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OAKLAND

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AGENDA REPORT

TO: SABRINA B. LANDRETH
CITY ADMINISTRATOR

FROM: Mark Sawicki

SUBJECT: DDA City Center T-5/6 Sites

DATE: June 26, 2015

Asst. City Administrator
Approval

Date

7/2/15

COUNCIL DISTRICT: # 3

RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

An Ordinance Authorizing The City Administrator, Without Returning To The City Council, To Negotiate And Execute A Disposition And Development Agreement And Related Documents Between The City Of Oakland And Strada T5 LLC (Or A Related Entity Or Affiliate) For Sale Of The City Center T-5/6 Parcels Located On The Block Bounded By Broadway, 11th Street, 12th Street And Clay Street For No Less Than \$6.45 Million And Development As A Residential Mixed-Use Project And A Hotel Mixed-Use Project, All Of The Foregoing Documents To Be In A Form And Content Substantially In Conformance With The Term Sheet Attached As Exhibit A

OUTCOME

Adoption of the proposed ordinance will enable the City Administrator, without returning to the City Council, to negotiate and execute a Disposition and Development Agreement (“DDA”) that will allow: (a) the City to sell the two City Center T-5/6 parcels (“Property” or “Sites”) to Strada T5 LLC (or related entities or affiliates of Strada Investment Group, LLC) (such entity referred to collectively herein as “Developer” or “Strada”) for \$6.45 million; and (b) the Developer to build a mixed-use residential high-rise tower and a hotel high-rise tower on the Property as well as to provide the hardscaping and landscaping and ongoing maintenance of a privately-owned public plaza on 12th Street. Staff is also recommending certain modifications to the Council’s previous direction on certain terms, including:

- changing the sale from a strict “as-is” sale to instead providing for a set aside of up to \$1,500,000 from the land sale proceeds from this transaction to be placed in an escrow account to pay the possible costs of qualified environmental remediation work on Parcel A, and

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- Exempting the Developer from providing payment and performance construction bonds naming the City as a co-beneficiary, if its construction lender does not require the Developer to provide payment and performance bonds.

EXECUTIVE SUMMARY

Strada's 24-month Exclusive Negotiating Agreement ("ENA"), with the City expires on July 15, 2015 and Project Implementation staff have substantially completed negotiations with Strada on the terms for a DDA.

The Developer satisfied the requirements of the ENA, including working with staff to refine the project proposal in response to input from the community and the Planning Department; completing California Environmental Quality Act ("CEQA") review; completing market studies and determining the project's financial feasibility. On July 1, 2015, the Planning Commission approved the entitlements for the project including Design Review, Amendment/Revision to preliminary Planned Unit Development ("PUD"), a Final Development Plan for Site A, Conditional Use Permit for reduced parking, Variance for reduced loading, and CEQA review.

Following Planning Commission's approval of Strada's proposed project, staff is now seeking City Council approval to execute a DDA with Strada, which will provide for: 1) the sale of the City-owned City Center T-5/6 Sites at the combined appraised value of \$6.45 million; 2) commencement of construction within two years of approval of the DDA of a 14-story residential apartment building with approximately 225 units, 6,000 square feet of ground floor retail and a public plaza on Site A; and 3) commencement of construction within four years of approval of the DDA of a 14-story hotel with 8,000 square feet of ground floor retail on Site B. Please note the schedule for development of Site B includes time to obtain additional financing, including allocation of New Market Tax Credits or EB-5 Visa investments, needed to make the hotel financially feasible. Staff is further requesting Council approval that the DDA allow for an administrative extension of up to two months in these deadlines, at the City Administrator's reasonable discretion, if Strada shows a good faith effort to implement the Project.

BACKGROUND/LEGISLATIVE HISTORY

The City of Oakland owns approximately 1.25 acres of property on the block bounded by Broadway, 11th Street, 12th Street and Clay Street, commonly known as T-5/T-6 that will be reconfigured into two development sites. The City Center T-5/6 Sites were purchased as numerous separate properties, assembled and consolidated as part of the City Center Redevelopment Project in the early 1970's. The Property is bisected by the driveway for the City Center Garage and Super Dock and includes air rights over the entry to the City Center Garage where the public plaza is proposed. Due to the difficulty of building on this portion of

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the site, it was excluded from the appraised value of the Property. (*See Attachment A: Parcel Map for T-5/T-6 Development Project*)

Following dissolution of the Redevelopment Agency, the properties were transferred to the City and the disposition of the Property became subject to the Successor Agency's Long Range Property Management Plan ("LRPMP"), as well as the Compensation Agreement among the taxing entities that will share in residual sales proceeds. Because the Property was purchased by the former Redevelopment Agency with unrestricted funds (and not bond funds), the net sales proceeds will be split among the various taxing entities and the City will receive its approximate 39% proportional share of about \$2.5 Million.

In January 2012, staff issued a Request for Proposals ("RFP") to neighboring property owners under the expectation that they may be most likely to want to invest and develop the site. Although two of the property owners, CBRE Inc. and CIM Group, showed initial interest, they did not have plans for investment in development sites at the time. The CIM Group instead recommended Strada, which was the only developer to make a proposal under the RFP.

The City Council authorized an ENA on July 16, 2013, and January 7, 2014 (Reso No. 84514 C.M.S. and Reso No. 84785 C.M.S., respectively), between the City and Strada for the purposes of developing a project proposal for City review and approval, conducting CEQA review and approval, and negotiating the terms and conditions of a DDA. The City Administrator authorized a six-month discretionary administrative extension of the ENA on January 23, 2015.

During the 18-month ENA period, Strada worked diligently with staff to satisfy the requirements of the ENA, including refining the project proposal in response to community and Planning staff input, as well as changing market conditions and requirements to make the project financially feasible. Community stakeholders, including Old Oakland Neighborhood Association and the commercial building owners, were also consulted about the project.

Development Team

Strada is a real estate investment and development company focused on the San Francisco Bay Area. Strada has closed on almost two million square feet of institutional office product in the past five years and is currently developing over four million square feet of office, residential, retail, and hotel product in the Bay Area.

Strada hired Arquitectonica to design the Phase I residential project and provide massing analysis for the Phase II hotel project. Arquitectonica is an internationally-acclaimed architecture firm that has prepared a design that incorporates finer grain building scale, diversified land uses, generous height for ground floor retail, a public plaza on 12th Street, and pedestrian-friendly elements.

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Strada also hired PKF Consulting USA to prepare a Market Demand Analysis for the proposed hotel. This study highlighted the demand for hotel rooms in Oakland, while also challenging the financial feasibility of developing this product in this market at this time. Hotels are generally more risky to develop and investors require higher returns. Due to the high cost for high-rise construction, it is extremely difficult for hotel development to break even. Strada's financial model depends on securing lower cost governmental financing, including through the New Markets Tax Credits ("NMTC") and EB5 (Visa) real estate financing programs.

The Project

Strada's proposal is for two mid-rise projects, one along Clay Street ("Site A") and the second along 11th Street ("Site B"). The proposal includes:

- **Site A** – Sales price of \$3.35 million based on a 14-story residential condominium project with between 165 and 262 units and between 3,000 and 8,000 square feet of retail space, including a public plaza above the City Center Garage on 12th Street with retail in shipping containers. The application submitted to Planning includes 225 residential units, 4,500 square feet of retail in the building and 1,500 square feet of retail in the plaza.
- **Site B** – Sales price of \$3.1 million based on a 14-story, 200 to 300 key hotel with ground floor retail. If the hotel is determined to be financially infeasible, Strada has the ability to request the use of the site be changed to residential, to be granted at the City Council's sole and absolute discretion. The latest feasibility analysis was for a 225-key hotel with 8,000 square feet of retail. The DDA will provide that, if the City sells Site B to Strada for residential development, the purchase price will increase to its current fair market value of \$4.1 million.

(See Attachment B: Development Plans for Strada's City Center T-5/6 Proposal)

ANALYSIS

DDA Terms

The terms of the proposed DDA have been under continuous negotiation by the parties and not all terms have been agreed to by the Developer (*See Attachment C: DDA Term Sheet for T-5/T-6 Development Project*). The City's term sheet includes the following:

1. **Appraised Fair Market Price** –An appraisal conducted by Yovino & Young determined the as-is Fair Market Value of Site A to be \$3.35 million, with a highest and best use as a multi-unit residential project. The same appraisal determined the value for Site B as a hotel site to be \$3.1 million, with the Fair Market Value for the highest and best use (residential) being \$4.1 million. The hotel land value is \$1 million below the fair market value for residential.

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2. **Easements** - As a condition to closing, the City shall use commercially reasonable efforts to secure certain easements necessary for the Project, related to the driveway bisecting the site and over the City Center Garage, which is under a portion of the site, pursuant to the City Center Third Amended and Restated Easement Agreement.
3. **Environmental Remediation** – Council previously directed that the Property be sold for the appraised purchase price in an as-is condition. However, based on environmental assessment studies that have been conducted to date, it is known that the Property contains some hazardous materials. Accordingly, staff is now asking that the Council set aside up to \$1.5 Million dollars to cover potential environmental remediation specific to Site A. Site B was cleaned up and has a “no further action” letter from Alameda County Environmental Health Services.
4. **Development Schedule** - For Site A, 24 months from approval of DDA to Strada meeting all conditions precedent to closing and thereafter purchasing the site and starting construction within 30 days following transfer; for Site B, 60 months from approval of DDA to Strada meeting all conditions precedent to closing and thereafter purchasing the site and starting construction within 30 days following transfer.
5. **Community Benefits** – Strada has agreed to:
 - ✓ provide a \$1,300,000 contribution to the City’s Affordable Housing Trust Fund;
 - ✓ restrict condo conversion credits that the project would normally be entitled to under the current Condo Conversion Ordinance;
 - ✓ execute Project Labor Agreement (“PLA”) and local hire commitment for construction;
 - ✓ execute a Card Check Agreement for the hotel operation; and
 - ✓ develop, own and maintain a publicly-accessible plaza along 12th Street.
6. Other typical DDA terms such as completion guaranty, \$50,000 good faith deposit, repurchase option, etc.

There are three terms that are still in discussion with the Developer. City staff is recommending that the following terms be modified to partially meet Strada’s requests:

1. **Development Schedule.** Strada has requested that the maximum period between approval of the DDA and closing on each of the sites be one year longer, giving Strada three years to start construction on the residential project and five years to start construction on the hotel project. When City staff didn’t agree to the longer schedule, Strada requested that the DDA allow for up to six-month extensions by the City Administrator. Staff is only recommending authority for a two-month extension for each Site. Staff proposes that the term sheet be revised to provide that Developer may request a two-month extension of the closing dates, to be approved by the City Administrator.

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Such approval shall not be unreasonably withheld if Developer demonstrates good faith efforts to meet conditions precedent to closing pursuant to the Schedule.

2. **Payment and Performance Bond Requirement.** Strada has consistently and firmly requested that the City waive its standard DDA requirement related to payment and performance bonds, which states: "Developer to provide payment and performance bonds in an amount not less than 100 percent of the project construction costs, pursuant to the Developer-executed construction contract." The Council previously directed staff to reject this request. Staff believes that while the requirement provides modest additional protection to the City, it also adds significant cost to the project. Therefore, staff is recommending that the Council reconsider and agree to add the language to this requirement providing that it will apply only if these construction bonds are a requirement of the Developer's lender or investor.

3. **Environmental Remediation.** Strada has determined that there are remediation costs related to lead and other petroleum based contaminants in the soil of Site A. Based on a rough estimate of the costs for disposal of the contaminated soil Strada has requested that \$1.5 million from the sale only of Site A proceeds be held in escrow to cover any of these costs. The Council previously directed staff to sell the Property in an "as-is" condition with no reduction for remediation costs. However, staff is recommending that the Council reconsider and allow the holdback. The City has sold some properties in an "as-is" condition, and other properties with a provision for environmental holdbacks. Accordingly, staff feels that an environmental holdback in this case is not unusual. Although the cost estimate is considered excessive by staff, staff is recommending the following be added to the Environmental Remediation section of the term sheet: "Notwithstanding the foregoing, City shall hold in escrow for Developer up to \$1,500,000 of the Purchase Price for Site A to be credited back to Developer for actual Environmental Remediation costs, if any, for Site A." If the costs are less than \$1.5 million, then the excess funds set aside in escrow will be released to the City and forwarded to the County for release to the taxing entities.

Small/Local Business Enterprise and Other Contracting and Hiring Programs

Strada has agreed that all of the City programs, hiring, contracting, prevailing wage, etc., shall apply to the hotel. Strada has also agreed that a PLA shall apply to the entire project and a Card Check Neutrality Agreement shall apply to the hotel. But Strada has only agreed to limited contracting and hiring requirements for the market rate residential project. Given that the residential project is unsubsidized, staff is recommending requiring only the following hiring and contracting obligations:

1. As set forth in the PLA, Developer shall comply with a local hire program that commits to filling at least 25% of all apprentice jobs on the Property through a certified

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apprenticeship program, such as Cypress Mandela, and to fund \$70,000 for the training of up to 10 new local apprentices.

2. Developer shall enter into a construction services agreement with Oakland-based Turner Group Construction related to concrete, general site services and assistance in maximizing small and local business opportunities related to the Project.
3. Developer shall fund at least \$30,000 for outreach and local hire resource services (including multilingual outreach) to maximize opportunities for small and local businesses. The PLA for the Project incorporates these opportunities as well.

Affordable Housing

The original proposal by Strada was for a market rate sale of land for high density market rate housing. There was no requirement in the original RFP for any affordable housing. With recent market changes, rapidly increasing rents and community demands for affordable housing development, staff requested that Strada include an affordable housing component in the Project. In response, Strada initially offered to provide \$600,000 towards affordable housing, enough funds for predevelopment on a 100 percent affordable project on another site. According to the Developer, because of the amount of other community benefits offered, including building and maintaining the public plaza; Project Labor and Card Check Neutrality Agreements with unions; and local hiring and contracting efforts, they are only able to provide modest contributions to affordable housing. Strada's most recent proposal for high-rise residential on Site B only generates a modest return on cost of 5.08%. Typical investor requirements are 6%. With further staff prompting, Strada has agreed to increase the in-lieu contribution to the City's Affordable Housing Trust Fund to \$1,300,000. Assuming that the average City contribution to typical affording housing projects is approximately \$100,000 per unit, this contribution would allow the City to subsidize development of 13 residential units affordable to very low income households at an off-site location.

Analysis of Project Feasibility

Staff's assessment of Strada's financial feasibility analysis and pro forma, which included an evaluation for the hotel project and verification of the general analysis for the residential project by a consultant, Keyser Marston Associates, shows that the Phase I residential project is immediately feasible, but that the Phase II hotel is questionable at this time. This analysis showed that the hotel is not feasible without public financing programs, including New Markets Tax Credits ("NMTC") and EB5 (Visa) real estate financing. The City has committed to work with Strada to attempt to secure the necessary NMTC financing.

According to the Developer's latest pro forma, Phase I has a 5.08% rate of return on cost ("ROC"). A 6% ROC is typically required in the current market for institutional investment funding for a project of this type and size. This analysis does not include the latest assumptions for community benefits, including payments for affordable housing, cost increase for PLA,

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S/LBE contracting and hiring efforts. Rents need to increase more than 13%, from \$3.75 per sq. ft. per month to approximately \$4.25, in order to meet this higher return requirement over the next few years. This is a reasonable assumption given recent market rate rent increases.

Anticipated Fiscal and Economic Benefits to the City

The City will receive an approximate \$2.5 Million share of the \$6.45 million in sale proceeds that will be distributed to all property tax entities. The City will also generate permit fees on an estimated \$182.7 million development cost. The project will produce temporary and permanent jobs, and ongoing tax revenue as follows:

Table 1: Estimated Benefits from Project

	Site A Residential	Site B Hotel	Total
Construction Jobs	249	156	405
Permanent Jobs	22	113	135
Annual Property Tax (1%)	\$315,887	\$214,676	\$530,563
Annual Property Tax (Other)	\$181,145	\$123,106	\$304,251
Annual Sales Tax	\$29,700	\$39,600	\$69,300
Annual Business Tax	\$123,304		\$123,304
Annual Transient Occupancy Tax		\$1,829,918	\$1,829,918
Total Annual Tax Revenue	\$650,036	\$2,207,300	\$2,857,336

POLICY ALTERNATIVES

Lease vs. Sale

The City Council adopted a resolution in December 2014 to establish a general policy to lease rather than sell City property (Reso No. 85324 C.M.S.). Staff is recommending a sale of the Property as necessary to promote the City's economic development and housing goals. Attached to this report is a chart setting forth the pros and cons of making an exception to the Council's policy of preferring ground leases when disposing of City property.

Staff recommends an exception to the general policy be made for this Property based on the following:

1. Staff and Developer reliance on prior council direction

The Council is not legally bound by any agreement, including the RFP or ENA to sell, rather than lease, the property to the Developer. However, staff feels that a sale rather

than lease is justified on equitable grounds because the City issued an RFP in 2012, which explicitly offered the Property for sale. Staff and Strada conducted good faith negotiations for over two years assuming a land sale transaction.

2. Potential inability to finance development

The Developer is not prepared to ground lease the Property from the City. For a project with a 66 year ground lease, staff believes developers would require a much higher return on cost, perhaps as high as 7.5%, which would make the project financially infeasible.

(See Attachment D. Analysis of Ground Lease vs. Sale of the City Center T-5/6 Sites)

PUBLIC OUTREACH/INTEREST

Strada presented the proposed project numerous times to community members, community groups and businesses in the area, most notably the Old Oakland Neighbors. Strada also organized a formal meeting to present the project it submitted to the City for Planning entitlements to the general public.

COORDINATION

Staff from the Project Implementation Division and the Bureau of Planning has worked closely with Strada to develop the proposed project to be consistent with zoning and the City Center PUD. Staff also coordinated this report with the Budget Office and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The land sale proceeds totaling up to \$6.45 million will be deposited in the Central District Operations Fund (5610), Central District Redevelopment Organization (85245), Sale of Land (48111), Non-Project (0000000), Downtown Development (SC13).

Staff is recommending that an Environmental Remediation Allowance not to exceed \$1,500,000 of the land sale proceeds from Site A be set aside in escrow for remediation on Site A only. The exact amount will be negotiated based on findings of a Phase II report and released directly to the Developer as the remediation work is completed. The net sales proceeds, estimated to be approximately \$5.0 million, will be transferred to Alameda County for distribution to the taxing entities pursuant to the LRPMP and the Compensation Agreement. Any amount remaining after remediation work is complete will be deposited into the above named account. The Developer has agreed to pay for all escrow fees and closing costs, including City and any other County taxes.

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Pursuant to the ENA, Strada has been solely responsible for all costs associated with developing the project to date, including paying for market studies, architectural designs, its own legal counsel, CEQA consultant study, the environmental Phase I and Phase II reports, etc. The City used Strada's Project Expense Payment for the ENA to pay for the City's third party expenses related to the project including appraisal report, economic consultant services, etc.

FISCAL/POLICY ALIGNMENT

The project aligns with several of the City's goals and policies. The project will produce 250 temporary construction jobs as well as 135 long term jobs and almost \$2.9 million in annual taxes for the City and other public agencies.

SUSTAINABLE OPPORTUNITIES

Economic: The sale to Strada would generate aggregate land sale proceeds of between \$4.95 and \$6.45 million, depending on cost to remediate Site A, and facilitate development of housing and a modest amount of neighborhood-serving retail. The City's share of the proceeds will be up to \$2.5 million. The development would put vacant underutilized land into productive use. The construction of the project could provide significant employment at the site. Staff assessment of project employment benefits includes approximately 250 construction jobs and 135 permanent jobs. The project is anticipated to generate significant tax benefits to the City, including \$1,829,918 in transient occupancy tax, \$835,000 in annual property taxes, \$69,300 in annual sales tax, and \$123,304 annual business license tax. Commencement of a new high rise construction in Oakland is likely to precipitate further developer interest and investment.

Environmental: As an infill project in an already built-up area, 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 project residents and retail customers to use BART and AC Transit. The project proposes to incorporate green building and energy efficient components both during construction and occupancy, such as a green roof, a solar thermal system and a waste management system to facilitate recycling. The Bureau of Planning's Conditions of Approval for this project include requirements for pro-environmental plans be incorporated prior to issuance of a building permit, such as a Parking and Transportation Demand Management Plan and a Greenhouse Gas Reduction Plan.

Social Equity: During the two year ENA period, Strada engaged in an active community participation process that involved a variety of stakeholders so that the project could be informed by a wide-range of voices. Specific community benefits from this project include the Developer agreeing to building and maintaining a publicly-accessible plaza on 12th Street, providing an affordable housing in-lieu fee of \$1,300,000 to the City's Affordable Housing Trust Fund and

agreeing to restrict the project from generating condo conversion credits. The retail on the ground floor and in the plaza will activate the area and enhance security. Finally, the residents that will be attracted to live in this high density project will contribute to Oakland's economic diversity and the demand that is needed to support Oakland's growing economy.

CEQA

A detailed CEQA Analysis was prepared for this project which concluded that the proposed project satisfies each of the following CEQA Guideline provisions: 15183 - Projects consistent with a community plan, general plan, or zoning; 15183.3 - Streamlining for Qualified in-fill projects; 151681/15180 - Program EIR for Redevelopment Plans (Central District Urban Renewal Plan); and/or 15164 - Addendum (to 2000 City Center EIR); each of which provides a separate and independent basis for CEQA compliance.

The CEQA Analysis document may be reviewed at the Planning Bureau offices at 250 Frank Ogawa Plaza, 2nd Floor or on-line at:

<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application;DOWD009157>.

CONCLUSION

Staff is recommending that the ordinance be approved with the following changes to the attached term sheet:

Development Schedule. The DDA schedule will provide that Developer may request a two-month extension of the closing dates, to be approved by the City Administrator. Such approval shall not be unreasonably withheld if Developer demonstrates good faith efforts meet conditions precedent to closing pursuant to the Schedule.

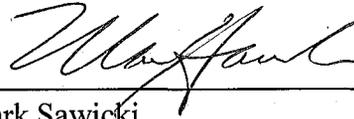
Payment and Performance Bond Requirement. The Developer will be exempt from complying with the City's standard provision requiring payment and performance Bonds in an amount not less than 100 percent of the project construction costs, pursuant to the Developer-executed construction contract if such bonds are not required by the Developer's lender or investor.

Environmental Remediation. Instead of an "as-is" sale, the Environmental Remediation section of the term sheet and DDA will provide for the City to hold in escrow for Developer up to \$1,500,000 of the Site A Purchase Price to be credited back to Developer for actual Environmental Remediation costs, if any, for Site A.

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For questions regarding this report, please contact Patrick Lane, Acting Project Implementation Manager at (510) 238-7362.

Respectfully submitted,



Mark Sawicki
Director, Economic & Workforce Development
Department

Prepared by:
Patrick Lane, Acting Manager
Project Implementation Division

Attachments

Attachment A. Parcel Map for T-5/T-6 Development Project

Attachment B. Development Plans for T-5/T-6 Development Project

Attachment C. DDA Term Sheet for T-5/T-6 Development Project

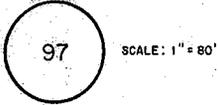
Attachment D. Analysis of Ground Lease Vs. Sale of the of the City Center T-5/6 Sites

ATTACHMENT A Parcel Map for T-5/T-6 Development Project

ASSESSOR'S MAP 2

Code Area Nos. 17-016 17-020 17-021 17-022

2 W.P.



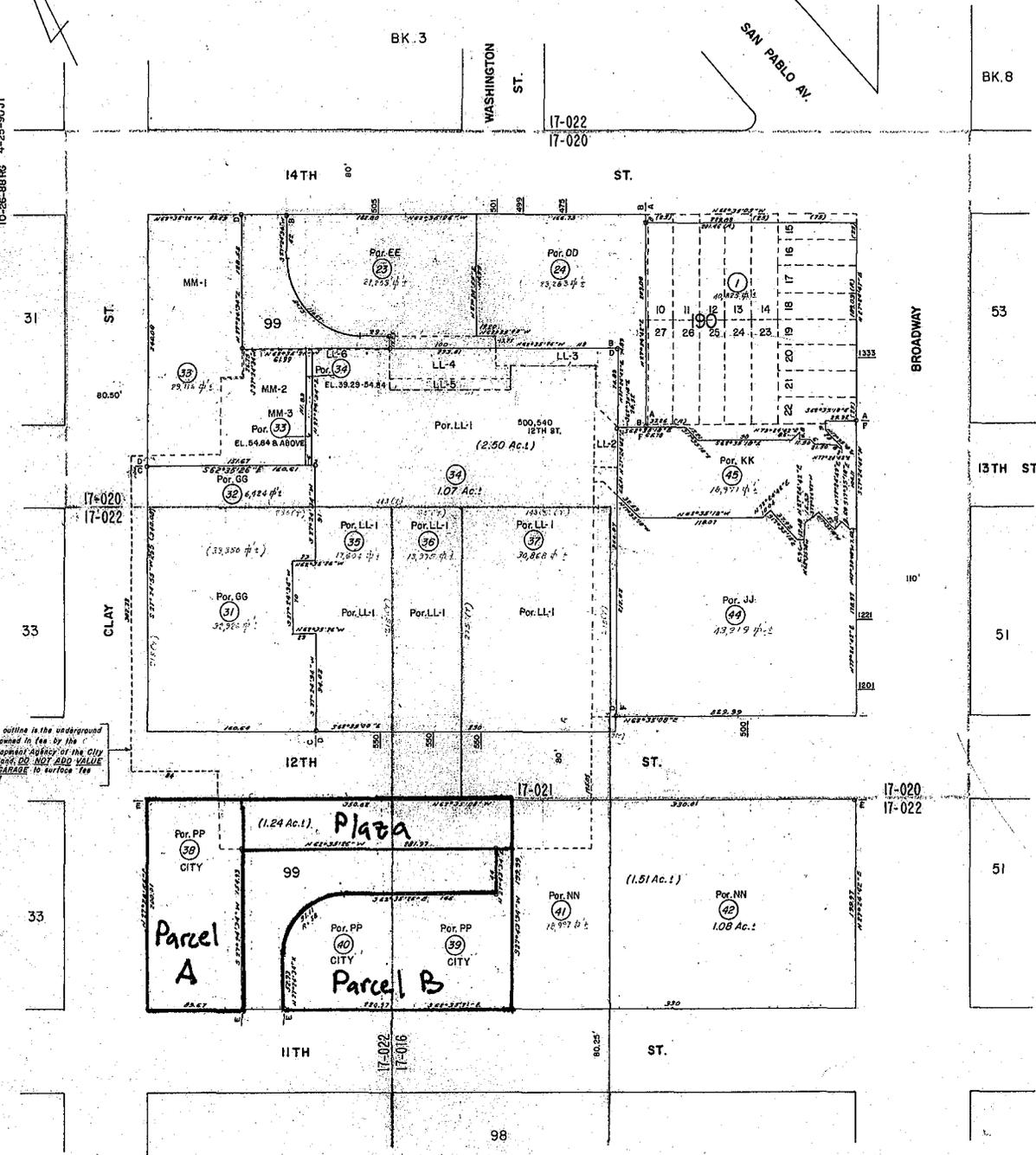
- (A) OAKLAND (KELLERSBERGER'S) (BK. 7 PG. 3)
- (B) P.M. 4976 166/78 (ELEV. 34.20 & ABOVE)
- (C) P.M. 5372 178/64 (ELEV. 39.29 & ABOVE)
- (D) P.M. 5410 176/62 (ELEV. 34.20 & ABOVE)
- (E) P.M. 5533 180/44 (ELEV. 39.29 & ABOVE)
- (F) P.M. 5456 182/71 (ELEV. 34.20 & ABOVE)

REVISED: 3-12-84 PB 12-6-88 PB 7-11-90 PB
 10-5-85 PB 3-20-89 PB 1-07-12 LL
 4-07-86 CS 9-12-89 JCR
 10-13-88 JT 1-19-90 PB
 10-26-88 RB 4-23-90 JT

DRAWN: 5-3-83 PB

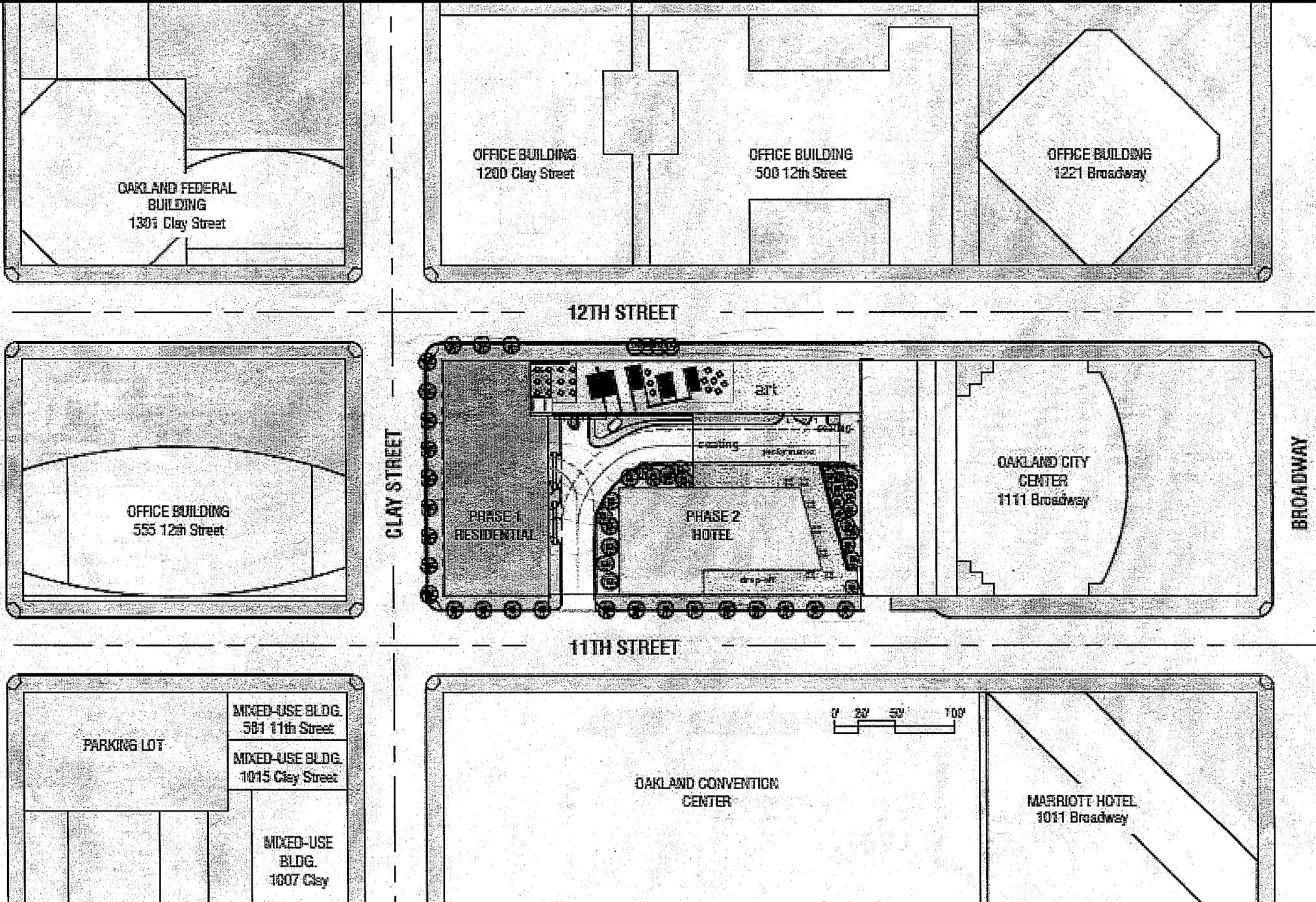
Dashed outline in the underground
 garage owned in fee by the
 Redevelopment Agency of the City
 of Oakland, DO NOT ADD VALUE
 as the GARAGE is surface Fee
 DRIVE!

FORMERLY: BLKS. 39, 41, 43 & 45

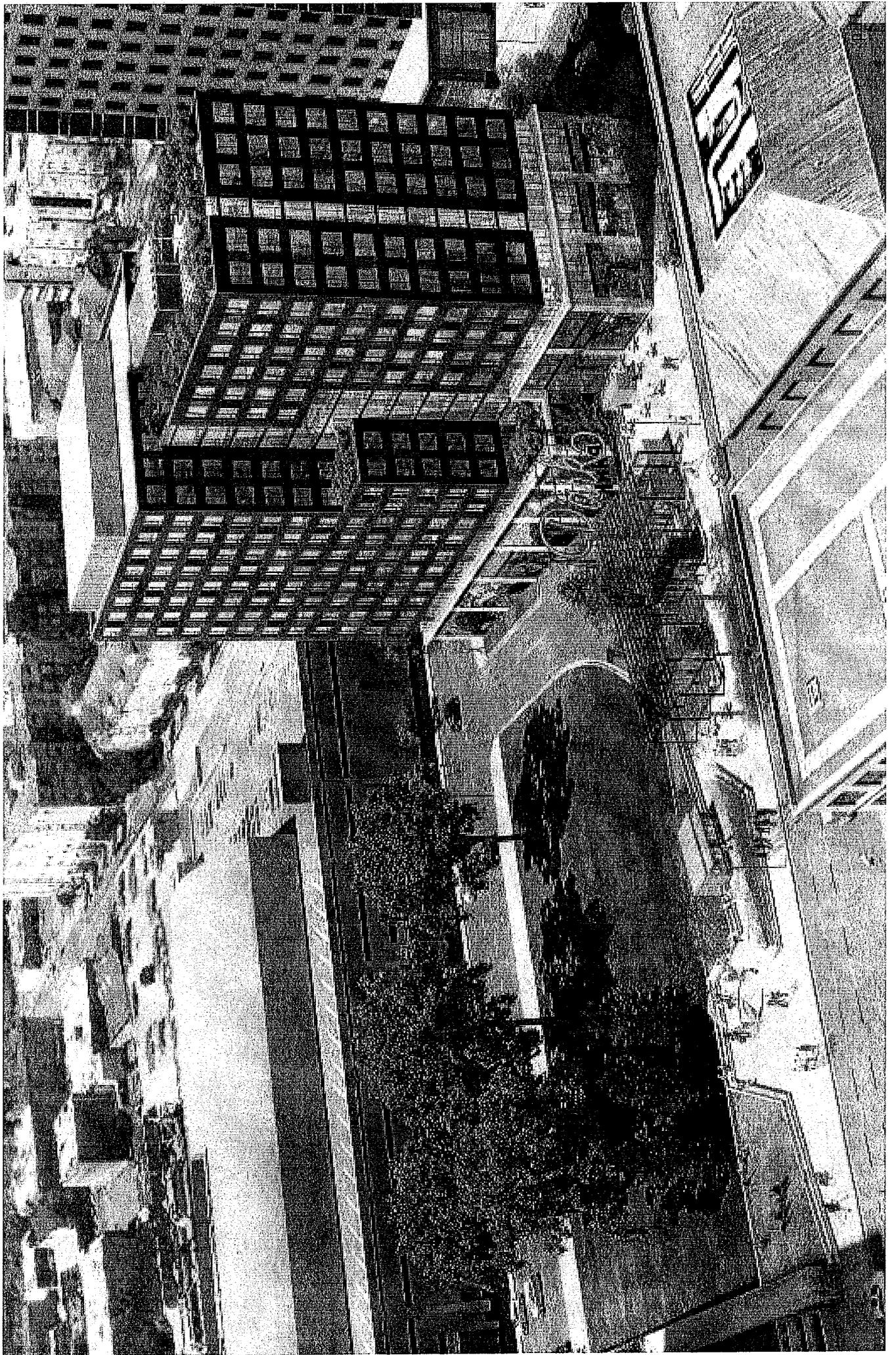


ATTACHMENT B
Development Plans for T-5/T-6 Development Project

T-5/6 Site Plan



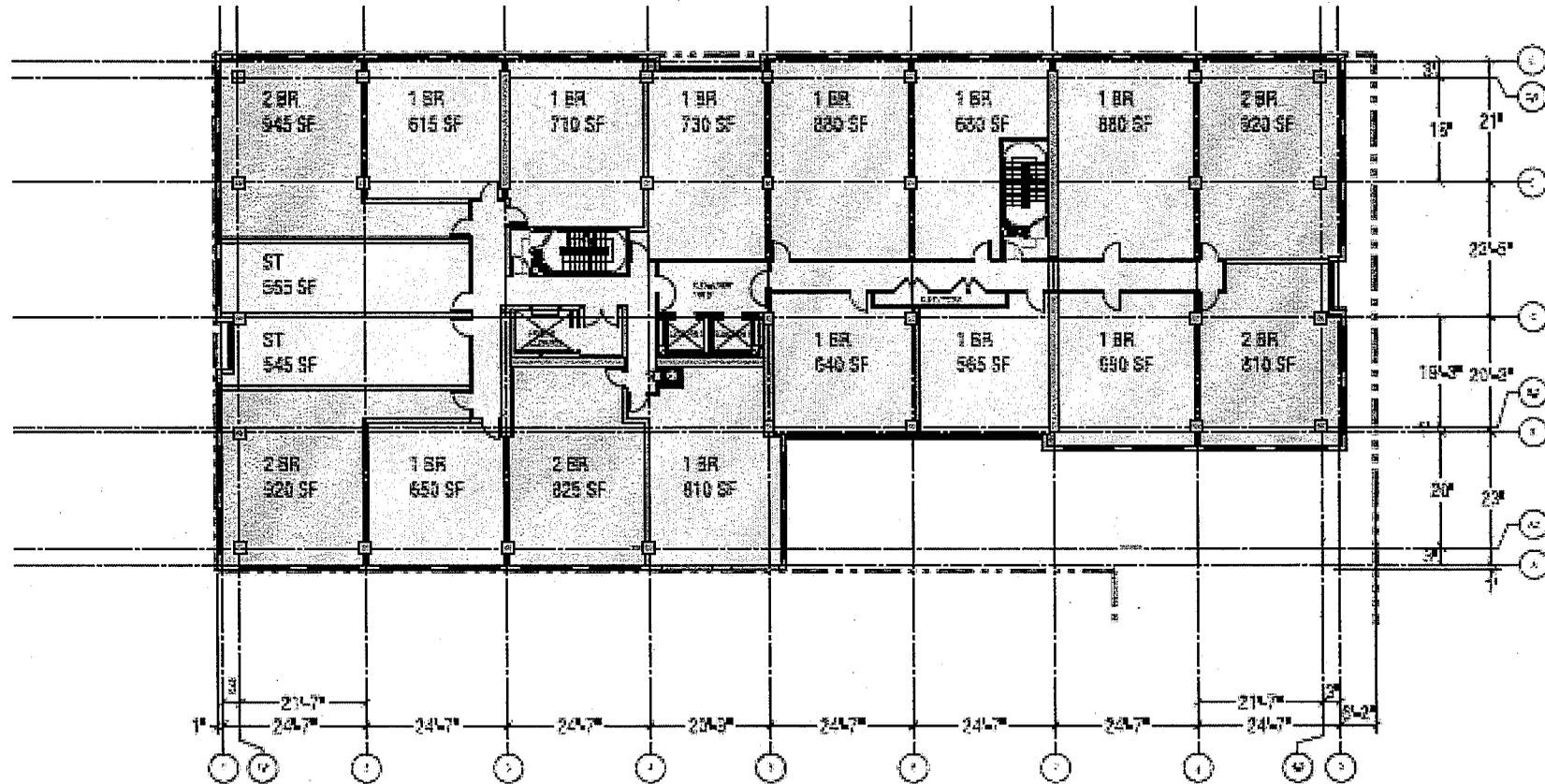
T-5/6 Phase I Residential Development



T-5/6 Phase I Residential Development



T-5/6 Phase I Typical Unit Floor Plan



16% Studio
 56% 1 Bedroom
 28% 2 Bedroom

736 SF
 Average Unit Size

T-5/6 Phase II Development – Residential + Hotel



ATTACHMENT C
DDA TERM SHEET FOR T-5/T-6 DEVELOPMENT PROJECT

1	OWNER	City of Oakland
2A	DEVELOPER	Strada T5, LLC a California limited liability company, (“Developer”)
2B	GUARANTY	At close of escrow, Developer to provide City a Completion Guaranty for the Project, substantially in the form attached to the DDA. Guarantor must be a financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion.
3	PROPERTY	Approximately 1.25 acres of property in downtown Oakland that is within the block bounded by Broadway, 11th Street, 12th Street, and Clay Street, referred to as Site A and Site B inclusively (Developer to provide legal descriptions).
4	PROJECT DESCRIPTION	<p>Phase 1 shall be developed on Site A as a mixed use residential development of between 165 and 262 residential units and between 3,000 and 8,000 square feet of retail space.</p> <p>Phase 2 shall be developed on Site B as a 200 to 300 key hotel. If a hotel is not Financially Feasible (able to secure the requisite equity and debt sources necessary to build) on current market terms within two years of the date of the Agreement or with sufficient demonstration of lack of Financial Feasibility, and, subject to City Council’s sole discretion, Developer may seek the Council’s approval to proceed with an alternative development of either (a) a 205,000 square foot office building or (b) between 165 and 262 residential units and between and between 3,000 and 8,000 square feet of retail space. In the event that Developer has not demonstrated Financial Feasibility of the hotel, or secured City approval of an alternative project proposal, within three years of the Effective Date, the City may terminate the DDA with respect to Phase 2.</p>
5	PURCHASE PRICE	<p>The Purchase Price for Site A of the Property shall be \$3,350,000.</p> <p>The Purchase Price for Site B shall be \$4,100,000 or, if used for hotel development, \$3,100,000 and City’s public subsidy programs and requirements shall apply.</p>

6	TERMS OF PAYMENT	Purchase Price for each site to be due and payable in cash submitted into escrow 3 days before close of escrow. Escrow to close 30 days after all contingencies, including evidence of financial feasibility, building permits, and construction financing, have been met.
7	DEPOSIT	Upon executing the DDA, Developer will provide a \$50,000 good faith deposit. If Developer fails to fulfill the conditions or meet the obligations set forth in the DDA, City may retain the Good Faith Deposit as liquidated damages. Prior to close of escrow, City's sole remedy shall be to terminate the DDA and retain the good faith Deposit.
8	REPURCHASE OPTION	<p>In addition to all other City remedies for Developer default, and subject to the notice and cure rights described below, if construction of a Phase does not start within 30 days after close of escrow or does not diligently continue construction thereafter, or the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure), the City will have the option to repurchase the applicable Site for the original sale price and the then current fair market value of any physical improvements (the "Option"). Appraisal process to determine Fair Market Value will be set forth in the DDA. Prior to close of escrow, if force majeure individually or cumulatively exceeds twelve (12) months, either party shall have the right to terminate the agreement.</p> <p>City's Option is assignable or transferable in its sole and absolute discretion.</p> <p>There will be a 30-day notice and cure process for any such default, and the cure period will be extended if the default cannot reasonably be cured within such 30-day period and the Developer has commenced and is proceeding diligently with efforts to cure the default; subject, however, to a maximum cure date deadline to be negotiated by the parties.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Option, at such time as the Option is no longer exercisable in accordance with its terms.</p>
9	SCHEDULE OF PERFORMANCE	<p style="text-align: center;"><u>PHASE 1 SCHEDULE</u></p> <ol style="list-style-type: none"> 1. Developer submits Final Schematic Designs – 4 months after City approval of DDA. 2. Developer submits Design Development Plans – 10 months after City approval of DDA.

3. Developer submits Construction Drawings and Complete Applications for Building Permits – 18 months after City approval of DDA.
4. Developer submits Financial Plan (including evidence of construction financing and copy of construction contract) - 21 months after City approval of DDA.
5. Developer submits approved Building Permits – 23 months after City approval of DDA.
6. Conveyance/Close of Escrow/Commence Construction – Within 30 days following satisfaction of all City conditions to closing but in no event later than 24 months following City approval of DDA.
7. Complete Construction – 30 months after conveyance (Developer may request a six-month extension of this date, to be approved by the City Administrator, which approval shall not be unreasonably withheld if Developer has demonstrated good faith efforts to Commence and Complete Construction in accordance the Schedule).

PHASE 2 SCHEDULE

1. Developer submits updated pro forma for development of the hotel – no later than 4 months after City approval of DDA.
2. Developer submits notice of determination of financial feasibility of hotel (“Hotel Feasibility Notice”), or seeks Council approval of alternative development – within 24 months following City approval of DDA.
3. Developer submits Final Schematic Designs – no later than 4 months following delivery of Hotel Feasibility Notice.
4. Developer submits Design Development Plans – 10 months after delivery of Hotel Feasibility Notice.
5. Developer submits Construction Drawings and Complete Applications for Building Permits – 18 months after delivery of Hotel Feasibility Notice.
6. Developer submits Financial Plan (including evidence of construction financing and copy of construction contract)

		<p>- 21 months after delivery of Hotel Feasibility notice.</p> <p>7. Developer submits approved Building Permits – 23 months after delivery of Hotel Feasibility Notice.</p> <p>8. Conveyance/Close of Escrow/Commence Construction – Within 30 days following satisfaction of all City conditions to closing but in no event later than 24 months following delivery of Hotel Feasibility Notice.</p> <p>9. Complete Construction – 30 months after conveyance (Developer may request a six-month extension of this date, to be approved by the City Administrator, which shall not be unreasonably withheld if Developer has demonstrated good faith efforts to Commence and Complete Construction in accordance with the Schedule)</p> <p>(All Phase 1 and 2 dates subject to events of force majeure, up to an aggregate maximum delay of one year.)</p>
10	OFF-SITE IMPROVEMENTS	Developer to be responsible for the cost of required off-site improvements in connection with the Project.
11	TITLE INSURANCE	Developer to secure title insurance policy, if desired, at its own cost and expense.
12	CLOSING COSTS	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
13	LIMITATIONS ON PROPERTY RIGHTS	Developers accept and acknowledge the Property is subject to: 1) deed restrictions and a recorded covenant to restrict use of property. Developer to comply with provisions of the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law. As a condition to closing, the City shall use commercially reasonable efforts, which shall be limited to reasonable amounts of staff time with no out-of-pocket expenditures, to secure certain easements necessary for the Project pursuant to the City Center Third Amended and Restated Easement Agreement (“3 rd AREA”) and any amendments thereto related, including but not limited to the easements described in Subparagraphs 5.2(c), (d), (e), (f), (g) and (i) and Paragraph 3.4 of the 3 rd AREA, and a right to use or a shared exclusive easement as described in Subparagraph 5.2(a) of the 3 rd AREA; all of such easement rights to be in recordable form .
14	CONDITION OF PROPERTY AT DELIVERY	Developer to take the Property in its “as-is” condition.

15	ENVIRONMENTAL REMEDIATION	Environmental Notice. The City hereby gives notice to the Developer that, to the best of its knowledge and relying on analysis performed by its environmental consultants, there are no Hazardous Materials present on or beneath the Property other than those set forth in those environmental assessments and reports attached as Exhibit A. Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City with respect to the presence of hazardous materials known or unknown on or near the Property.
16	INDEMNIFICATION	Developer shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developer to negotiate the various levels of indemnification as part of the DDA.
17	CITY MAINTENANCE	Upon Close of Escrow, Developer is responsible for all maintenance within the Property.
18	NO COMMISSION	City shall not pay or be liable for any commissions or brokerage fees. City/Developer shall hold harmless and defend City/Developer against any claims for commissions or brokerage fees.
19	SIGNAGE	Developers may not install or place signage on any existing City street on the Property or the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes and any other applicable codes or regulations.
20	STANDARD OF PROPERTY	Developer to maintain the Property and Project in first-class condition and will ensure at no time does the Property violate the City Blight Ordinance.
21	CITY PROGRAMS & COMMUNITY BENEFITS	<p>If the Developer decides to pursue a project that requires less than full market price for the land or includes some other City subsidy – below market loan, tax credits, etc. - then the following City benefits are required, including: labor peace agreement, prevailing wages, living wages, local and small local business, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs.</p> <p>Other community benefits are described under Item 29 [Public Benefits] below.</p>

22	PAYMENT & PERFORMANCE BONDS	Developer shall obtain payment bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer. Developer shall obtain performance bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer.
23	RIGHT OF ENTRY	Developer to have the right to enter onto the property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developers cost, required as part of its due diligence. Developer shall be required to provide City with indemnity and evidence of insurance and meet other standard City conditions to entry.
24	FINANCING	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA will be subject to customary mortgagee protections for any construction financing.
25	PERMITTED TRANSFERS	Prior to project completion, Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the Agreement, other than an Affiliate Transfer, without the prior written consent of the City, in the City's sole and absolute discretion. An Affiliate Transfer shall not require consent and shall mean a transfer to an entity or entities for which Strada maintains development management responsibilities and control.
26	PARKING	The City to reserve UP TO 200 parking spaces at the prevailing market rate in City Center Garage West for Project occupants as negotiated by the City Administrator and Developer. Upon the date the Project is first occupied by tenants and for five years thereafter, the option to license parking spaces herein shall be limited to a maximum of 200 parking spaces. Thereafter, the option to license parking spaces shall be limited to the highest number of parking spaces, but not to exceed 200, actually licensed to tenants, residents and/or the homeowners association at any given time during the initial five year period for both Site A and B. The City Center Garage West parking spaces shall be counted towards any minimum parking requirements for the Project.

		"Prevailing Market Rate" means the monthly fee for the same type of Parking Space in the same parking facility being used in a similar manner, excluding city employee parking. If there are no other similar Parking Spaces or no Parking Spaces used in the same manner in the parking facility, the Prevailing Market Rate means the monthly fee for such a Parking Space in other nearby parking garages.
27	PROJECT COMPLETION	Following issuance of final certificate of occupancy and certificate of completion for Phase 1 of the Project, the City shall have no rights of repurchase of Phase 1 under the Agreement or any approval rights over the subsequent transfers, assignments, or financings. Following issuance of final certificate of occupancy and certificate of completion for Phase 2 of the Project, the City shall have no rights of repurchase of Phase 2 under the Agreement or any approval rights over the subsequent transfers, assignments, or financings.
28	STANDARD CONDITIONS	DDA to include standard City conditions, including without limitation, provision of labor and completion bonds, executed completion guaranty, approval of financing plan, copies of all required regulatory approvals, and insurance policies.
29	PUBLIC BENEFITS	<p>Developer has agreed to provide the following public benefits, :</p> <ol style="list-style-type: none"> 1. Developer shall pay \$1,300,000 to the Oakland Affordable Housing Trust Fund, which funds may be used by the City, in its sole discretion, to fund the predevelopment and entitlement work – including architecture, engineering, environmental review and tax credit consultants– needed to develop 100% affordable projects in District 3. 2. Developer shall design and construct a 12,850-square-foot (privately owned and maintained by Developer) public plaza on the 12th Street side of Site A that includes landscaping and pedestrian-oriented hardscape, repurposed shipping containers, interactive public art and outdoor café seating at a cost of more than \$900,000. Developer shall work with the Planning Department on an Operations Plan to ensure the Plaza is maintained as a lively, clean and safe public amenity, and Developer’s continuing obligations with respect to maintenance of and public access to the plaza will be memorialized in a recorded agreement with the City substantially in the form attached to the DDA. Developer will provide funding to the Downtown

		<p>Oakland Community Benefit District (CBD) for such services and to support the downtown neighborhood at a cost of approximately \$54,000 per year. This contribution of annual project income equates to a loss in future sales value of \$1,200,000 (using a 4.5% capitalization rate).</p> <ol style="list-style-type: none"> 3. Developer has entered into a Project Labor Agreement (PLA) with the Alameda County Building Trades to ensure the Project is completed with union labor. 4. Developer has entered into a Card Check Neutrality Agreement with Unite Here Local 2850 to ensure any hotel built on the Property is operated with Union Labor. 5. As set forth in the PLA, Developer shall comply with a local hire program that commits to filling at least 25% of all apprentice jobs on the Property through a certified apprenticeship program, such as Cypress Mandela, and to fund \$70,000 for the training of up to 10 new local apprentices. 6. Developer shall enter into a construction services agreement with Oakland-based Turner Group Construction related to concrete, general site services and assistance in maximizing small and local business opportunities related to the Project. <p>Developer shall fund at least \$30,000 for outreach and local hire resource services (including multilingual outreach) to maximize opportunities for small and local businesses. The PLA for the Project incorporates these opportunities as well.</p>
30	<p>PROHIBITION ON GENERATION OF CONDOMINIUM CONVERSION RIGHTS</p>	<p>The DDA shall include an acknowledgment and agreement by Developer that the Project shall not generate, and the Developer shall not assert, condominium “conversion rights” under Chapter 16.36 of the Oakland Municipal Code.</p>

Exhibit A
Environmental Assessments

1. Environmental Site Assessment and Fill Characterization Report, City Center Parcels T5 and T6, Oakland, California; Woodward-Clyde Consultants; June 7, 1993
2. Soil & Groundwater Sampling, City Center Parcel T-5/6, Oakland, California; Subsurface Consultants, Inc.; August 21, 2001
3. Soil & Water Sampling, City Center Parcel T-5 and T-6, Oakland, California; Subsurface Consultants, Inc.; September 19, 2001
4. Supplemental Soil & Groundwater Investigation, City Center Parcel T-5 and T-6, Oakland, California; Subsurface Consultants, Inc.; July 16, 2002

ATTACHMENT D
Analysis of Ground Lease Vs. Sale of the of the City Center T-5/6 Sites

Attachment D: Analysis of Ground Lease Vs. Sale of City Center T-5/6 Sites

Below is a review of the pros and cons for ground lease and for sale of City property, based on the Agenda Report that accompanied Reso No. 85324 C.M.S., along with how those factors apply or do not apply in the case of the T-5/6 Parcels.

Ground Leasing City Property - PROS	In the case of City Center T-5/6...	Ground Leasing City Property- CONS	In the case of City Center T-5/6...
1. City retains ownership of a valuable City asset	By selling the parcel to a private developer, the City forever loses all its interest in the property, as opposed to leasing it long term and having the property revert back to the City for a new future use or development.	1. Ongoing liability for City	By leasing the property, the City retains potential landowner liability, including environmental and tort issues. (However, while not an absolute guarantee, these risks typically can be covered by requiring the ground tenant to obtain appropriate insurance, and provide warranties to the City).
2. City realizes benefit of property appreciation	By ground leasing, the City retains the right to get back the property at the end of the ground lease. In this case, the property may well have appreciated considerably over the ground lease term. The City, rather than a private developer, would then be the beneficiary of the property's appreciation for the public benefit.	2. Financing problems for Developer	A change to a ground lease would require Strada to re-evaluate this investment opportunity and could cause the project to be infeasible and/or slow development.
3. As Landlord, City increases its ability to oversee and enforce City policy objectives	Landlords have considerable more leverage to enforce lease provisions than a seller has once the seller has actually transferred its interest in land to a buyer. Accordingly, the City could more easily enforce community benefits, city policies and monitor and enforce the tenant's lease covenants and promises.	3. There is no downside to the additional leverage the landlord has to enforce the lease.	A sale, using a disposition and development agreement (DDA), also includes enforcement provisions requiring the developer to comply with City policies and objectives, although these enforcement provisions are more difficult to enforce and do not provide the same enforcement leverage as a lease.

Attachment D: Analysis of Ground Lease Vs. Sale of City Center T-5/6 Sites

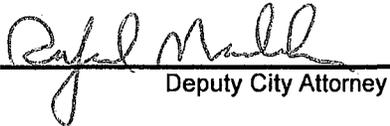
Ground Leasing City Property - PROS	In the case of City Center T-5/6...	Ground Leasing City Property- CONS	In the case of City Center T-5/6...
4. City preserves increased flexibility and potential profitability from a revenue stream	If the City desires a large upfront payment, the City could require the tenant to make a significant upfront lease payment, similar to a purchase price.	4. Because the City is retaining its right to get back the property at the end of the lease term and thereby reserving to the City the right to property appreciation and ownership, the upfront rent payment may not equal the amount the City could get from a sale. The trade-off from the lesser up-front rent is the City's long-term right to property appreciation by retaining ownership rights.	In terms of "Net Present Value", the ongoing revenue stream from this Project that the City can receive through a likely ground lease deal is likely worth less than a payment upfront. The FMV appraisal already assumed sale of land for development of high-density residential, so a new appraisal would be needed to determine the FMV of land if it is for lease. That amount will likely be lower.
5. Retaining Public Property	By ground leasing the site to the developer, the City would be retaining a valuable future City property when the lease term is up.	5. Potential for higher infrastructure cost to City	Because title to the land would revert to the City when the lease expires, in some, but not all, cases developers legitimately expect the City to pay more upfront for infrastructure costs.
6. Meeting the City's Financial Goals	In general, sale of land meets the City's short term financial goals while ground lease meets the City's long term financial and public policy goals of maintaining public property for the public.	6. Less marketable	Most developers in California build projects as condominiums so that they can sell the project or the units when condominiums are valued higher than rental projects. Although condominium projects can be (and are) ground-leased in certain cases, leasing to a developer can reduce potential profit and increase its risks.
7. City can enforce Project Labor Agreements	Leasing provides greater legal justification for enforcing a Project Labor Agreement ("PLA").	7. PLA is less feasible with higher return required from ground lease.	Strada has agreed to both a PLA with Alameda County Building Trades and a Card Check Agreement with Unite Here Local 2850 with sale of the land.

Attachment D: Analysis of Ground Lease Vs. Sale of City Center T-5/6 Sites

Sale of City Property - PROS	As applied to City Center T-5/6...	Sale of City Property - CONS	As applied to City Center T-5/6...
1. Meeting the City's long-term financial goals by generating Transient Occupancy Tax	The project is expected to generate about \$1.8 million per year in transient occupancy tax plus property, sales, business and other taxes. The hotel is barely possible with the lower returns required for a project with a fee simple interest in the property. The project is likely to be infeasible if the developer requires a higher return in order to recoup its investment and generate a reasonable profit in 66 years.	1. Eliminates any City participation in property appreciation.	Developer is paying the FMV for the land and is projecting to meet the minimum returns on investment required to attract the capital/equity that is needed for a development project of this size. Developer will also be giving up approximately 225 "condo conversion credits" that can be worth as much as \$20K each, a concession that might not be feasible in a ground leased project..
2. Faster Development	Developer has been working on this project for over two years and has a financially feasible project that requires sale of the land to develop condominiums.	2. City gives up its longer-term right to keep the parcel as public property, and the City's right to future property appreciation.	This is a former Redevelopment Agency site purchased with unrestricted funds. As is the case with sale proceeds, the larger share of future appreciation under a lease would likely therefore go to the other taxing entities, with the City receiving approximately 39%.
3. More up front funds for the City	Staff believes that the sales price would likely be higher than an up front lease payment.	3. Loss of potential future revenue.	Lease would likely result in a smaller up front revenue but major future revenue, which is lost with a sale of the property.
4. Will end the City's obligation under the Long Range Property Management Plan and Compensation Agreement.	Will reduce future staff costs and monitoring of property.	4. City will lose long term authority over the site.	If the property were leased, the City could reassess the use of the site after 66 year lease to meet the then current needs of the City. Any staff costs for monitoring the property can be deducted before net revenues are transferred to the County for distribution to the taxing entities.

2015 JUL -3 AM 8:47

Approved as to Form and Legality


Deputy City Attorney

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND, AND STRADA T5 LLC (OR A RELATED ENTITY OR AFFILIATE) FOR SALE OF THE CITY CENTER T-5/6 PARCELS LOCATED ON THE BLOCK BOUNDED BY BROADWAY, 11TH STREET, 12TH STREET AND CLAY STREET FOR NO LESS THAN \$6.45 MILLION AND DEVELOPMENT AS A RESIDENTIAL MIXED-USE PROJECT AND A HOTEL MIXED-USE PROJECT, ALL OF THE FOREGOING DOCUMENTS TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE TERM SHEET ATTACHED AS EXHIBIT A

WHEREAS, the City owns approximately 1.25 acres of property on the block bounded by Broadway, 11th Street, 12th Street and Clay Street, commonly known as T-5/T-6, that will be reconfigured into two development sites; and

WHEREAS, the Property is located within the City Center Redevelopment Project and was owned by the former Oakland Redevelopment Agency prior to its dissolution pursuant to AB 1X 26 and AB 1484 (collectively, "Redevelopment Dissolution Act"); and

WHEREAS, disposition of the Property is governed by the Long Range Property Management Plan prepared by the Oakland Redevelopment Successor Agency ("ORSA") and approved by the ORSA Oversight Board and the Department of Finance and the Compensation Agreement entered into by the City and taxing entities pursuant to the Redevelopment Dissolution Act; and

WHEREAS, on January 31, 2012, the City issued a Request for Proposals ("RFP") to develop the Property; and

WHEREAS, the City only received one proposal from Strada (as defined below); and

WHEREAS, Strada T5 LLC (“Developer”) is a limited liability company created by Strada Investment Group, LLC (“Strada”); and

WHEREAS, the City Council authorized an Exclusive Negotiating Agreement between the City and Strada on July 16, 2013 and January 7, 2014 (“ENA”), and the City Administrator granted a discretionary administrative extension on January 23, 2015 for the purposes of developing a project proposal for City review and approval, conducting California Environmental Quality Act (“CEQA”) review and approval, and negotiating the terms and conditions of a Disposition and Development Agreement (“DDA”) (Reso Nos. 84514 and 84785 C.M.S.); and

WHEREAS, Strada satisfied all the requirements of the ENA; and

WHEREAS, a June 2015 appraisal conducted by Yovino & Young concluded the as-is Fair Market Value of the land is \$7.45 million (\$3.35 million for Parcel A and \$4.1 million for Parcel B), considering the highest and best use of the Property to be a multi-unit residential project, with a \$1.0 million discount on Parcel B when restricted to hotel use; and

WHEREAS, Developer is offering to pay \$6.45 million (\$3.35 million for Parcel A and \$3.1 million for Parcel B) for the Property; and

WHEREAS, Developer proposes to build a 14-story residential apartment tower with a public plaza on Parcel A, including between 165 and 262 residential units, between 3,000 and 8,000 square feet of ground level commercial space, and a 200-300 key hotel on Parcel B (the “Project”); and

WHEREAS, Strada is a real estate investment and development company focused on the San Francisco Bay Area, which has closed on over 1.9 million square feet of institutional office product in the past five years and is developing over 4 million square feet of office, residential, retail and hotel product in the Bay Area; and

WHEREAS, a Disposition and Development Agreement (“DDA”) will set forth the terms and conditions under which the City will sell the Property to Developer and by which Developer will construct improvements to the Property; and

WHEREAS, the City has prepared and placed on file a copy of the summary of the transaction contemplated by this Ordinance as required by Government Code Section 52201 (“52201 Report”) and the information required by Government Code Section 53083 (“53083 Report”), and the City has conducted a noticed public hearing on the transaction as required by Government Code Sections 52201 and 53083; and

WHEREAS, the City Council adopted a Resolution in December 2014 to establish a general policy to lease rather than sell City property (Reso No. 85324 C.M.S.); and

WHEREAS, staff is recommending a sale of the Property instead of a ground lease in this case because a sale is necessary to promote the economic development and housing goals of

the City for the reasons set forth in the Agenda Report for this item; now therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. The City Council hereby finds, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to sell rather than lease the Property for the reasons described in the Agenda Report for this item, and hereby authorizes the conveyance of the Property to the Developer pursuant to the terms of the documents described in Section 5 hereof for the price of \$6.45 million.

SECTION 2. The City Council hereby finds and determines that the City's Request for Proposal (RFP) process for the Property complied, to the extent applicable, with Oakland Municipal Code Section 2.42.170(A), which requires that the City issue "a public and competitive NODO to potential developers and other interested parties." However, in the event that it may later be determined that such RFP process did not in any respect meet any applicable Code requirement for a competitive NODO process, the Council hereby waives such requirement on the basis that the process that was used was in the best interests of the City because it was most likely to elicit responses from potential purchasers with the experience, capacity and other qualifications, as well as demonstrated interest in developing a project on the site, to achieve the City's goals for development of the Property.

SECTION 3. The City Council hereby finds and determines the following, based on the appraisal conducted by Yovino & Young, the 52201 Report and the entirety of the record described in Section 10 below:

- A. The sale of the Property will assist in the creation of economic opportunity;
- B. Parcel A is being conveyed at its fair market value, and the City is not granting any economic development subsidy for this phase of the Project; and

Parcel B is being conveyed at its fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale.

SECTION 4. The City Council authorizes the City Administrator to deposit land sales proceeds in the Central District Operations Fund (5610), Central District Redevelopment Organization (85245), Sale of Land (48111), Non-Project (0000000), Downtown Development (SC13).

SECTION 5. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) a Disposition and Development Agreement and related documents with the Developer, for the sale and development of the Property, all of the foregoing documents to be in a form and content substantially in conformance with the Term Sheet attached as Exhibit A to this Ordinance; (2) grant deeds and any other agreements or documents as necessary to convey the Property to the Developer; (3) such other additions, amendments or other modifications to any of the foregoing

documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (4) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the sale and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 6. The City Administrator, without returning to the City Council, shall determine satisfaction of conditions precedent to the conveyance of the Property to the Developer.

SECTION 7. All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 8. The City Council finds and determines that the anticipated environmental effects of the project have been evaluated by the "Modified Block T5/6 Project CEQA Analysis" dated May 29, 2015, and, as supported by substantial evidence in the record and for the reasons set forth in the CEQA Findings adopted by the Planning Commission on July 1, 2015 in connection with its consideration of the Project, no further environmental review is required for sale of the Property and the development of the Project.

SECTION 9. The City Administrator or his/her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

SECTION 10. The record before this Council relating to this Ordinance includes, without limitation, the following:

- A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Planning Commission Report and all notices relating to this Ordinance and the DDA;
- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance, including without limitation the Planning Commission consideration of general plan conformity; and
- C. The 52201 Report and the 53083 Report.
- D. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation,

the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.

SECTION 11. The custodians and locations of the documents or other materials which constitute the record of proceedings upon with the City Council's decision is based are respectively (a) the Project Implementation Division, 250 Frank Ogawa Plaza, 5th Floor, Oakland, CA; (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3rd Floor, Oakland, CA; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1st Floor, Oakland, CA.

SECTION 12. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 13. The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____ 2015

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON McELHANEY

NOES -

ABSENT -

ABSTENTION -

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

EXHIBIT A

DDA TERM SHEET

**REAL ESTATE TERM SHEET
T-5/T-6 DEVELOPMENT PROJECT**

1	OWNER	City of Oakland
2A	DEVELOPER	Strada T5, LLC a California limited liability company, ("Developer")
2B	GUARANTY	At close of escrow, Developer to provide City a Completion Guaranty for the Project, substantially in the form attached to the DDA. Guarantor must be a financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion.
3	PROPERTY	Approximately 1.25 acres of property in downtown Oakland that is within the block bounded by Broadway, 11th Street, 12th Street, and Clay Street, referred to as Site A and Site B inclusively (Developer to provide legal descriptions).
4	PROJECT DESCRIPTION	<p>Phase 1 shall be developed on Site A as a mixed use residential development of between 165 and 262 residential units and between 3,000 and 8,000 square feet of retail space.</p> <p>Phase 2 shall be developed on Site B as a 200 to 300 key hotel. If a hotel is not Financially Feasible (able to secure the requisite equity and debt sources necessary to build) on current market terms within two years of the date of the Agreement or with sufficient demonstration of lack of Financial Feasibility, and, subject to City Council's sole discretion, Developer may seek the Council's approval to proceed with an alternative development of either (a) a 205,000 square foot office building or (b) between 165 and 262 residential units and between and between 3,000 and 8,000 square feet of retail space. In the event that Developer has not demonstrated Financial Feasibility of the hotel, or secured City approval of an alternative project proposal, within three years of the Effective Date, the City may terminate the DDA with respect to Phase 2.</p>
5	PURCHASE PRICE	<p>The Purchase Price for Site A of the Property shall be \$3,350,000.</p> <p>The Purchase Price for Site B shall be \$4,100,000 or, if used for hotel development, \$3,100,000 and City's public subsidy programs and requirements shall apply.</p>

6	TERMS OF PAYMENT	Purchase Price for each site to be due and payable in cash submitted into escrow 3 days before close of escrow. Escrow to close 30 days after all contingencies, including evidence of financial feasibility, building permits, and construction financing, have been met.
7	DEPOSIT	Upon executing the DDA, Developer will provide a \$50,000 good faith deposit. If Developer fails to fulfill the conditions or meet the obligations set forth in the DDA, City may retain the Good Faith Deposit as liquidated damages. Prior to close of escrow, City's sole remedy shall be to terminate the DDA and retain the good faith Deposit.
8	REPURCHASE OPTION	<p>In addition to all other City remedies for Developer default, and subject to the notice and cure rights described below, if construction of a Phase does not start within 30 days after close of escrow or does not diligently continue construction thereafter, or the Developer does not complete construction within the time period required under the DDA (subject in each case to extension for force majeure), the City will have the option to repurchase the applicable Site for the original sale price and the then current fair market value of any physical improvements (the "Option"). Appraisal process to determine Fair Market Value will be set forth in the DDA. Prior to close of escrow, if force majeure individually or cumulatively exceeds twelve (12) months, either party shall have the right to terminate the agreement.</p> <p>City's Option is assignable or transferable in its sole and absolute discretion.</p> <p>There will be a 30-day notice and cure process for any such default, and the cure period will be extended if the default cannot reasonably be cured within such 30-day period and the Developer has commenced and is proceeding diligently with efforts to cure the default; subject, however, to an maximum cure date deadline to be negotiated by the parties.</p> <p>The City will execute and record such instruments as Developer may reasonably request to terminate the Option, at such time as the Option is no longer exercisable in accordance with its terms.</p>
9	SCHEDULE OF PERFORMANCE	<p style="text-align: center;"><u>PHASE 1 SCHEDULE</u></p> <ol style="list-style-type: none"> 1. Developer submits Final Schematic Designs – 4 months after City approval of DDA. 2. Developer submits Design Development Plans – 10 months after City approval of DDA.

3. Developer submits Construction Drawings and Complete Applications for Building Permits – 18 months after City approval of DDA.
4. Developer submits Financial Plan (including evidence of construction financing and copy of construction contract) - 21 months after City approval of DDA.
5. Developer submits approved Building Permits – 23 months after City approval of DDA.
6. Conveyance/Close of Escrow/Commence Construction – Within 30 days following satisfaction of all City conditions to closing but in no event later than 24 months following City approval of DDA.
7. Complete Construction – 30 months after conveyance (Developer may request a six-month extension of this date, to be approved by the City Administrator, which approval shall not be unreasonably withheld if Developer has demonstrated good faith efforts to Commence and Complete Construction in accordance the Schedule).

PHASE 2 SCHEDULE

1. Developer submits updated pro forma for development of the hotel – no later than 4 months after City approval of DDA.
2. Developer submits notice of determination of financial feasibility of hotel (“Hotel Feasibility Notice”), or seeks Council approval of alternative development – within 24 months following City approval of DDA.
3. Developer submits Final Schematic Designs – no later than 4 months following delivery of Hotel Feasibility Notice.
4. Developer submits Design Development Plans – 10 months after delivery of Hotel Feasibility Notice.
5. Developer submits Construction Drawings and Complete Applications for Building Permits – 18 months after delivery of Hotel Feasibility Notice.
6. Developer submits Financial Plan (including evidence of construction financing and copy of construction contract)

		<p>- 21 months after delivery of Hotel Feasibility notice.</p> <p>7. Developer submits approved Building Permits – 23 months after delivery of Hotel Feasibility Notice.</p> <p>8. Conveyance/Close of Escrow/Commence Construction – Within 30 days following satisfaction of all City conditions to closing but in no event later than 24 months following delivery of Hotel Feasibility Notice.</p> <p>9. Complete Construction – 30 months after conveyance (Developer may request a six-month extension of this date, to be approved by the City Administrator, which shall not be unreasonably withheld if Developer has demonstrated good faith efforts to Commence and Complete Construction in accordance with the Schedule)</p> <p>(All Phase 1 and 2 dates subject to events of force majeure, up to an aggregate maximum delay of one year.)</p>
10	OFF-SITE IMPROVEMENTS	Developer to be responsible for the cost of required off-site improvements in connection with the Project.
11	TITLE INSURANCE	Developer to secure title insurance policy, if desired, at its own cost and expense.
12	CLOSING COSTS	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
13	LIMITATIONS ON PROPERTY RIGHTS	Developers accept and acknowledge the Property is subject to: 1) deed restrictions and a recorded covenant to restrict use of property. Developer to comply with provisions of the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law. As a condition to closing, the City shall use commercially reasonable efforts, which shall be limited to reasonable amounts of staff time with no out-of-pocket expenditures, to secure certain easements necessary for the Project pursuant to the City Center Third Amended and Restated Easement Agreement (“3 rd AREA”) and any amendments thereto related, including but not limited to the easements described in Subparagraphs 5.2(c), (d), (e), (f), (g) and (i) and Paragraph 3.4 of the 3 rd AREA, and a right to use or a shared exclusive easement as described in Subparagraph 5.2(a) of the 3 rd AREA; all of such easement rights to be in recordable form .
14	CONDITION OF PROPERTY AT DELIVERY	Developer to take the Property in its “as-is” condition.

15	ENVIRONMENTAL REMEDIATION	Environmental Notice. The City hereby gives notice to the Developer that, to the best of its knowledge and relying on analysis performed by its environmental consultants, there are no Hazardous Materials present on or beneath the Property other than those set forth in those environmental assessments and reports attached as Exhibit A. Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City with respect to the presence of hazardous materials known or unknown on or near the Property.
16	INDEMNIFICATION	Developer shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developer to negotiate the various levels of indemnification as part of the DDA.
17	CITY MAINTENANCE	Upon Close of Escrow, Developer is responsible for all maintenance within the Property.
18	NO COMMISSION	City shall not pay or be liable for any commissions or brokerage fees. City/Developer shall hold harmless and defend City/Developer against any claims for commissions or brokerage fees.
19	SIGNAGE	Developers may not install or place signage on any existing City street on the Property or the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes and any other applicable codes or regulations.
20	STANDARD OF PROPERTY	Developer to maintain the Property and Project in first-class condition and will ensure at no time does the Property violate the City Blight Ordinance.
21	CITY PROGRAMS & COMMUNITY BENEFITS	<p>If the Developer decides to pursue a project that requires less than full market price for the land or includes some other City subsidy – below market loan, tax credits, etc. - then the following City benefits are required, including: labor peace agreement, prevailing wages, living wages, local and small local business, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs.</p> <p>Other community benefits are described under Item 29 [Public Benefits] below.</p>

22	PAYMENT & PERFORMANCE BONDS	Developer shall obtain payment bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer. Developer shall obtain performance bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer.
23	RIGHT OF ENTRY	Developer to have the right to enter onto the property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developers cost, required as part of its due diligence. Developer shall be required to provide City with indemnity and evidence of insurance and meet other standard City conditions to entry.
24	FINANCING	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA will be subject to customary mortgagee protections for any construction financing.
25	PERMITTED TRANSFERS	Prior to project completion, Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the Agreement, other than an Affiliate Transfer, without the prior written consent of the City, in the City's sole and absolute discretion. An Affiliate Transfer shall not require consent and shall mean a transfer to an entity or entities for which Strada maintains development management responsibilities and control.
26	PARKING	The City to reserve UP TO 200 parking spaces at the prevailing market rate in City Center Garage West for Project occupants as negotiated by the City Administrator and Developer. Upon the date the Project is first occupied by tenants and for five years thereafter, the option to license parking spaces herein shall be limited to a maximum of 200 parking spaces. Thereafter, the option to license parking spaces shall be limited to the highest number of parking spaces, but not to exceed 200, actually licensed to tenants, residents and/or the homeowners association at any given time during the initial five year period for both Site A and B. The City Center Garage West parking spaces shall be counted towards any minimum parking requirements for the Project.

		"Prevailing Market Rate" means the monthly fee for the same type of Parking Space in the same parking facility being used in a similar manner, excluding city employee parking. If there are no other similar Parking Spaces or no Parking Spaces used in the same manner in the parking facility, the Prevailing Market Rate means the monthly fee for such a Parking Space in other nearby parking garages.
27	PROJECT COMPLETION	Following issuance of final certificate of occupancy and certificate of completion for Phase 1 of the Project, the City shall have no rights of repurchase of Phase 1 under the Agreement or any approval rights over the subsequent transfers, assignments, or financings. Following issuance of final certificate of occupancy and certificate of completion for Phase 2 of the Project, the City shall have no rights of repurchase of Phase 2 under the Agreement or any approval rights over the subsequent transfers, assignments, or financings.
28	STANDARD CONDITIONS	DDA to include standard City conditions, including without limitation, provision of labor and completion bonds, executed completion guaranty, approval of financing plan, copies of all required regulatory approvals, and insurance policies.
29	PUBLIC BENEFITS	Developer has agreed to provide the following public benefits, : <ol style="list-style-type: none"> 1. Developer shall pay \$1,300,000 to the Oakland Affordable Housing Trust Fund, which funds may be used by the City, in its sole discretion, to fund the predevelopment and entitlement work – including architecture, engineering, environmental review and tax credit consultants– needed to develop 100% affordable projects in District 3. 2. Developer shall design and construct a 12,850-square-foot (privately owned and maintained by Developer) public plaza on the 12th Street side of Site A that includes landscaping and pedestrian-oriented hardscape, repurposed shipping containers, interactive public art and outdoor café seating at a cost of more than \$900,000. Developer shall work with the Planning Department on an Operations Plan to ensure the Plaza is maintained as a lively, clean and safe public amenity, and Developer’s continuing obligations with respect to maintenance of and public access to the plaza will be memorialized in a recorded agreement with the City substantially in the form attached to the DDA. Developer will provide funding to the Downtown

		<p>Oakland Community Benefit District (CBD) for such services and to support the downtown neighborhood at a cost of approximately \$54,000 per year. This contribution of annual project income equates to a loss in future sales value of \$1,200,000 (using a 4.5% capitalization rate).</p> <ol style="list-style-type: none"> 3. Developer has entered into a Project Labor Agreement (PLA) with the Alameda County Building Trades to ensure the Project is completed with union labor. 4. Developer has entered into a Card Check Neutrality Agreement with Unite Here Local 2850 to ensure any hotel built on the Property is operated with Union Labor. 5. As set forth in the PLA, Developer shall comply with a local hire program that commits to filling at least 25% of all apprentice jobs on the Property through a certified apprenticeship program, such as Cypress Mandela, and to fund \$70,000 for the training of up to 10 new local apprentices. 6. Developer shall enter into a construction services agreement with Oakland-based Turner Group Construction related to concrete, general site services and assistance in maximizing small and local business opportunities related to the Project. <p>Developer shall fund at least \$30,000 for outreach and local hire resource services (including multilingual outreach) to maximize opportunities for small and local businesses. The PLA for the Project incorporates these opportunities as well.</p>
30	<p>PROHIBITION ON GENERATION OF CONDOMINIUM CONVERSION RIGHTS</p>	<p>The DDA shall include an acknowledgment and agreement by Developer that the Project shall not generate, and the Developer shall not assert, condominium “conversion rights” under Chapter 16.36 of the Oakland Municipal Code.</p>

Exhibit A
Environmental Assessments

1. Environmental Site Assessment and Fill Characterization Report, City Center Parcels T5 and T6, Oakland, California; Woodward-Clyde Consultants; June 7, 1993
2. Soil & Groundwater Sampling, City Center Parcel T-5/6, Oakland, California; Subsurface Consultants, Inc.; August 21, 2001
3. Soil & Water Sampling, City Center Parcel T-5 and T-6, Oakland, California; Subsurface Consultants, Inc.; September 19, 2001
4. Supplemental Soil & Groundwater Investigation, City Center Parcel T-5 and T-6, Oakland, California; Subsurface Consultants, Inc.; July 16, 2002

NOTICE AND DIGEST

An Ordinance Authorizing the City Administrator, without returning to the City Council, to negotiate and execute a Disposition And Development Agreement and related documents between the City of Oakland, and Strada T5, LLC (or its Related entities or Affiliates) for sale of property on the block bounded by Broadway, 11th Street, 12th Street and Clay Street, commonly known as T-5/T-6, for no less than \$6.45 million and development as a residential mixed-use and hotel projects, all of the foregoing documents to be in a form and content substantially in conformance with the term sheet attached as Exhibit A.