



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 MAR -9 PM 3: 04

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki, Director
Director, EWD

SUBJECT: Sale of Oakport Property to Oakland
Acura at \$5.2 million

DATE: February 17, 2017

City Administrator Approval

Date:

3/8/17

RECOMMENDATION

Staff Recommends That City Council Adopt An Ordinance Authorizing The City Administrator Or Designee, Without Returning To The City Council, To Negotiate And Execute A Disposition And Development Agreement And Related Documents Between The City Of Oakland And Oakland Acura, Or A Related Entity For The Sale Of The Oakport Property (APN 041-3902-021) At The Agreed Upon Sales Price Of \$5.2 Million For The Development Of An Acura Dealership And Adopting CEQA Exemption Findings

EXECUTIVE SUMMARY

Oakland Acura ("Acura") proposes to purchase for \$5.2 million a 3.6-acre City-owned property located on Oakport Street (APN 041-3902-021) as shown in **Attachment A** to develop an Acura dealership on the site. The dealership needs to relocate since they are selling their current property at 277 27th Street (24th Street and Harrison Street) to the Holland Partner Group which is ready to develop an 18 story mixed-use project featuring 437 housing units and 65,000 square feet of retail space on the property. The Holland Partner Group is prepared to start construction in 2017, but cannot start work until Acura relocates to the other site. The City would like Acura to stay in Oakland, and the Oakport site with its freeway visibility is an ideal location for the Acura dealership. Oakland Acura has received its Planning approvals for their project and will be ready to start construction once Acura completes its conditions precedent to close of escrow in the Disposition and Development Agreement (DDA). Because this is a former Redevelopment Agency property purchased with tax increment revenue, the proceeds will be shared with the local taxing entities. The City will receive its 29% property tax share or \$1,508,000. Per Council policy, 25% of those "boomerang" proceeds (or \$398,750) will be deposited in the Affordable Housing Trust Fund.

BACKGROUND / LEGISLATIVE HISTORY

In 2000, the former Redevelopment Agency (Agency) sold a vacant 14.5-acre site to Zhong Technologies, Inc., for the purpose of developing a 300,000 square foot corporate campus. However, instead of developing a 300,000 square foot campus, only an 180,000 square foot campus was developed. Plans for the Zhong campus originally called for four buildings, but only three buildings were eventually developed: 1) a 30,000 square foot warehouse building at the southern rear portion of the property; 2) a 60,000 square foot office building that fronts the 1-880 freeway; and 3) a 90,000 square foot partially completed "core and shell" office building. The

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fourth and final 120,000 square foot office building that was originally planned was never developed.

At the time of the original sale to Zhone, the Agency entered into a disposition and development agreement that included a repurchase option to the Agency in the event the property was never fully developed within a given timeframe. In 2007, as a result of the fourth building never being completed, the Agency exercised its option and the un-developed portion (3.625 acres) was subdivided and ultimately repurchased from Zhone Technologies at its original sales price. Following the dissolution of the Agency in 2012, the property ownership was transferred to the City as Successor Agency.

In September of 2014, the County of Alameda purchased the larger 10.87-acre former Zhone campus located at 7001 Oakport Street from LBA Realty. The County has not since released any details regarding their plans for the property, but has indicated their interest in consolidating a number of their departments and offices at the subject property. In addition, the City and the County of Alameda jointly own the 120-acre Oakland-Alameda County Coliseum Complex. It should be noted that the current master plan for the Coliseum property excludes properties west of the I-880 freeway, so there is no obligation for the City to reserve the Property for the larger Coliseum project.

In November 2015, the City entered into an Exclusive Negotiating Agreement ("ENA") with Oakland Acura to negotiate the disposition of the City-owned parcel on Oakport Street. Acura has diligently completed its project deliverables pursuant to the terms of the ENA and has agreed to purchase the property from the City of Oakland. Acura will develop the Property into a new auto dealership, making this the latest addition to the City's growing Coliseum Auto Mile. The Property will house the dealership's new auto showroom and office space as well as a parts and service center.

The Project

The City owns the 3.6-acre parcel (APN #: 041-3902-021) located on Oakport Street, which does not have a formal street address but is often referred to as 6771, 6775, or the property adjacent to 7001 Oakport St. The Property lies south of 66th Avenue between the Damon Slough and the County-owned former Zhone campus at 7001 Oakport Street. The property consists of a vacant parking lot with asphalt paving, lighting, and modest landscape improvements and has approximately 350 feet of freeway frontage. Oakport Street is currently a two-way, two-lane street and is improved with concrete curbs, gutters and lighting and runs parallel and west of Interstate I-880, which gives the property excellent freeway visibility (**See Attachment A**).

The property occupies a very strategic location directly across from the Oakland Alameda County Coliseum Complex which attracts over three million patrons per year for sporting events, concerts, and entertainment. The property is also near the Oakland International Airport and is

directly adjacent to the Oakland Airport Business Park. Over the years, major public improvements have occurred along Oakport Street between 66th and Hegenberger that enhance the area's character as a district for auto, truck, and motorcycle dealership sales. The property is located along the Coliseum Auto Mile which runs along I-880 between High Street and 98th Avenue and features dealerships such as Toyota One of Oakland, Coliseum Lexus, Paul Blanco's, as well as Freightliner, TEC Oakland (Volvo, Mack, GMC Trucks), and a Bob Dron Harley Davidson Motorcycle dealership along Hegenberger Road.

Acura

Acura needs to find a new location since they are in the process of selling their current property at 277 27th Street. However, rather than permanently closing or moving to another City, Acura is interested in relocating its business to the City-owned parcel along Oakport Street. Introducing a new dealership on Oakport would not only complement the existing auto dealerships, but would also draw additional buyers and foot traffic to the area which may increase overall automobile sales and therefore real property taxes and additional sales and business taxes to the City. Architectural designs and renderings featuring the new dealership location have already been completed and Acura anticipates starting construction immediately following the DDA period. Acura currently estimates the cost of building the new dealership at approximately \$12 million dollars. The new dealership will feature a two-story building with programmed space for dealer showroom, sales offices, service department with service bays, parts department, washing and detailing area, and a surface parking lot featuring the latest environmental and sustainable storm-water features (**See Attachment B**).

ANALYSIS AND POLICY ALTERNATIVES

Acura has currently completed all of its deliverables pursuant to the ENA including obtaining Planning entitlements and a Notice of Determination and Notice of Exemption in August 2016. Staff commissioned and received a copy of an independent Member of Appraisal Institute (MAI) appraisal from Fabbro, Moore & Associates Inc., one of the City's on-call appraisal firms, which estimated the fair market value of the Property at \$5.5M. However, Acura felt that the City's appraisal neglected to make any special adjustments to the fair market value to reflect the existing soil conditions, as well as the cost of infrastructure improvements to ready the site for use. As a result, Acura decided to order its own independent appraisal. The City received a copy of Acura's independent appraisal completed by Integra Realty Resources estimating the Property's fair market value at \$4.4M.

As part of the disposition of City-owned property, the City must undergo an independent analysis of the property as required by Government Code 52201. In order to meet the requirements of this government code, the City maintains on-call real estate economic firms to provide the required findings. Economic & Planning Systems, Inc. (EPS) provided their summary of findings (**See Attachment C**). EPS' findings indicate that the agreed upon value of the property, estimated at \$5.2 million is based on the highest and best use permitted under the current zoning. It reflects the average between the two appraisals of the market value of fee

simple interest in the land (\$5.5 million and \$4.4 million) with a five percent increase made by EPS to adjust for the escalation in the land value market over the last quarter of 2016.

Under the City's Lease vs. Sale Policy, long-term ground leases are preferred versus a sale unless the City Council determines a sale is in the City's best interest. City staff recommends selling the land to Acura rather than entering into a long term ground lease since Acura has indicated that they would not be able to obtain viable project financing through their parent company Honda Motors under a long term ground lease because the land is required as collateral. To facilitate the development with Acura, staff is recommending that the City consider the transfer of the Property through a Disposition and Development Agreement (DDA) rather than a Lease and Development Agreement (LDDA). If the City wants to maintain an investment in land, the proceeds from this sale could be used to purchase other property.

FISCAL IMPACT

Anticipated Fiscal and Economic Impacts to the City/Community

1. **Sales Proceeds**- As a former Redevelopment Agency property, the \$5.2 million in sale proceeds will be distributed to local taxing entities, pursuant to a Cooperation Agreement entered into during dissolution of the Agency. The City's property tax share of 29% will yield \$1,508,000 to the General Purpose Fund from this property sale.
2. **Sales Tax**- The dealership expects to continue generating at least \$200,000 in net sales tax to the City on an annual basis. Sales projections at the new location anticipate even higher sales volume.
3. **Business Tax**- Approximately \$50,000 in annual business tax fees are currently generated at the existing location. Due to a higher anticipated sales volume, the dealership currently estimates approx. \$65,000 in annual business tax fees being generated at the new proposed location.
4. **Real Property Taxes**- Based on a \$5.2M transaction, over \$72,800 in annual property taxes and over \$82,500 in real property transfer taxes would be generated.

PUBLIC OUTREACH / INTEREST

The Coliseum Specific Plan and California Environmental Quality Act/Environmental Impact Report (CEQA/EIR) process was completed in 2014 surrounding the Coliseum Arena site including the area where the Property is located. As part of this process, staff solicited input from the community regarding the land use and zoning designations for the area at nearly three dozen public meetings over a two year period. The zoning for the Oakport parcel is currently D-CO-3 which conditionally permits auto sales.

COORDINATION

Economic and Workforce Development (EWD) staff worked closely and coordinated with the Planning and Building Department on the Coliseum CEQA/EIR Specific Plan process. In addition, the City Attorney's Office, Real Estate Services Division of EWD, and Project Implementation staff were responsible for the re-acquisition of the Property. Staff from these groups will also work on the final Disposition and Development Agreement (DDA).

SUSTAINABLE OPPORTUNITIES

Economic: By retaining the existing Oakland dealership, approximately 66 local jobs will be retained with approximately 15 of those positions having current Oakland addresses. Positions will range from sales management, service, parts, and administration. It is also anticipated that up to 80 construction jobs would be required to build the project. The new proposed dealership will also complement the other existing dealerships and should increase the amount of potential buyers of vehicles along the Coliseum Auto Row.

Environmental: Acura proposes to construct a new state of the art facility complete with sustainable building materials and methods and shall incorporate storm water filtration standards for the entire parking lot area.

Social Equity: The project will provide local construction jobs and will produce new sales, administrative, and service jobs to run the operations and facility and will provide a positive stimulus for the local economy.

CEQA

In August 2016, the Oakland City Planning Commission determined that, under the California Environmental Quality Act (CEQA), the project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. The zoning for the Oakport Street parcel is currently D-CO-3, which conditionally permits auto sales.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends Approval of an Ordinance Authorizing The City Administrator Or Designee, Without Returning To The City Council, To Negotiate And Execute A Disposition And Development Agreement And Related Documents Between The City Of Oakland And Oakland Acura, Or A Related Entity For The Sale Of The Oakport Property (APN 041-3902-021) At The Agreed Upon Sales Price Of \$5.2 Million For The Development Of An Acura Dealership And Adopting CEQA Exemption Findings

For questions regarding this report, please contact Theresa Lopez, Urban Economic Coordinator at (510) 238-6250.

Respectfully submitted,



Mark Sawicki, Director
Economic and Workforce Development

Reviewed by:

Patrick Lane, Manager and
Larry Gallegos, Area Manager

Prepared by:

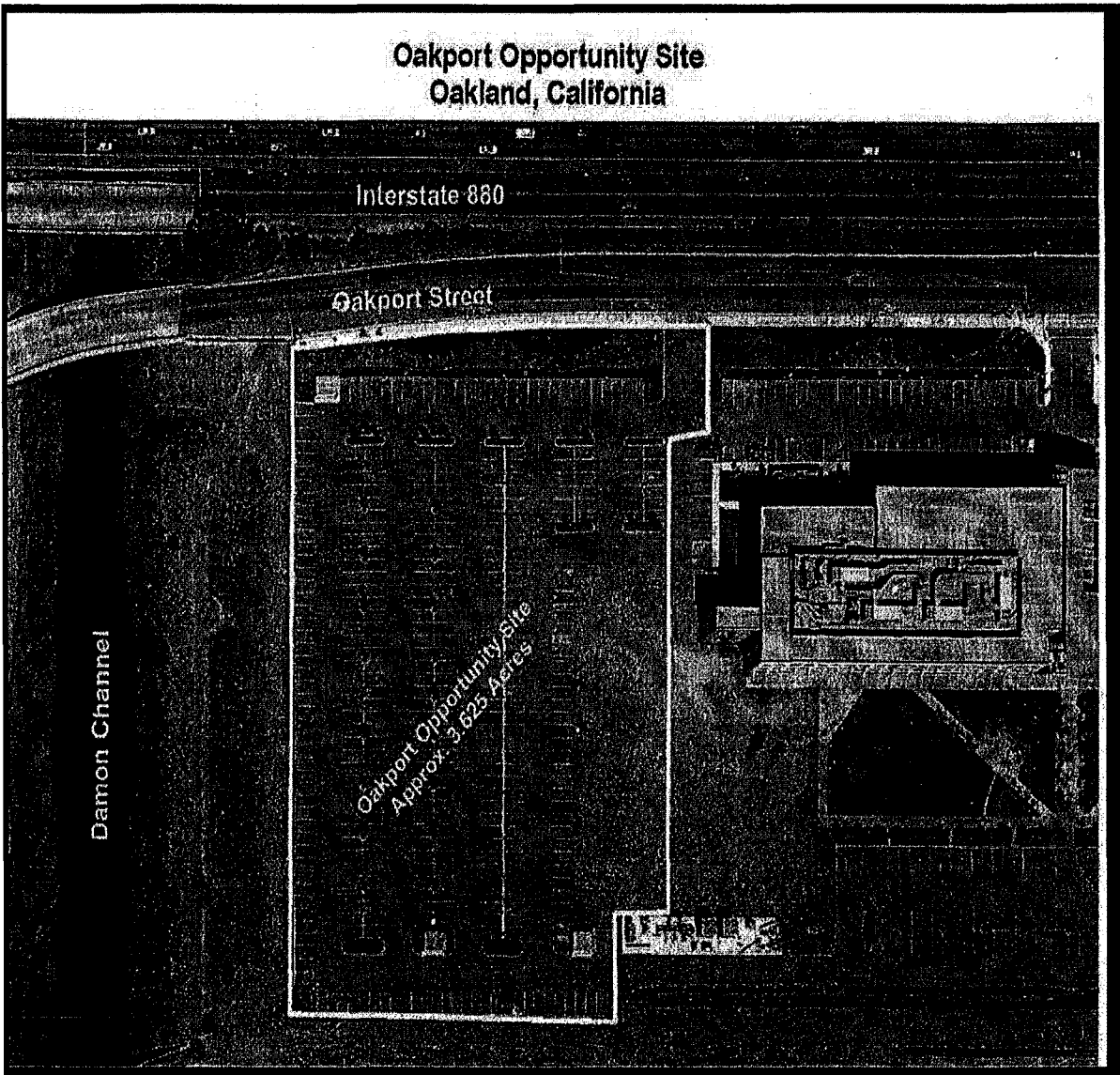
Theresa Lopez, Urban Economic Coordinator
Project Implementation

Attachments:

1. Attachment A- Oakport property
2. Attachment B- Acura Dealership proposed development
3. Attachment C- EPS Review and Findings Pursuant to Government Code 52201
4. Attachment D- Term Sheet

Item: _____
City Council
March 21, 2017

Attachment A



ATTACHMENT B



ACURA OF OAKLAND

6701 OAKPORT STREET
OAKLAND, CALIFORNIA



**Michael Zucker
& Associates**

Architects & Interior Design
155 Montgomery Street, Suite 201
San Francisco, CA 94104
T: 415.387.7000
F: 415.387.7633

PROJECT NUMBER: 150000000

PROJECT DATA

OCCUPANCY CLASSIFICATION: B, S-3, S-1
ZONE: D-CO-3
CODE EDITION: CALIFORNIA BUILDING CODE 2013
TYPE OF CONSTRUCTION: TYPE V-N SPRINKLERED
SITE AREA: 157,905 SF (3.625 ACRES)
BUILDING GROSS AREA: 38,000 GSF
BUILDING HEIGHT: 2 FLOORS; 27'-6"

PROJECT TEAM

Owner / Developer:
Mr. Gordon Walton
Walnut Creek Associates S, Inc.
277 27th Street
Oakland, CA 94612

Architect:
MICHAEL ZUCKER & ASSOCIATES
155 Montgomery Street, suite 201
San Francisco, CA 94104
Michael F. Zucker, AIA

Landscape Architect:
PGA Design
LANDSCAPE ARCHITECTS
444 17th Street
Oakland, CA 94612
Ms. Chris Pattillo FASLA

Structural Engineer:
IDA Structural Engineers, Inc.
1629 Telegraph Avenue, Suite 300
Oakland, CA 94612
Mr. Stephen Dejesse, SE

Mechanical, Electrical & Plumbing Engineer:
Giumac Engineers
150 California Street, Suite 300
Mr. Michael Howe

Geotechnical & Civil Engineer:
ARUP
560 Mission Street, Suite 700
San Francisco, CA 94105
Mr. Martin Walker P.E.

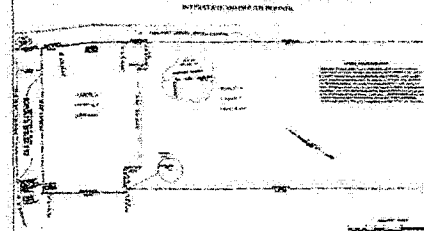
General Contractor:
Zyc Crouse
Crouse Construction Company
1551 Third Ave.
Walnut Creek, CA 94596

EIR / CEQA:
Lamphier-Gregory
1944 Embarcadero
Oakland, CA 94606
Mr. Scott Gregory

VICINITY MAP



PARCEL MAP



DRAWING INDEX

A-0.1 COVER PAGE
A-0.2 PERSPECTIVE 1
A-0.3 PERSPECTIVE 2
A-0.4 SURVEY WITH PROPOSED BLDG. FOOTPRINT
A-1.0 SITE PLAN
A-2.0 GROUND FLOOR PLAN
A-3.0 2ND FLOOR PLAN
A-4.0 EAST AND NORTH ELEVATIONS
A-5.0 WEST AND SOUTH ELEVATIONS
1 OF 1 SURVEY
L-1.0 LANDSCAPE PLAN

APPLICABLE CODES

THE WORK SHALL BE PERFORMED IN ACCORDANCE WITH APPLICABLE CODE REQUIREMENTS, AND APPLICABLE REQUIREMENTS OF ALL OTHER REGULATORY AGENCIES, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- CALIFORNIA BUILDING CODE 2013
- CALIFORNIA ELECTRICAL CODE 2013
- CALIFORNIA MECHANICAL CODE 2013
- CALIFORNIA PLUMBING CODE 2013
- CALIFORNIA ENERGY CODE 2013
- CALIFORNIA FIRE CODE 2013
- STATE REFERENCE STANDARDS CODE 2013
- NATIONAL FIRE PROTECTION ASSOCIATION PAMPHLETS 13 & 72, 2013 EDITION

PROJECT: 150000000

**ACURA
of Oakland**

6701 Oakport Street
Oakland, CA 94621

AT A GLANCE APPROVAL



PROJECT NO.

DATE

SCALE

SHEET NUMBER

SHEET NUMBER



**Michael Zucker
& Associates**

Architecture • Interior Design
105 Montgomery Street Suite 201
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T 415.857.0050
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ISSUE	DATE
DEVELOPMENT REVIEW	07/11/2017

PROJECT TITLE/ADDRESS

ACURA
of Oakland

6701 Oakport Street
Oakland, CA 94621

STAMP/APPROVALS



PROJECT NO.

DRAWN BY

SCALE AS NOTED

SHEET TITLE

PERSPECTIVE 1

SHEET NUMBER

A-0.2



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ISSUE	DATE	PROJECT REVIEW
		BOZEMAN

ACURA
of Oakland

6701 Oakland Street
Oakland, CA 94621



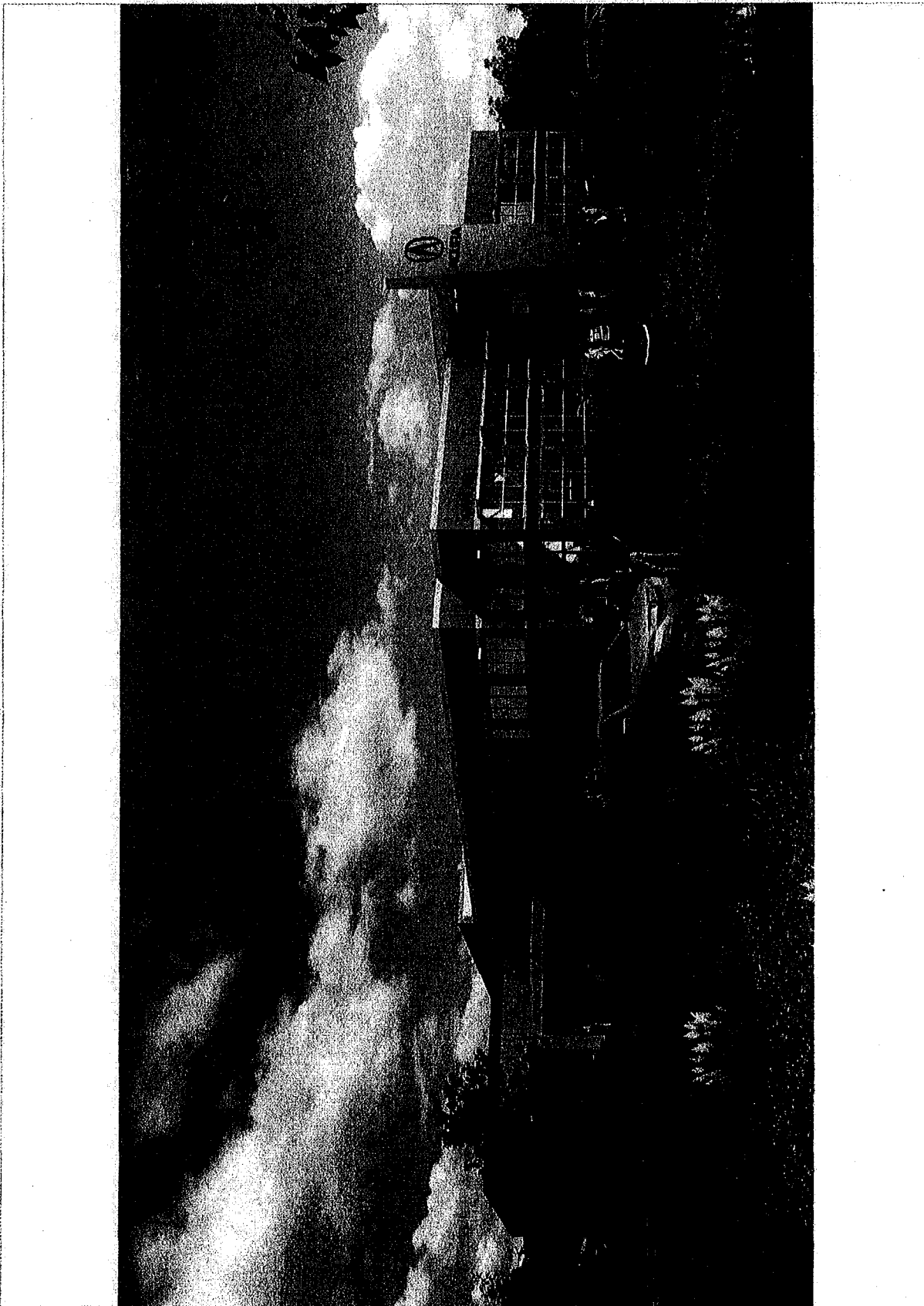
PROJECT NO.	PROJECT NAME	DATE

SCALE	AS NOTED

SHEET TITLE

PERSPECTIVE 2

SHEET NUMBER
A-0.3





**Michael Zucker
& Associates**
Architecture • Interior Design

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PROJECT: DATE:
DEVELOPMENT REVIEW: 03/14/2018

PROJECT TITLE/ADDRESS:

ACURA
of Oakland

6721 Oakport Street
Oakland, CA 94621

STAMPS/APPROVALS



PROJECT NO.

DRAWN BY

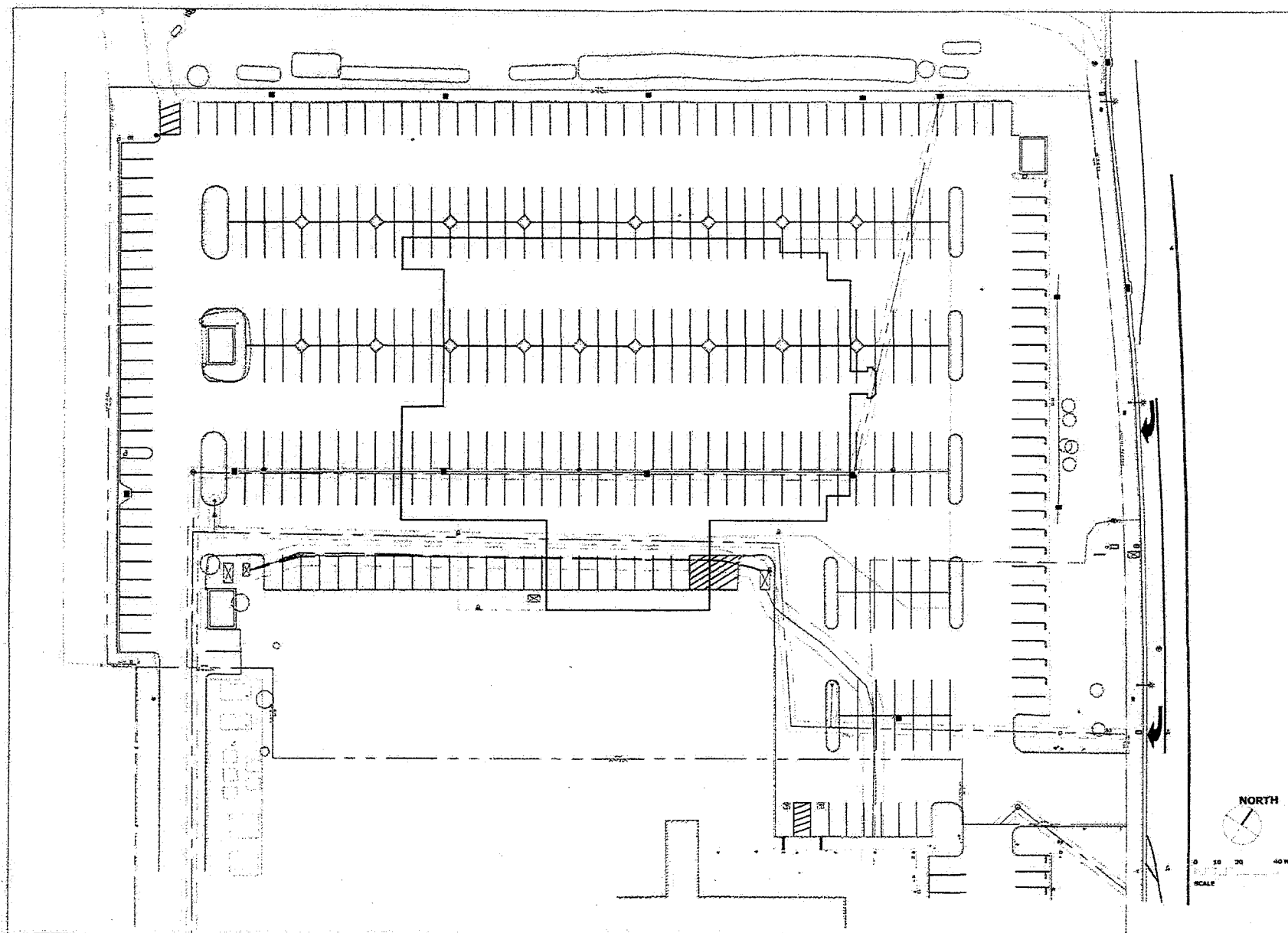
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SHEET TITLE

**SURVEY WITH
(P) BLDG
FOOTPRINT**

SHEET NUMBER

A-0.4





**Michael Zucker
& Associates**

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19 JUL 2017 DATE
PROJECT POWER 1 05/02/2016

PROJECT TITLE/ADDRESS
ACURA
of Oakland

6701 Oakport Street
Oakland, CA 94621

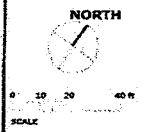
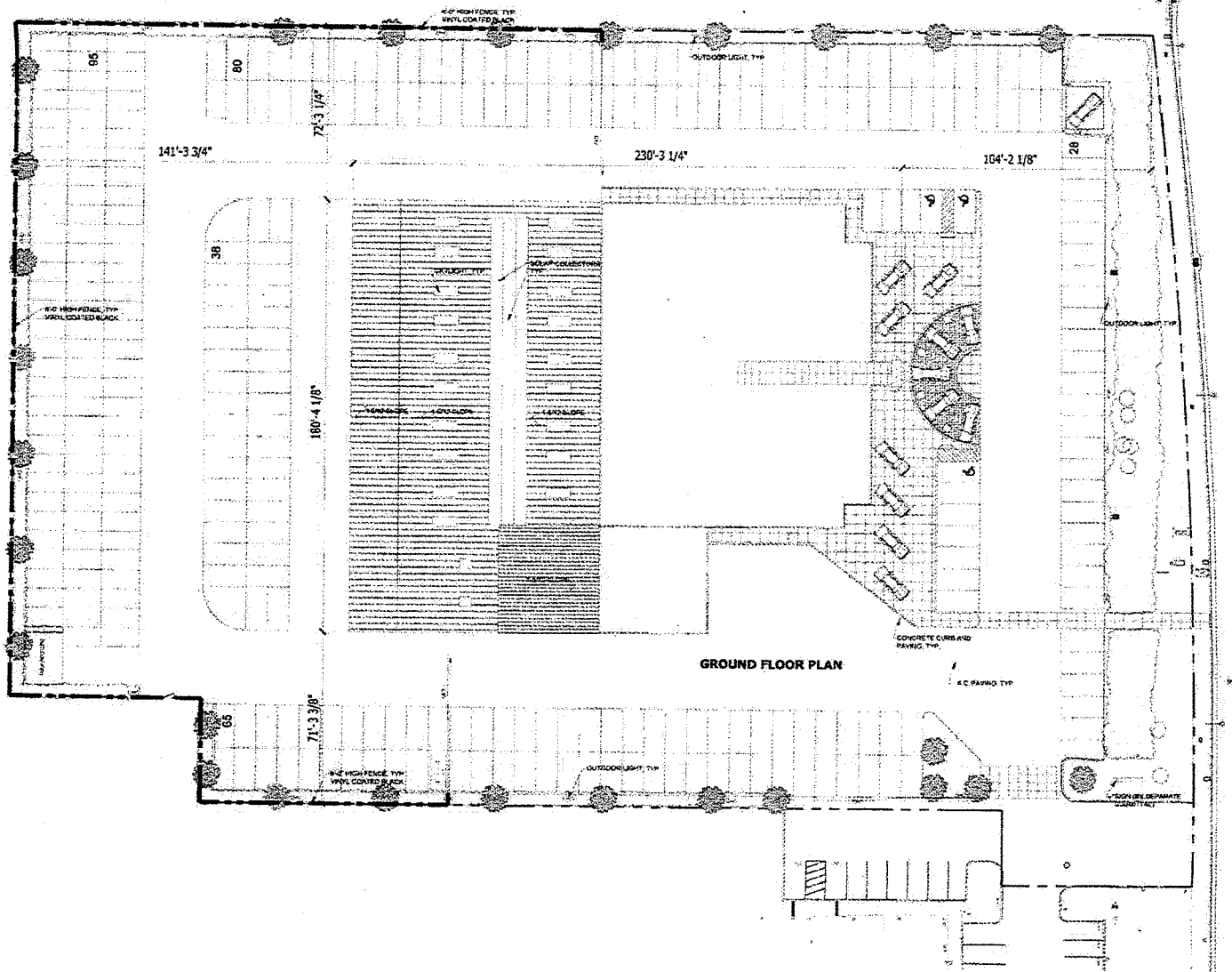
STAMP/APPROVALS



PROJECT NO.
DRAWN BY
CHECKED BY
SHEET TITLE

SITE PLAN

SHEET NUMBER
A-1.0



ATTACHMENT C

DRAFT MEMORANDUM

To: Theresa Lopez, City of Oakland
From: Jason Moody and Michael Nimon
Subject: Acura Dealership Lease Review and Findings Pursuant to
Government Code Section 52201; EPS #161131
Date: February 6, 2017

The Economics of Land Use



This memorandum provides analysis required under Government Code (GC) Section 52201 for disposition of a surface parking lot located at 6775-7001 Oakport Street in Oakland (the Project). The site consists of 3.6 acres with Interstate 880 frontage. The Project site is owned by the Oakland Redevelopment Successor Agency (housed within the Office of Economic and Workforce Development Department and referenced hereafter as Agency), which is contemplating a sale to the Acura Dealership (the Buyer). The Project envisions development of a 35,000-square foot, 2-story showroom to be used for auto sales and accommodate relocation of the Acura franchise from its existing Uptown location on Grand Avenue.

The Agency has retained Economic & Planning Systems (EPS) to provide an independent financial assessment of development economics based on the most recent Project assumptions. This memorandum builds on the Fabbro, Moore & Associates, Inc. appraisal completed on September 10, 2016 and the Integra Realty Resources appraisal on October 4, 2016. Both appraisals determined the fee value of the site based on comparable sales in the region.

Scope and Methodology Overview

This memorandum addresses specific Government Code Section 52201 requirements including the following:

1. The cost of the agreement to the City, including land acquisition, clearance, relocation of any improvements provided by the City, and the expected interest on any loans or bonds to finance the agreements (52201.2B.i).
2. The estimated value of the property to be conveyed or leased, determined at the highest and best use permitted under the general plan or zoning (52201.2B.ii).

*Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612
510 841 9190 tel
510 740 2080 fax*

*Oakland
Sacramento
Denver
Los Angeles*

www.epsys.com

3. The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments which the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use, then the City shall provide as part of the summary and explanation of the reasons for the difference (52201.2B.iii).
4. An explanation of why the sale or lease of the property will assist in the creation of economic opportunity, with reference to all supporting facts and materials relied upon in making this explanation (52201.2B.iv).

This analysis relies on industry standards, EPS's experience with similar projects, and a review of market conditions and trends in Oakland and the Bay Area. Specifically, EPS has reviewed the recent land sale transactions in the region to validate the value conclusions in the appraisal. EPS has not conducted a detailed market or development feasibility analysis associated with this Project. Actual financial outcomes may differ from those estimated in the appraisal to the extent that future economic cycles, market, and development trends change.

Summary of Findings

1. **Other than prior site acquisition, the City is not expected to incur substantial costs from land disposition to Acura.** This is because the land sale is subject to the prevalent market value that falls within the range of estimates between the two professional appraisals and buyer will incur all clearance and improvement costs under the contemplated deal structure. The City will not require any loans or bonds to finance the agreements and will therefore incur no expected interest expenses.
2. **The appraised value of the site is estimated at \$5.2 million based on the highest and best use permitted under the current zoning.** It reflects the average between the two appraisals of the market value of fee simple interest in the land (\$4.4 million and \$5.5 million) with a 5 percent increase made by EPS to adjust for the escalation in the land value market over the last quarter of 2016.¹ The site's automotive sales use is consistent with existing zoning of regional commercial based on the Coliseum Area Specific Plan adopted in 2015 and results in the highest and best use based on the appraisal findings. This estimate is consistent with values generated by recent commercial land sales along the I-880 corridor, reviewed by EPS.
3. **Implementation of the Project will create economic opportunity in the neighborhood as well as other goals and policy objectives.** These goals include retention of auto dealers in the City, neighborhood revitalization, creation of employment opportunities, and attraction of private investment. The Acura dealership is currently located in the Broadway/Valdez Specific Plan area, a neighborhood that has been undergoing substantial economic transition to higher value and higher density uses. As this neighborhood continues to be built out, many of the City's existing auto sales uses may be displaced

¹ Average commercial land sale prices in Alameda County increased by 20 percent from the third quarter of 2016 to the first quarter of 2017 according to Costar data.

elsewhere unless the City targets retention through the provision of alternative sites. Automotive sales are typically associated with significant fiscal benefits and employment generation.

Other Section 52201 Documentation

Existing Use and Zoning

The site is currently used as a surface parking lot. It is located within the Coliseum Area Specific Plan and is zoned D-CO-3 (Coliseum Area Commercial District Zone 3). While residential uses are prohibited, the zoning allows a range of civic activities, general food and retail sales, restaurants, consumer services, financial services, various types of personal services, offices, certain types of manufacturing, and research and development uses. Auto dealership sales, among other commercial uses, are allowed as a conditional use. Maximum building height allowed under the existing zoning is 159 feet with maximum allowed floor area ratio of 6. There is no parking requirement for automotive uses in a D-CO-3 district.

Highest and Best Use Fee Ownership Value

The fee value of the site was appraised based on the sales comparables approach, defined as "the process in which a market value estimate is derived by comparing the subject property to similar properties that have recently sold, are listed for sale, or are under contract." The Fabbro, Moore & Associates, Inc. appraisal completed on September 10, 2016 found an automobile dealership as the highest and best use of the property and established the value based on seven recent auto sales use transactions and one current listing with appropriate adjustments. This approach established the highest and best use value for the site at \$5.5 million or \$1.5 million per acre.

The Integra Realty Resources appraisal completed on October 4, 2016 found a speculator owner/user as the highest and best use of the property and also established the value based on seven recent commercial land sale transactions. This approach also considered the soil conditions of the site and established the highest and best use value at \$4.4 million or \$1.2 million per acre.² While both of these estimates fall within the range of recent commercial land sales along the I-880 corridor reviewed by EPS, the average was used with a 5 percent inflation adjusted to reflect the recent escalation in land values since fall 2016, when the appraisals were completed.

The appraised values are based on the sales approach, which often vary from economic value because of the wide variety of factors embodied in actual market transactions, including land speculation, the unique characteristics of individual sites (e.g., views, access, adjacencies), the financial and negotiating position of various parties involved, and other factors. Differences between appraised values and economic values of land can be especially pronounced for auto dealers where unique business factors can substantially affect willingness to pay for land across various locations.

² While each appraisal used seven land sale comparables, five of the seven transactions were used in both appraisals. However, these transactions were adjusted differently for the purpose of comparison to the Project site.

Creation of Economic Opportunity

The redevelopment of the Acura site is expected to advance several primary goals of the 2014 Broadway-Valdez Specific Plan and the 2016 Downtown Oakland Specific Plan. Many land use goals fall under two major policy concepts listed in the Broadway-Valdez Specific Plan: 1) Create a "Complete" Neighborhood and Balanced Land Uses and 2) Redevelopment and Revitalization.³ By establishing these land use goals the City hopes to "promote the transition of the Plan Area from the automobile-centric commercial strip to a more balanced mix of uses appropriate for the renaissance of Oakland's Downtown".

Economic development is one of the seven guiding elements of the Downtown Oakland Plan, which describes the City's work to encourage strategic transit-oriented development while capturing and retaining businesses that employ residents in good quality jobs. Accordingly, the following benefits will likely be created by the accommodation of the Acura dealership in an alternative location within the City's boundaries:

1. Development of an automotive cluster in the Coliseum district. The area already has three auto dealerships located along Oakport Street and other auto service uses located between Hegenberger Road and 66th Avenue. Consolidation of auto sales at this location makes sense given the visibility and freeway accessibility desired by these users.
2. Provision of increased revenues to the City, including sales, property, business license, and other fees, taxes, and revenues.
3. Creation and retention of local job opportunities and the preservation of the area's existing employment base.
4. Enhancement of a sense of safety and place in the area by enhancing activity and attracting a constant flow of customers to the area.
5. Attraction of customers to support and revitalize neighborhood commercial areas and strengthening retail in the Project Area.

The contemplated land sale transaction of the site to Acura conforms to the broader economic opportunity objectives and creates abovementioned benefits for the City.

³ Land Use goals are LU-2, LU-3, LU-4, LU-5, LU-7, LU-8, LU-9, LU-10, LU-11, CD-1, CD-2, CD-3, C-1, IMP-1, IMP-2, IMP-4, IMP-5 in the Broadway Valdez Specific Plan (2014).

ATTACHMENT D

ATTACHMENT D

DDA TERM SHEET
OAKPORT STREET (APN #: 041-3902-021)

March 7, 2017

Note- This nonbinding term sheet shall serve as the basis for the negotiations of a detailed final Disposition and Development Agreement (“DDA”) between the City and Walnut Creek Associates 5 Incorporated, a California corporation, doing business as Oakland Acura (the “Developer”). The terms hereof are not binding on the City unless and until the Developer and the City Administrator, pursuant to City Council authorization, have executed a mutually acceptable DDA for the proposed project.

1	OWNER	City of Oakland
2A	DEVELOPER	Walnut Creek Associates 5 Incorporated, a California corporation, doing business as Oakland Acura (“Acura” or “Developer”)
2B	NO ASSIGNMENT	Except as may be set forth in the DDA, Developer shall have no right to assign the DDA nor the development of the Project.
3	COMPLETION GUARANTY	<p>Developer to provide City a Completion Guaranty as part of DDA and as a condition to closing. Guarantor must be a financially strong entity with significant assets or capital sufficient to complete the development of an automobile dealership (the “Project”), pursuant to criteria set forth in the DDA, and acceptable to the City in its sole and absolute discretion. The Guarantor shall guarantee Project completion, as determined by City. Developer will identify the Guarantor within 90 days after DDA approval.</p> <p>A “Form of Guaranty” will be included as an attachment to the DDA and will need to be executed by the City-approved guarantor at close of escrow.</p>
4	PROPERTY	Approximately 3.625 acre parcel owned by the City: APN #: 041-3902-021 located on Oakport Street between the Damon Slough and 7001 Oakport Street in Oakland, California (the “Property”). (See attached map).

5	PROJECT DESCRIPTION	The proposed development comprises the construction of an automobile dealership with an approximate 38,000 square foot structure, including a Service Department and 20 parking spaces for customers and 280 parking spaces for new and used inventory and employee parking.
6	PURCHASE PRICE	The purchase price shall be <u>\$5,200,000.00</u> (Five Million Two Hundred Thousand Dollars and No Cents) which was based on a negotiated value determined by the City of Oakland and Developer.
7	TERMS OF PAYMENT/ CLOSING	The full purchase price amount will be due to the City and payable in cash or certified funds submitted into escrow 3 business days before close of escrow. Escrow to close in accordance with the schedule of performance contained herein. (Item #10).
8	GOOD FAITH DEPOSIT	Upon execution of the DDA, Developer will provide to the City a \$50,000 Good Faith Deposit. If the Developer negotiates in good faith and is not otherwise in default, but fails to reach agreement with City, or City otherwise declines, in its sole and absolute discretion, to enter into a DDA, City shall return the Good Faith Deposit to Developer. Subject to the next sentence, said good faith deposit shall be credited to the purchase price at closing. If the Developer fails to close under the DDA terms, (unless extended in writing by the City), or for reasons beyond the Developer's control (excepting financial ability), or the Developer otherwise defaults on any obligation under the DDA, the City shall retain the Good Faith Deposit as liquidated damages.
9A	DEFAULT	DDA to include City's standard remedies including, without limitation, right to terminate transaction upon Developer's default.
9B	CITY'S REPURCHASE OPTION	If: (1) construction on the Project does not start within 30 days after close of escrow and diligently proceeds thereafter; or (2) the Project is not completed by July 15, 2018, City will have the option to repurchase the Property for the original sale price. If the Project is delayed due to government action, the July 15, 2018 completion date shall be extended for 6 months. City's Option is assignable or transferable. There will be a 30 day notice and cure process for any such default.

10	SCHEDULE OF PERFORMANCE TARGET DATES	<p>Within <u>60 Days</u> of DDA Execution</p> <p>Developer shall submit 2 years of unaudited financial statements, prepared by its internal controller, according to standard general accounting principles, for Oakland Acura or related entity for City review and submit an update 60 days prior to close of escrow. However, City reserves the right to have a third party consultant provide an independent review of the financials.</p> <p>Within <u>90 Days</u> of DDA Execution</p> <p>Developer shall submit evidence of funds/equity commitments for land acquisition for City review and submit an update 30 days prior to close of escrow. Developer shall identify a Guarantor and controlling entity that is satisfactory to the City in its sole and absolute discretion.</p> <p>Within <u>120 Days</u> of DDA Execution</p> <p>Developer shall submit architectural schematic designs (35%), design development (65%), and construction designs (90%). Developer shall submit all regulatory and required governmental applications and pay all necessary permit fees required for demolition, grading, utilities, off-site, on-site and building approvals.</p> <p>Within <u>150 Days</u> of DDA Execution</p> <p>Developer shall finalize and submit proof of construction and permanent related financing and include a copy of the construction contract.</p> <p>Within <u>180 Days</u> of DDA Execution</p> <p>Developer shall submit copies of all governmental and regulatory permits issued for Project.</p> <p>After Close of Escrow DDA</p> <p>Commence Construction - Within 30 days after close of escrow and proceed diligently thereafter.</p> <p>Complete Construction – By July 15, 2018.</p>
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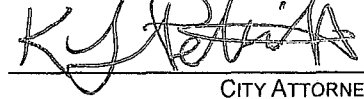
11	TITLE INSURANCE	Developer to secure title insurance policy, if desired, at its own cost and expense from Chicago Title, 1 Kaiser Plaza, Suite 1305, Oakland, CA 94612 - Attn: Laurie Edwards.
12	CLOSING COSTS	Developer shall pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
13	LIMITATIONS ON PROPERTY RIGHTS	<p>Without limiting Developer's title review contingencies, Developer accepts and acknowledges the Property may be subject to deed restrictions and recorded covenants to restrict use of property, as applicable in the DDA.</p> <p>Developer to comply with provisions of: 1) the Coliseum Area Redevelopment Plan and nondiscrimination provisions of redevelopment law and 2) the Coliseum Area Specific Plan.</p>
14	CONDITION OF PROPERTY AT DELIVERY	<p>Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City, including without limitation, with respect to the presence of hazardous materials known or unknown on or near the Property.</p> <p>Parties shall provide each other with any and all Environmental Soils reports in their possession 60 days prior to close of escrow.</p>
15	ENVIRONMENTAL REMEDIATION	<p>Environmental Notice. The City hereby gives notice to the Developer that, to the best of its knowledge there are no Hazardous Materials present on or beneath the Property other than those set forth in those environmental site assessments (ESA) and reports as follows:</p> <ul style="list-style-type: none"> Developer to provide City any environmental studies conducted by its consultants under the ENA. <p>The City shall not be liable for any previously identified or unforeseen environmental remediation costs.</p>
16	INDEMNIFICATION	Developer shall provide standard commercial hold harmless and defend provisions to the City of Oakland and its Councilmembers, employees, officers, directors, partners and agents. City and Developer to negotiate the various levels of indemnification as part of the DDA.

17	NO COMMISSION	City shall not pay or be liable for any commissions or brokerage fees. The parties shall hold each other harmless and defend against any claims for commissions or brokerage.
18	SIGNAGE	Developer may not install or place signage on any existing City street outside the Property or in the public corridor, without prior approvals and proper permits. Developer may install and place signage on the remaining Property in compliance with City codes, or other applicable codes or regulations.
19	DEVELOPER MAINTENANCE/ STANDARD OF PROPERTY	Developer to maintain the Property and Project in first-class condition and shall ensure that the Property never violates the City's Blight Ordinance.
20	FINAL CONSTRUCTION PLANS	The Developer and its design consultants shall meet or exceed requirements of City's Green Building Ordinance as it pertains to this project and particularly with regards to sustainable storm water features.
21	PAYMENT & PERFORMANCE BONDS	Guarantee (form to be determined) shall be in the amount of 100% estimated construction cost.
22	RIGHT OF ENTRY	Developer shall have the right to enter the Property prior to transfer to conduct any investigation, testing at Developer's cost and pursuant to its License Agreement with the City. Developer shall have the right to Use the Property for purposes of completing the Work described in the Agreement, subject to providing the City with indemnity, insurance and other terms set forth.
23	FINANCING	The DDA shall include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA shall include customary mortgagee protections in favor of an Approved Lender.

24	SALE OR REFINANCE OF IMPROVEMENTS	<p>The DDA shall include non-exclusive criteria regarding the “reasonableness” standard for City consent that will include, without limitation, City’s sole and absolute right to withhold consent to any change in permitted uses, and City’s right to consider proposed assignee’s financial capacity, general business reputation, and experience in the allowed uses.</p> <p>Developer shall have no transfer rights prior to completion of construction of the Project, except for as permitted in #27 below</p>
25	TAXES	<p>Developer shall be solely responsible for the payment of any taxes, levies, assessments, fees or charges that may be assessed against the Property or Acura or the City with respect to the Property, the occupation or operation thereof, the revenue derived there from, or any personal property or fixtures located thereon arising from Acura’s construction and operations (collectively referred to as "Taxes).</p>
26	STANDARD CONDITIONS	<p>The DDA shall include standard City conditions, including completion guaranty executed on or before the Closing Date; approval by City of financing plan, assignment and transfer, amendments to project and project approvals, copies of all required regulatory approvals; and insurance policies; and default, notice and cure, and termination provisions.</p>
27	PERMITTED TRANSFERS	<p>Prior to Project completion, Acura shall not have the right to assign or transfer all or any portion of its rights and obligations under the DDA, other than to an Affiliate Transfer.</p> <p>An Affiliate Transfer shall not require consent (but will require prior notice to and review by City) and shall mean a transfer to an entity or entities for which Acura maintains control as defined in the DDA.</p>
28	OFF-SITE IMPROVEMENTS	<p>Developer to be responsible for the cost of any off-site improvements and relocation of all existing utilities and easements in advance of the Project.</p>

29	CAPITAL IMPROVEMENT	The City's Capital Improvement Impact Fee (a "CI Requirement") and Transportation Impact Fee (a "TI Requirement") as well as other Impact Fees may apply to the Project pursuant to approved City Ordinances.
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2017 MAR -9 PM 3:04


CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND OAKLAND ACURA, OR A RELATED ENTITY FOR THE SALE OF THE OAKPORT PROPERTY (APN 041-3902-021) AT THE AGREED UPON SALES PRICE OF \$5.2 MILLION FOR THE DEVELOPMENT OF AN ACURA DEALERSHIP AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, the City of Oakland, a municipal corporation ("City") owns an approximately 3.625 acre parcel (the "Property") located adjacent to 7001 Oakport Street; and

WHEREAS, Walnut Creek Associates 5 Incorporated, a California corporation, doing business as Oakland Acura ("Acura" or "Developer") is proposing to purchase the Property from the City of Oakland to develop an Acura dealership on the property; and

WHEREAS, on October 6, 2015, the City Council pursuant to Resolution No. 85803 C.M.S authorized an Exclusive Negotiating Agreement (ENA) with Oakland Acura for a period of twelve months with the option by the City Administrator or designee in his/her sole discretion to extend for an additional six months; and

WHEREAS, Oakland Acura has diligently completed its project deliverables pursuant to the terms of the ENA; and

WHEREAS, Oakland Acura submitted a proposal to purchase the Property to develop a new Acura Dealership featuring a showroom, service center, parts department consisting of an approximately 38,000 square foot building (the "Project") on the Property; and

WHEREAS, the agreed upon purchase price of the Property is Five Million Two Hundred Thousand Dollars (\$5,200,000); and

WHEREAS, City staff is currently negotiating the terms and conditions under which the City will pursue a Disposition and Development Agreement ("DDA") with Oakland Acura for the sale of the Property to Acura; and

WHEREAS, the Property is located in the Coliseum Project Area and was owned by the former Oakland Redevelopment Agency ("Agency") prior to its dissolution pursuant to AB IX 26 and AB 1484 (collectively, "Redevelopment Dissolution Act"); and

WHEREAS, disposition of the Property is governed by (1) the Long Range Property Management Plan prepared by the Oakland Redevelopment Successor Agency ("ORSA") and approved by the ORSA Oversight Board and the State Department of Finance, and (2) the Compensation Agreement entered into by the City and taxing entities pursuant to the Redevelopment Dissolution Act; and

WHEREAS, California Government Code Section 52201 ("State Law") requires that before any real property formerly owned by the Agency is sold or leased for economic development purposes, the sale or lease must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

WHEREAS, a public hearing of the City Council was held to hear public comments on the sale of the Oakport Property to Oakland Acura for the Project; and

WHEREAS, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

WHEREAS, as required by State Law, the City made a report available to the public for inspection, no later than the first date of publication of the notice for the hearing, that contains: (i) a copy of the proposed sale of the Oakport property and (ii) a summary of (a) the cost of the agreement to the City, (b) the estimated highest and best use value permitted under the City general plan or zoning, (c) the estimated value determined at the use required by the sale, with an explanation of the reasons for the difference between the two values, and (d) an explanation, with supporting facts and materials, of why the sale of the Oakport property will assist in the creation of economic opportunity; and

WHEREAS, the City commissioned and received a copy of an independent Member of Appraisal Institute (MAI) appraisal from Fabbro, Moore & Associates Inc., one of the City's on-call appraisal firms, which estimated the fair market value of the Property at \$5.5M. Acura ordered its own separate and independent appraisal by Integra Realty Resources which estimated the Property's fair market value at \$4.4M.

WHEREAS, the City commissioned the consulting firm of Economic & Planning Systems, Inc. ("EPS") to undertake an independent analysis of the Property. EPS' findings indicate that the appraised value of the property is estimated at \$5.2 million based on the highest and best use permitted under the current zoning. It reflects the average between the two appraisals of the market value of fee simple interest in the land (\$5.5 million and \$4.4 million) with a 5 percent increase made by EPS to adjust for the escalation in the land value market over the last quarter of 2016; and

WHEREAS, In August 2016, the Oakland City Planning Commission determined that, under the California Environmental Quality Act (CEQA), the Project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. The zoning for the Oakport Street parcel is currently D-CO-3, which conditionally permits auto sales.

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

WHEREAS, City staff recommends selling the land to Oakland Acura rather than entering into a long term ground lease since Oakland Acura has indicated that they would not be able to obtain viable project financing through their parent company Honda Motors under a long term ground lease. Acura has taken the position that a long term ground lease would not work because this would adversely affect their ability to properly finance the Project since many lenders typically consider the land to be an asset under fee simple ownership and a liability under leasehold interest; and

WHEREAS, to facilitate the development with Oakland Acura, staff is recommending that the City consider the transfer of the Property through a Disposition and Development Agreement ("DDA") rather than a Lease and Development Agreement ("LDDA"); and

WHEREAS, City staff recommends a sale of the Property instead of a ground lease because a sale is necessary to promote the economic development 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 City Administrator or designee to negotiate and execute documents for the conveyance of the Property to Oakland Acura pursuant to the terms of the documents described in Section 5 hereof for the price of \$5.2 million.

SECTION 2. The City Council hereby authorizes the City Administrator or designee to negotiate and execute the DDA: (1) including without limitation the exhibits thereto, with Oakland Acura for the sale and development of the Oakland Acura Dealership Project; (2) upon satisfaction or waiver of the conditions precedent to the sale; and (3) upon the satisfaction of any preconveyance conditions imposed by the City Administrator or designee (4) require a \$50,000 good faith deposit from Developer upon execution of the DDA and balance of \$5,150,000 upon close of escrow; (5) said \$50,000 good faith deposit and balance of \$5,150,000 upon close of escrow shall be accepted and appropriated in Fund 5650 and Project 1001670, such other agreements or documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the sale and development of the Property for the Oakland Acura dealership Project in order to consummate the transaction under the DDA in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 3. The City Council hereby authorizes the City Administrator to appropriate and distribute the net sale proceeds to the taxing entities per the compensation Agreement, including approximately 29% to the City's General Fund (1010).

SECTION 4. The City Council hereby finds and determines that the sale of the Property for the Oakland Acura Dealership Project will assist in the creation of economic opportunity in the City by:

- Retaining a total of 50 full time and 16 part-time Oakland jobs with additional positions and hiring expected at the new location. It is also anticipated that up to 80 construction jobs would be required to build the project.
- The dealership expects to continue generating at least \$200,000 in net sales tax to the City on an annual basis. Sales projections at the new location anticipate even higher sales volume.
- Approximately \$50,000 in annual business tax fees are currently generated at Acura's existing location. Due to a higher anticipated sales volume, the dealership currently estimates approx. \$65,000 in annual business tax fees being generated at the new proposed location.
- Based on a \$5.2M transaction, over \$72,800 in annual property taxes and over \$82,500 in real property transfer taxes would be generated.

SECTION 5. The City Council hereby further finds and determines that the consideration for the sale of the Oakport Property is an agreed upon price of the highest and best use of the Property and that it is in the best interest of the City to sell the Property to the Developer at its fair reuse value given the need to redevelop the Property for the benefit of the community.

SECTION 6. All agreements associated with the conveyance of the Oakport Property for the Acura Dealership Project shall be reviewed and approved as to form and legality by the Office of the City Attorney prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 7. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 8. The City Council hereby authorizes the City Administrator or designee to (1) determine satisfaction of conditions precedent under the DDA to the conveyance of the fee simple sale, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the Purchase and Sale Agreement and (2) take whatever action is necessary with respect to the sale of the Property for the Acura Dealership Project consistent with this Ordinance and its basic purposes.

SECTION 9. This Ordinance shall be in full force and effective immediately upon final adoption, 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, _____, 2017

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR
DESIGNEE, WITHOUT RETURNING TO THE CITY COUNCIL, TO
NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT
AGREEMENT AND RELATED DOCUMENTS BETWEEN THE CITY
OF OAKLAND AND OAKLAND ACURA, OR A RELATED ENTITY
FOR THE SALE OF THE OAKPORT PROPERTY (APN 041-3902-021)
AT THE AGREED UPON SALES PRICE OF \$5.2 MILLION FOR THE
DEVELOPMENT OF AN ACURA DEALERSHIP AND ADOPTING
CEQA EXEMPTION FINDINGS**

NOTICE AND DIGEST

This Ordinance authorizes the disposition of the property immediately adjacent to 7001 Oakport Street known as assessor's parcel number 041-3902-021 to Oakland Acura for the development of the Oakland Acura Dealership which shall consist of a two-story building with programmed space for dealer showroom, sales offices, service department with service bays, parts department, washing and detailing area, and a surface parking lot featuring the latest environmental and sustainable storm-water features. This Ordinance authorizes the City Administrator to negotiate and enter into a Disposition and Development Agreement with Oakland Acura for this transaction, and makes associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.

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17 MAR -9 PM 2:48

EXHIBIT A

**DDA TERM SHEET
OAKPORT STREET (APN #: 041-3902-021)**

March 9, 2017

Note- This nonbinding term sheet shall serve as the basis for the negotiations of a detailed final Disposition and Development Agreement ("DDA") between the City and Walnut Creek Associates 5 Incorporated, a California corporation, doing business as Oakland Acura (the "Developer"). The terms hereof are not binding on the City unless and until the Developer and the City Administrator, pursuant to City Council authorization, have executed a mutually acceptable DDA for the proposed project.

1	OWNER	City of Oakland
2A	DEVELOPER	Walnut Creek Associates 5 Incorporated, a California corporation, doing business as Oakland Acura ("Acura" or "Developer")
2B	NO ASSIGNMENT	Except as may be set forth in the DDA, Developer shall have no right to assign the DDA nor the development of the Project.
3	COMPLETION GUARANTY	<p>Developer to provide City a Completion Guaranty as part of DDA and as a condition to closing. Guarantor must be a financially strong entity with significant assets or capital sufficient to complete the development of an automobile dealership (the "Project"), pursuant to criteria set forth in the DDA, and acceptable to the City in its sole and absolute discretion. The Guarantor shall guarantee Project completion, as determined by City. Developer will identify the Guarantor within 90 days after DDA approval.</p> <p>A "Form of Guaranty" will be included as an attachment to the DDA and will need to be executed by the City-approved guarantor at close of escrow.</p>
4	PROPERTY	Approximately 3.625 acre parcel owned by the City: APN #: 041-3902-021 located on Oakport Street between the Damon Slough and 7001 Oakport Street in Oakland, California (the "Property"). (See attached map).

5	PROJECT DESCRIPTION	The proposed development comprises the construction of an automobile dealership with an approximate 38,000 square foot structure, including a Service Department and 20 parking spaces for customers and 280 parking spaces for new and used inventory and employee parking.
6	PURCHASE PRICE	The purchase price shall be <u>\$5,200,000.00</u> (Five Million Two Hundred Thousand Dollars and No Cents) which was based on a negotiated value determined by the City of Oakland and Developer.
7	TERMS OF PAYMENT/ CLOSING	The full purchase price amount will be due to the City and payable in cash or certified funds submitted into escrow 3 business days before close of escrow. Escrow to close in accordance with the schedule of performance contained herein. (Item #10).
8	GOOD FAITH DEPOSIT	Upon execution of the DDA, Developer will provide to the City a \$50,000 Good Faith Deposit. If the Developer negotiates in good faith and is not otherwise in default, but fails to reach agreement with City, or City otherwise declines, in its sole and absolute discretion, to enter into a DDA, City shall return the Good Faith Deposit to Developer. Subject to the next sentence, said good faith deposit shall be credited to the purchase price at closing. If the Developer fails to close under the DDA terms, (unless extended in writing by the City), or for reasons beyond the Developer's control (excepting financial ability), or the Developer otherwise defaults on any obligation under the DDA, the City shall retain the Good Faith Deposit as liquidated damages.
9A	DEFAULT	DDA to include City's standard remedies including, without limitation, right to terminate transaction upon Developer's default.
9B	CITY'S REPURCHASE OPTION	<p>If: (1) construction on the Project does not start within 30 days after close of escrow and diligently proceeds thereafter; or (2) the Project is not completed by July 15, 2018, City will have the option to repurchase the Property for the original sale price. If the Project is delayed due to government action, the July 15, 2018 completion date shall be extended for 6 months.</p> <p>City's Option is assignable or transferable. There will be a 30 day notice and cure process for any such default.</p>

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11	TITLE INSURANCE	Developer to secure title insurance policy, if desired, at its own cost and expense from Chicago Title, 1 Kaiser Plaza, Suite 1305, Oakland, CA 94612 - Attn: Laurie Edwards.
12	CLOSING COSTS	Developer shall pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
13	LIMITATIONS ON PROPERTY RIGHTS	<p>Without limiting Developer's title review contingencies, Developer accepts and acknowledges the Property may be subject to deed restrictions and recorded covenants to restrict use of property, as applicable in the DDA.</p> <p>Developer to comply with provisions of: 1) the Coliseum Area Redevelopment Plan and nondiscrimination provisions of redevelopment law and 2) the Coliseum Area Specific Plan.</p>
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21	PAYMENT & PERFORMANCE BONDS	Payment and Performance bonds in the amount of 100% of estimated construction cost, or equivalent security as determined by City in its sole and absolute discretion.
22	RIGHT OF ENTRY	Developer shall have the right to enter the Property prior to transfer to conduct any investigation, testing at Developer's cost and pursuant to its License Agreement with the City. Developer shall have the right to Use the Property for purposes of completing the Work described in the Agreement, subject to providing the City with indemnity, insurance and other terms set forth.
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25	STANDARD CONDITIONS	The DDA shall include standard City conditions, including completion guaranty executed on or before the Closing Date; approval by City of financing plan, assignment and transfer, amendments to project and project approvals, copies of all required regulatory approvals, and insurance policies; and default, notice and cure, and termination provisions.
26	PERMITTED TRANSFERS	<p>Prior to Project completion, Acura shall not have the right to assign or transfer all or any portion of its rights and obligations under the DDA, other than to an Affiliate Transfer.</p> <p>An Affiliate Transfer shall not require consent (but will require prior notice to and review by City) and shall mean a transfer to an entity or entities for which Acura maintains control as defined in the DDA.</p>
27	OFF-SITE IMPROVEMENTS	Developer to be responsible for the cost of any off-site improvements and relocation of all existing utilities and easements in advance of the Project.
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