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County of Alameda (the "County") for distribution to all taxing entities, including the City, in proportion to their respective share of the property tax base. Until such time that the compensation agreement is fully executed by all 14 taxing entities, the City cannot transfer title or lease the Property to a developer. However, it is anticipated that the compensation agreement will be signed by all parties before the end of the calendar year 2014 before any sale or lease of a property will take place.

### The Property

The Property is located at 2101 Telegraph Avenue in the Uptown area. The size of the parcel is approximately 74,000 square feet or 1.76 acres. The Property is improved with a City-owned two-story public parking structure that includes 351 spaces and covers approximately 90 percent of the site. The garage provides parking for the Uptown area, including the Paramount Theater. The Property is encumbered with a subterranean easement held by BART for a subway tunnel that runs beneath the northeastern portion of the Property.

The City's General Plan designates the area which the Property is located in as the "Central Business District." The Property Zoning is CBD-P: Central Business District Pedestrian Retail Commercial Zone. The intent of the CBD-P zone is to create, maintain, and enhance areas of the Central Business District for ground-level, pedestrian-oriented, active storefront uses. Upper story spaces are intended to be available for a wide range of commercial and residential uses.

For several years, TB2 has expressed interest in redeveloping the Property. In 2013, TB2 proposed to acquire the Sears Department store and purchase the Property from the City for redevelopment. In May of 2014, the City received an unsolicited proposal from TB2 to develop the Property into a mixed-use development.

### ANALYSIS

The transaction contemplated between the City and TB2 would involve the sale or long-term lease of the Property from the City to TB2, and the City's purchase from TB2, at development cost, of the newly developed 350-space public parking garage. The City will take a condominium ownership interest in the garage, providing the City with part ownership in the Project. The City plans to use a combination of bond funds and land sale proceeds to pay for the garage. The exact amount from each of these two funding sources can only be determined after the sales price for the garage has been agreed upon by the parties based on development costs, and the Property has been appraised to determine its fair market value, all of which would be completed during the ENA period.

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### The Project

TB2 proposes to develop at least 250 rental residential units, with 15 percent of the units to be affordable to low and moderate income households, approximately 220 residential parking spaces, at least 15,000 square feet of ground floor retail, and at least 350 public parking spaces to be purchased by the City. TB2 has not requested financial assistance from the City for the affordable units, although this may change during the ENA period once the project feasibility analysis has been completed.

TB2 is also evaluating the development of a larger high-density project alternative that would include approximately 400 rental housing units, with 15 percent of the units to be affordable to low and moderate income households, approximately 365 residential parking spaces, up to 50,000 square feet of ground floor retail space and at least 350 public parking spaces to be purchased by the City. Staff prefers the larger high-density project alternative since it would increase activity levels in the area and contribute to an already vibrant district.

### BART

The feasibility and implementation of the TB2's larger project alternative depends on the constructability and costs associated with building over the BART tunnel that passes directly underneath the northeastern section of the Property. Although the high-density project alternative creates development cost advantages because of its larger scale, these must off-set any construction cost increases related to bridging the BART tunnel. BART imposes stringent design and engineering requirements on any new permanent construction that is planned over its subway structures. Therefore, the final BART-approved tunnel bridging design may result in additional development costs that cannot be supported by the economics of the larger Project alternative. As a result, TB2 would only develop the smaller project, which would require reuse, renovation and integration of the northeastern portion of the existing garage with the newly constructed building components of the Project. During the ENA period, TB2 will work with BART to study the exact alignment, depth and configuration of the BART tunnel to determine and analyze the appropriate engineering approach and related costs, and decide on a final Project.

### Purchase of New Parking Garage to Replace Telegraph Parking Plaza

Off-site parking is in short supply in the Uptown area in which the Property is located. The development of the Uptown Apartments by Forest City resulted in the removal of approximately 1,200 public parking spaces in the area. The current success of the Uptown area partially depends on the availability of hourly, daily and monthly parking for workers and visitors, which is provided by the existing garage on the Property. Although the City desires to redevelop the Property with higher intensity uses, it is critical to continue to provide public parking at the site with a new City-owned garage.

TB2 Retail Complex, LLC

The developer, TB2 is a limited liability company comprised of the Strategic Urban Development Alliance ("SUDA") and Hensel Phelps Construction Company ("HPCC").

SUDA was formed in 2001 as a fully integrated general engineering, construction, real estate, and finance firm. As a developer, SUDA is involved in land acquisition, construction and sale of residential, industrial, and commercial projects throughout the United States. SUDA's projects in Oakland include *Thomas L. Berkley Square* ("TLBS"), a 242,000 square-foot mixed-use development spreading over 1.56 acres of land in downtown Oakland. Phase I of TLBS consists of a 4-story, 110,000 square-foot multi-use office building, including a parking garage, was completed in 2006. SUDA broke ground on TLBS-Phase II in January, 2006. The project consists of 89 market-rate residential units and parking facilities for an additional 123 vehicles. TLBS also provides 4,000 square feet of retail space. HPCC acted as the general contractor for the first phase of the project.

Another recent SUDA project is *La Escuelita Education Center* located at Second Avenue and Tenth Street. The facility includes La Escuelita Elementary, MetWest High School, and Yuk Yau and Centro Infantil CDCs, and provides the Eastlake community with a state-of-the art, multi-use structure. SUDA, in joint venture with Turner Construction, served as the construction manager for the La Escuelita Education Complex Project.

HPCC is one of the largest general contractors and construction managers in the United States, ranked consistently among ENR's (Engineering News-Record) top 20 Contractors. Founded in 1937 in Greeley, Colorado, HPCC has grown into a multi-billion dollar employee-owned, national contractor with an eclectic and unparalleled portfolio of successfully completed projects. HPCC was the contractor on two major City projects - *Martin Luther King Jr. Plaza*, including the North Oakland Senior Center, and the *City Administration Buildings*.

During the development process, HPCC will rely on Hensel Phelps Development ("HPD") its wholly owned subsidiary, which was established to augment the traditional construction services provided by HPCC. Current HPD projects under development include the *Apollo Residences at Town Center*, a \$93 million, 417-unit Class-A apartment project in Camp Springs, Prince George's County, Maryland, which is expected to be completed in late 2014, and a hotel development at Lane Field in San Diego, which includes a 253-room *SpringHill Suites* and a 147-room *Residence Inn*, in addition to approximately 27,000 square feet of retail space and more than 400 parking spaces. The project is projected for completion in early 2016.

Project Schedule

TB2 currently proposes the following milestone schedule for the Project:

<b>Task</b>	<b>Date</b>
ENA executed	October 2014
Preliminary BART Tunnel Analysis complete	January 2015
Schematic Design Complete	February 2015
BART Tunnel Bridging Design Approval	October 2015
CEQA Certification	February 2016
DDA approval	March 2016
Commence construction documents (CDs)	April 2016
Apply for building and other permits	September 2016
Obtain building permit	November 2016
Transfer of property	December 2016
Commence construction	January 2017
Complete construction	January 2019

This schedule presents a best-case scenario for Project development activities and the dates are subject to change. TB2 has cautioned City staff that securing approval from BART for bridging the BART tunnel beneath the affected northeastern section of the Property may require more time than currently projected. However, during the ENA period, TB2 will submit certain deliverables to the City by specific dates, including:

- Complete a market feasibility study and marketing strategy.
- Hold at least two public meetings to discuss the potential development plans for the Project.
- Submit conceptual and refined project development schedules and proformas.
- Secure approval from BART to construct above the BART tunnel.
- Complete design plans, including plans for public art and open space.
- Complete Project environmental review process pursuant to the California Environmental Quality Act ("CEQA"), including the preparation of the EIR and other CEQA documents as appropriate.
- Obtain all necessary planning approvals. The approval process will include public hearings with the Planning Commission, Design Review Committee, and any other necessary Boards or Committees as recommended by the Planning Commission or staff.
- Obtain letters of intent or commitment for financing from lenders and equity partners.

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- Negotiate the terms and conditions of a DDA and PSA or Ground Lease for the garage with the City.

Upon successful completion of all ENA activities and agreement on terms and conditions of a DDA and PSA, staff will return to the City Council with a recommendation to execute a DDA and PSA or Ground Lease between the City and TB2.

#### The ENA Term

The proposed 24-months ENA term should be sufficient to secure design approvals from BART, to complete environmental review required under CEQA, to negotiate the terms of a DDA and PSA or Ground Lease between the parties, including the purchase price of a public garage that will be part of the development, and to schedule a public hearing by the City Council to consider whether to approve a DDA and PSA or Ground Lease between the City and TB2. The developer requested an initial ENA term of 24 months because TB2 is anticipating a lengthy design review and approval process with BART. The outcome of this process is critical because BART approval of a proposed design for building over the tunnel will determine the final scope of the Project. In the event that the initial ENA term does not provide enough time for these activities, the City Administrator has the option to grant one ENA extension of up to six months.

#### PUBLIC OUTREACH/INTEREST

TB2 has to complete a final Planned Unit Development permit for the Project, which includes design review. This will require a full community review process with at least two community meetings and a public hearing before the Planning Commission. If the Project is required to prepare an Environmental Impact Report ("EIR") to comply with CEQA, there will be additional public outreach. All of these activities will be required by the ENA and are part of the Schedule of Performance. If the City and TB2 successfully complete negotiations, staff will recommend approval of a DDA and PSA or Ground Lease between the City and TB2 to the City Council at a public hearing.

#### COORDINATION

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

- Office of the City Attorney
- City Budget Office

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### **COST SUMMARY/IMPLICATIONS**

The proposed legislation does not commit the City to expenditure of any funds. TB2 will bear sole responsibility for all costs associated with developing the Project for approval, including consultant fees, permitting fees, legal fees, financing expenses, etc. The ENA requires TB2 to make a \$25,000 Project Expense Payment ("PEP") to the City, which is a nonrefundable good faith deposit, and to reimburse the City for staff costs and third party expenses such as appraisal costs. The \$25,000 PEP from TB2 will be deposited into the Miscellaneous Capital Projects Fund (Fund 5999) and a new project to be created.

If ENA negotiations are successful and the parties enter into a DDA and PSA, the City will have to use a combination of land sale proceeds and redevelopment bond funds to acquire the 350-space public parking garage.

### **FISCAL/POLICY ALIGNMENT**

The proposed Project supports the following goal as identified in the current Central District Project Area Redevelopment Plan:

- Revitalization and strengthening of the Oakland Central Business District's historical role as the major regional retail center for the Metropolitan Oakland Area.

The completed project will generate property, sales, utility and business taxes for the City and other taxing entities.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The sale or long-term lease of land to TB2 would generate land sale proceeds or rental income for the City. The Project would transform underutilized land into more productive economic use. The Project is in the pre-development phase, and projections on the number of jobs and tax benefits generated as a result of this Project will be assessed during the ENA phase.

**Environmental:** By developing in established areas, this Project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl. The location of the Project in proximity to major public transportation nodes will likely encourage residents and retail customers to use BART and AC Transit. TB2 will have to comply with City Ordinance No. 13040 C.M.S., which provides comprehensive green building requirements for private development projects.



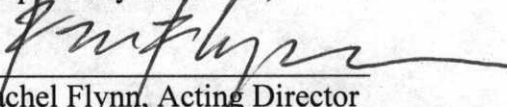
**Social Equity:** If the Property is not sold at its fair market value or if the City Council approves the acquisition and development of a public parking garage, TB2 must comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program for either the entire Project or only the public parking component of the Project. All of the workers performing construction work for the City-funded Project component must be paid prevailing wages. TB2 will also be subject to the Living Wage Ordinance in the event of a subsidy for the proposed affordable housing, which by itself constitutes another community benefit.

**CEQA**

The City has determined, after independent review and consideration, that the proposed authorization of an ENA with TB2 is exempt from CEQA review pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator at 238-3317.

Respectfully submitted,

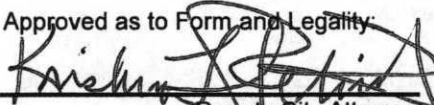
  
Rachel Flynn, Acting Director  
Economic & Workforce Development Department

Reviewed by:  
Gregory Hunter  
Project Implementation Division

Prepared by:  
Jens Hillmer  
Project Implementation Division

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Approved as to Form and Legality  
  
Deputy City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**A RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH TB2 RETAIL COMPLEX, LLC OR A RELATED ENTITY, FOR DEVELOPMENT OF A MIXED-USE PROJECT ON CITY-OWNED PROPERTY LOCATED AT 2100 TELEGRAPH AVENUE; AND AUTHORIZING AN EXCLUSIVE NEGOTIATING PERIOD OF TWO YEARS AND ONE OPTIONAL SIX-MONTH ADMINISTRATIVE EXTENSION**

**WHEREAS**, the City of Oakland (the "City") owns approximately 1.76 acres of property located at 2100 Telegraph Avenue (the "Property"), which is improved with a two-story public parking structure that includes 351 parking spaces (the "Garage"); and

**WHEREAS**, the Garage provides an important parking facility for the area (including the Paramount Theater) and contributes to the success of the vibrant Uptown district; and

**WHEREAS**, TB2 Retail Complex, LLC ("TB2"), a limited liability company comprised of the Strategic Urban Development Alliance ("SUDA") and Hensel Phelps Construction Company ("HPCC"), submitted a proposal to develop a mixed-use project on the Property consisting of least 250 rental residential units (with 15 percent of the units to be affordable to low and moderate income households), approximately 220 residential parking spaces, at least 15,000 square feet of ground floor retail, and a new garage consisting of 350 public parking spaces (the "Project"); and

**WHEREAS**, TB2 proposes to acquire, by sale or long term lease, the Property from the City for development of the Project; and

**WHEREAS**, the City desires to purchase from TB2, at development cost, the new 350-space public parking garage and will take a condominium ownership interest in the garage which will replace the Garage and continue to provide parking in the Uptown area; and

**WHEREAS**, the City and TB2, as the prospective developer, desire to dedicate time for the preliminary study and exclusive negotiations of the proposed Project, with the understanding that such study and negotiations do not constitute a binding commitment on the part of the City to the proposed Project or TB2 for the Property; now, therefore, be it

**RESOLVED:** That the Interim City Administrator (the "City Administrator") or his designee is authorized to negotiate and enter into an Exclusive Negotiating Agreement ("ENA") with TB2 for the purposes of studying and evaluating the feasibility of the development of the proposed Project, for retail, residential, public parking and other uses, and the City's purchase of the newly developed 350 public parking spaces, and conducting California Environmental Quality Act ("CEQA") review and approval; and be it

**FURTHER RESOLVED:** That the exclusive negotiating period shall be for twenty-four (24) months from the date of the execution of the ENA, with the option by the City Administrator or his designee in his sole discretion to extend said period by an additional 6 months; and be it

**FURTHER RESOLVED:** That the City shall require a \$25,000 nonrefundable Project Expense Payment from TB2 to reimburse the City for its staff costs and third party expenses; and be it

**FURTHER RESOLVED:** That the \$25,000 nonrefundable Project Expense Payment from TB2 will be appropriated to Miscellaneous Capital Projects Fund (Fund 5999) and a new project to be created; and be it

**FURTHER RESOLVED:** That the ENA shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution; and be it

**FURTHER RESOLVED:** That the City finds and determines, after independent review and consideration, that the authorization to enter into the ENA with TB2 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 City Administrator or his designee shall cause a Notice of Exemption from CEQA requirements to be filed with the County of Alameda; and be it

**FURTHER RESOLVED:** That the City Administrator or his designee is further authorized to negotiate and enter into other agreements and take whatever action is necessary with respect to the ENA and the Project, consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and  
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California