



CITY OF OAKLAND

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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, Economic and  
Workforce Development  
Department

**SUBJECT:** 2100 Telegraph Plaza – DDA Terms

**DATE:** June 10, 2019

City Administrator Approval

Date:

6/13/19

## RECOMMENDATION

**Staff Recommends That The City Council Adopt An Ordinance Authorizing The City Administrator To Negotiate And Execute A Disposition And Development Agreement (“DDA”) And Related Documents Between The City Of Oakland And W/L Telegraph Owner, LLC Or A Related Entity Or Affiliate (“Developer”) In A Form And Content Substantially In Conformance With The Terms Described In The Agenda Packet**

## EXECUTIVE SUMMARY

W/L Telegraph Owner, LLC, or a related entity or affiliate (“Developer”), proposes to purchase the City-owned property located at 2100 Telegraph (the “Property”, as shown in **Attachment A**) for its appraised fair market value of \$28 million and merge the Property with surrounding Developer-owned parcels to create a full square-block development site on which to construct one of two development scenarios including up to 1.5 million square feet of large floor-plate office space, up to 80,000 square feet of ground floor retail, up to 22,000 square feet of community space and an optional 365,000 square-foot residential tower (the “Project”).

Since 2014 the Developer team, comprising several development/investment entities described below, has been analyzing the feasibility of the Project, obtaining California Environmental Quality Act (“CEQA”) and entitlement approvals, and negotiating the terms of a Disposition and Development Agreement (“DDA”) for the conveyance of the Property to Developer and development of the Project. The DDA will be based on the term sheet (the “Term Sheet”) as shown in **Attachment B**, which presents the major deal points enumerated below. Staff recommends that the City Council authorize the City Administrator to negotiate and execute a DDA and related documents consistent with the Term Sheet.

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The Project will create significant economic, workforce development and other community benefits, as shown in Table 1 below. A more detailed description of estimated economic benefits of both Project scenarios is outlined in the "Project Benefits To The City" section of this report.

**Table 1**  
**Summary of Economic Benefits**

	One Time	Ongoing
Net Sale Proceeds (after demolition and remediation)	At least \$22.4 million	N/A
Affordable Housing Impact Fees	\$9.7 million	N/A
Workforce Development Contribution	\$2 million	N/A
Other One-Time Fees	\$10.2 million	N/A
Jobs (under Project Labor Agreement ("PLA") and City Programs)	690 construction	7,800 permanent
General Fund Annual Revenue	n/a	\$15.2 million

## Major Terms

### 1. Project Alternatives

The Project is entitled for two different development scenarios:

*Scheme A (Office/Residential mix):* Up to 989,550 gross square feet of large floor-plate office, a 374,000 square-foot residential tower (395 units), 84,520 square feet of ground floor retail, 18,500 square feet of community space offered at below-market rents, with parking on the first six levels above the ground floor; or

*Scheme B (All Office):* Up to 1,600,000 gross square feet of large floor-plate office, 68,300 gross square feet of ground floor retail, 20,735 gross square feet of community space offered at below-market rents, with parking on the first six levels above the ground floor.

*Minimum Project:* The DDA will require a minimum of 90 percent of the approved square footages for each type of use (commercial, retail, etc.) for whichever scheme is developed.

### 2. Conveyance Price

The conveyance price will be \$28 million, which is the appraised fair market value. A portion of the sale proceeds will be held back in escrow for garage demolition and soil remediation costs (up to \$3.7 million and \$1.9 million, respectively).

### 3. DDA Term And Extension Fees

The Developer will have three years to commence construction, with four 1-year extension options. The current appraisal will be updated with each extension request, and the conveyance price will be adjusted accordingly, but in no event will it be less than \$28 million.

Each extension request will require payment of graduated extension fees as follows: \$300,000 for the first extension, \$500,000 for the second, \$700,000 for the third, and \$900,000 for the fourth extension.

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**4. Site Conveyance**

The Property shall be conveyed when the Developer provides written notice from the City that 100 percent complete construction drawings have been submitted to the City for review in its regulatory capacity and building permits are ready for issuance, but for approval of the Final Map.

**5. Permitted Transfers**

Transfer of the DDA, its rights and obligations, will be permitted upon approval by the City Administrator to another developer with the proven financial strength and experience to complete the Project per the terms of the DDA, or to an owner/user with a qualified construction manager.

**6. Completion Guaranty**

The Developer will be required to provide a completion guaranty for 100 percent of the total development costs, less any predevelopment work completed prior to the DDA term. The completion guaranty shall be provided by an entity able to pledge assets of at least 40 percent of the construction and remaining predevelopment costs.

**7. Local Hire/ Project Labor Agreement/Workforce Development Contribution**

The Developer shall comply with the City's Local Hire and Small/Local Business Enterprise Programs (the "City Programs"), which require at least 50 percent of jobs to be local. Penalties for noncompliance shall not exceed \$10 million if the Developer follows all program procedures.

The City Programs will continue to apply to Project operations (property management, maintenance, engineering, parking operations, etc.) for new positions not already filled by existing employees for five years from the date of occupancy. This term will not apply if the Project is sold to an owner/user.

Developer shall make best efforts to negotiate a Project Labor Agreement ("PLA").

Developer shall also contribute \$2 million to the City to support workforce development programs for Oakland residents.

**BACKGROUND/LEGISLATIVE HISTORY**

The former Oakland Redevelopment Agency (the "Agency") acquired the Property from the City for redevelopment purposes in June of 2009, pursuant to Agency Resolution No. 2009-0057 C.M.S., dated May 19, 2009, and City Ordinance No. 12934 C.M.S., dated June 2, 2009.

Subsequently, after the dissolution of the Agency, the Oakland Redevelopment Successor Agency ("ORSA") transferred the property back to the City pursuant to the Revised Long-Range Property Management Plan ("LRPMP") that was approved by ORSA pursuant to Resolution No. 2014-004 C.M.S., dated May 20, 2014, and by the City pursuant to Resolution No. 84995, dated May 20, 2014. The California Department of Finance ("DOF") approved the LRPMP on May 29, 2014. Per the LRPMP, the Property was transferred to the City for future development on October 15, 2014.

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On October 21, 2014, the City Council adopted Resolution No. 85220 C.M.S., authorizing an Exclusive Negotiation Agreement (“ENA”) between the City and TB2 Retail Complex, LLC (“TB2”) for the development of City-owned property located at 2100 Telegraph Avenue. At the time, TB2 proposed to develop a mixed-use project consisting of approximately 250 residential units, 15,000 square feet of retail and 570 parking spaces, which included replacement of the 351-space City-owned parking garage currently located on the Property.

Subsequently, Lane Partners and its investment partner, Walton Street Capital LLC, approached TB2 about expanding the Project site and adding a major office component to TB2’s proposed Project. After executing a partnership agreement, Developer acquired four adjacent properties, 495 22<sup>nd</sup> Street, 2101 Broadway, 2127 Broadway, and 2147 Broadway, which, if combined with the Property, offer a unique opportunity to create a campus-type office development on a city block measuring 3.2 acres surrounded by Broadway, Telegraph Avenue, 21<sup>st</sup> Street and 22<sup>nd</sup> Street. The expanded Project site will also enable Developer to design a cost-effective structural system that must straddle the Bay Area Rapid Transit (“BART”) tunnel running beneath the northeastern portion of the site to protect against the impacts of the buildings above.

On July 5, 2016, the City Council adopted Resolution No. 86267 C.M.S. approving (1) an assignment of the ENA from TB2 to Developer, and (2) an amendment of the ENA to extend the ENA term from 24 to 30 months, or from October 21, 2016 to April 21, 2017, with an administrative option to extend the ENA term by an additional six months from April 21, 2017 to October 21, 2017, while also extending certain performance deadlines.

The original Project concept included the construction and purchase by the City of a parking garage that would replace the 351-space garage currently on the site. However, upon further consideration, the City determined that it no longer would purchase replacement parking because (1) such a move would conflict with the City’s “Transit First” policy, and (2) a source of funding for the estimated \$30.4 million purchase price of the replacement garage could not be identified. This decision prompted revision of many of the design and financial assumptions the Developer was working from, which required additional time to analyze and complete.

On October 17, 2017, City Council adopted Resolution No. 86938 C.M.S. approving a 12-month extension of the ENA terms to October 21, 2018, with an administrative option to extend by an additional six-months to April 21, 2019.

On July 18, 2018, the Oakland Planning Commission certified the Environmental Impact Report (“EIR”) for the Project and approved the Final Planned Unit Development plan.

Although the Developer has continued to diligently meet all the performance benchmarks within the ENA term, negotiations toward a final DDA term sheet have required more time than the ENA allowed. On April 16, 2019, City Council adopted Resolution No. 87634 C.M.S. to further extend the ENA term by an additional six months to October 21, 2019.

### Site Description

The City-owned Property is an L-shaped corner lot comprising approximately 1.664 acres (72,475 square feet), located at 2100 Telegraph Avenue between 21<sup>st</sup> and 22<sup>nd</sup> Streets in Oakland's Uptown neighborhood. The Property is improved with an approximately 144,000 square foot, two-level garage called the Telegraph Plaza garage.

A BART subsurface easement affects about 45 percent of the Property, where BART tunnels run at a shallow depth underneath the surface. The BART easement prevents construction above it that would impact the structure of the BART tunnels. Strict design/engineering guidelines are in place to protect the tunnels from weight loads and vibrations associated with construction above or adjacent to the tunnels.

### Project Description

The proposed Project site is an assemblage of five contiguous parcels, including the City-owned Property, which sits in the middle of the other parcels and represents 53 percent of the entire 137,195 square foot Project site. The merger of the Property with the adjacent Developer-owned sites will allow the Developer to span the BART tunnels with a steel superstructure to distribute the weight loads of the new construction, adding considerably to Project costs and design complexity.

The Project is entitled for two different development scenarios; Scheme A, including large floor-plate office space, ground floor, community space, parking and a residential tower, or Scheme B, which is an all commercial development without the residential tower.

**Table 2**  
**Summary of Development Scenarios**

	<b>Scheme A</b>	<b>Scheme B</b>
Residential	374,000 sq. ft. (395 units)	0 sq. ft
Office	990,000 sq. ft	1,600,000 sq. ft.
Retail	85,000 sq. ft	68,000 sq. ft
Community Space	18,500 sq. ft	21,000 sq. ft
Parking	Four levels	Four levels

Both Schemes A and B include lower massing along the Telegraph Avenue frontage with an approximately 10-story office building, rising to an approximately 29-story office tower along the Broadway frontage.

If Scheme A is developed, the residential tower would likely be built by an independent residential developer on the corner of Broadway and 22<sup>nd</sup> Street. Developer's proforma analysis shows that a residential component negatively impacts Project feasibility and would not be viable without a financial subsidy. *Therefore, Scheme B is the Developer's preferred Project.*

## **Development Team**

The Developer is a joint venture between several entities:

- TB2 – a joint venture between Oakland-based Strategic Urban Development Alliance, LLC (“SUDA”), a real estate development company whose projects include Thomas L. Berkley Square; and Hensel Phelps, one of the nation’s largest contracting and construction management companies.
- Lane Partners - a Menlo Park-based company focused on investing, developing and operating commercial buildings throughout the Bay Area. In Oakland, Lane Partners sold the former Sears Department store to Uber Technologies, Inc.
- Walton Street Capital – a private real estate equity investment firm based in Chicago. Since its founding in 1994, Walton Street Capital has invested and/or committed to invest \$8.8 billion of equity in United States and international real estate.

Together, this team possesses expertise in large project construction design and management, contracting and real estate investment, with access to deep financial resources.

## **ANALYSIS AND POLICY ALTERNATIVES**

### **Economic Benefits To The City**

The proposed Project is a unique opportunity for the City to participate in the economic and fiscal benefits of development on a fully-assembled square block in downtown Oakland. Its size and proximity to public transportation makes it suitable as an employment center, with large floor plates that are particularly attractive to tech firms. As shown in Table 3 below, the preferred Scheme B is expected to generate more than \$15 million annually to the City, with one-time impact fees of more than \$24 million, including \$10 million for affordable housing, in addition to the \$28 million in sales proceeds.

By comparison, current general fund revenues generated by the five parcels comprising the Project site were approximately \$950,000 in 2017/2018.

**Table 3  
 Detailed Projection Of Economic Benefits**

***One-Time Revenue***

<u>Revenue Type</u>	<u>Scheme A</u>	<u>Scheme B</u>
Transfer Tax	\$418,600	\$418,600
Jobs/Housing Impact Fee	\$14.7 million	\$9.9 million
Workforce Development Contribution	\$2 million	\$2 million
Other Impact Fees	\$9.5 million	\$11.6 million
<b>Total One Time Revenue</b>	<b>\$26.7 million</b>	<b>\$24 million</b>

***Annual General Fund Revenue***

<u>Revenue Type</u>	<u>Scheme A</u>	<u>Scheme B</u>
Annual Property Tax	\$3.2 million	\$4.4 million
Annual Business License Tax*	\$4.9 million	\$7.9 million
Annual Retail Sales Tax	\$0.3 million	\$0.4 million
Other General Purpose Revenue	\$1.4 million	\$2.5 million
<b>Total Annual Revenues</b>	<b>\$9.8 million</b>	<b>\$15.2 million</b>
Net Present Value ("NPV") of 25 years at 4%	\$210 million	\$326 million

\*Includes parking taxes

***Employment Generation***

<u>Duration</u>	<u>Scheme A</u>	<u>Scheme B</u>
Construction Jobs	625	690
Permanent Employees	4,300	7,800

### **Community Benefits**

Under the terms of the DDA, the Project will also generate substantial benefits to the community including:

- Compliance with City Programs to maximize local contracting and employment opportunities. The Programs will continue to apply to Project operations (i.e. property management, maintenance, parking operations, etc.) for five years from the date of occupancy.
- Creation of 18,500–21,000 square feet of community space offered at 50 percent below market rental rates to tenants such as arts organizations, gallery/exhibit uses or other similar nonprofit organizations.
- At least 130-200 parking spaces available for public use, increasing to 350 spaces after 6:00 pm to accommodate patrons of the Paramount Theatre. Parking will be unbundled from tenants' leases.
- Implementation of health and environmental protections that include sharing information with the public regarding past soil conditions and remediation, maintaining or increasing the number of trees on site, use of low-VOC paints, maintenance of indoor air quality, and use of renewable energy sources when feasible.

### **Fee Simple Sale of the Property Rather Than a Long-Term Lease**

In December 2014, the City Council adopted Resolution No. 85324 C.M.S. establishing a preference for leasing rather than selling City land, unless findings are made that it is in the City's best interest to sell. Staff recommends a fee simple sale of the Property to realize the full development potential of the site when merged with the other four properties, and maximize the economic, workforce and other community benefits to the City, which is consistent with the purpose of ORSA's conveyance of the Property to the City. Per the proposed Project, the Property will be one of five parcels merged to create a square block development site. Since BART tunnels run beneath the City Property and adjacent parcels, development will require a steel superstructure to span the tunnels across several parcels. Assembling the parcels adjacent to the Property and merging them as one so a project of this magnitude can be developed is an efficient use of the entire block.

The Developer must merge the properties in order to be eligible for a building permit. It is therefore not possible to lease the Property, since the parcels could not be merged without a transfer. It is in the City's fiscal and economic development interest to support the larger Project by conveying in fee through sale rather than leasing the Property.

As required by California Government Code 52201, a report has been prepared and duly noticed identifying the terms of the sale of City-owned real estate and the economic benefits the sale will bring to the City. The 52201 report is on file in the Economic and Workforce Development Department, Public Private Development Division.

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## **Surplus Lands Act**

The City acquired the Property from ORSA pursuant to the approved DOF-approved LRPMP for future development. The sale of the Property is for economic development consistent with the DOF-approved LRPMP and is not subject to the Surplus Lands Act.

## **FISCAL IMPACT**

The proposed conveyance price of \$28 million is the Property's appraised fair market value. A portion of the sale proceeds will be held back in escrow for estimated garage demolition and soil remediation costs (up to \$3.7 million and \$1.9 million, respectively). Estimated net sale proceeds from the Property are between \$22 million to \$27 million. Net sale proceeds, extension fees, forfeited deposits, liquidated damages and default payments generated by the Project will be deposited into the Central District TA Bond Fund 2009T (Fund 5613), Central District Organization (85245), with a Project to be determined for future allocation. These funds can be used for eligible redevelopment activity in the Central District Project Area.

The Developer will also make a one-time contribution of \$2 million to the City to fund workforce training for Oakland residents, to be deposited into the Miscellaneous Trust, Donations and Endowment Fund (Fund 7999), Workforce Development Organization (Org. 85311) for subsequent allocation by Oakland Workforce Development Board and Council, with Projects to be determined for future allocation.

Preliminary estimates of annual net tax and assessment revenues generated by the Project include approximately \$10-\$15 million to the City's General Fund (1010), including an estimated \$518,000 to \$697,000 annually in parking taxes, depending on which of the two approved development scenarios moves forward. This revenue is in addition to approximately \$24-\$27 million in one-time fees, including a job/housing impact fee of \$10-\$15 million, depending on which development scheme is constructed.

Costs to the City are limited to loss of revenue from the discontinued operations of the Telegraph Plaza Garage. Net revenue generated in 2018 by garage operations was reported at \$576,768. This revenue stream would discontinue upon demolition of the garage. Parking tax revenues will also discontinue during the 3-year construction period (\$106,745 in 2018).

## **PUBLIC OUTREACH / INTEREST**

Per the terms of the ENA, the Developer team held four well-attended community meetings in November 2015, November 2016, February 2018, and April 2019 to present the Project, obtain community input and provide updates on the plans in response to that input. Fifteen to twenty smaller focus group community engagement sessions were held in addition to the large community gatherings.

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The City Planning Commission conducted a public scoping session for the Draft Environmental Impact Report (“Draft EIR”) of the proposed Project on December 21, 2016. The final EIR and a final Development Plan were subsequently certified by the Planning Commission on July 18, 2018.

### **COORDINATION**

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

- Office of the City Attorney;
- City Administrator’s Office, Contracts Compliance Division;
- Department of Transportation, Off-Street Parking Division;
- Planning and Building Department; and
- Budget Bureau.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The proposed Project will result in a mixed-use development that will add to the City’s tax base and provide stimulus to the local economy. The Project’s mix of office and ground floor retail opportunities, and proximity to public transit will significantly increase the downtown daytime population who will patronize restaurants, shops and services. The potential 395-unit residential component, if built, will add nighttime economic vitality as well. The Project will generate between 625 and 690 construction jobs and between 4,300 and 7,800 permanent jobs depending on which Project Alternative will be developed.

**Environmental:** The proposed Project site is located on or near BART stations, bus lines and bicycle corridors, allowing office commuters a variety of transportation alternatives to cars.

Developer will ensure Project compliance with the City’s Green Building Ordinance and endeavor to receive Leadership in Energy and Environmental Design (“LEED”) certification.

In addition, the DDA will include terms to protect health and the environment similar to those proposed in the adopted “Public Lands Policy” Resolution of December 2018, including provisions for use of renewable energy, and protection of indoor air quality.

**Social Equity:** The office and retail components of the Project will generate approximately \$10 to \$15 million for the Affordable Housing Trust Fund, which could provide funding for 100 to 150 below market rate homes.

Compliance with the City Local Hire and Small/Local Business Enterprises Programs on a project of this size will offer significant opportunities to Oakland residents for employment and training, as well as contracting opportunities for local business. The Developer will make a \$2 million contribution to support workforce training for Oakland residents.

The location of the Project adjacent to a regional transit station and multiple transit nodes will allow for a wide range of access to employment, and accommodate diverse commuters, including those for whom extended auto commuting is unaffordable.

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**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

On July 18, 2018, the City Planning Commission approved alternative proposed development projects (referred to in the Planning Commission approval as the “2100 Telegraph Avenue Project”), which included adoption of California Environmental Quality Act (“CEQA”) findings, certification of the Environmental Impact Report (“2100 Telegraph Avenue Project EIR”), rejection of alternatives as infeasible, Statement of Overriding Considerations, and Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, all of which are relied upon herein.

The anticipated environmental effects of the Project have been evaluated in the 2100 Telegraph Avenue Project EIR. As specified in the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is to be undertaken that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects, and (2) there is no “new information of substantial importance,” as defined in CEQA Guidelines Section 15162(a)(3).

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt an ordinance authorizing the City Administrator to negotiate and execute a Disposition and Development Agreement and related documents between the City of Oakland and W/L Telegraph Owner, LLC or a related entity or affiliate (“Developer”) in a form and content substantially in conformance with the terms described in the agenda packet.

For questions regarding this report, please contact Janice Lang, Urban Economic Analyst IV, at 510-238-6430.

Respectfully submitted,



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MARK SAWICKI  
Director, Economic and  
Workforce Development Department

Reviewed by:  
Alexa Jeffress  
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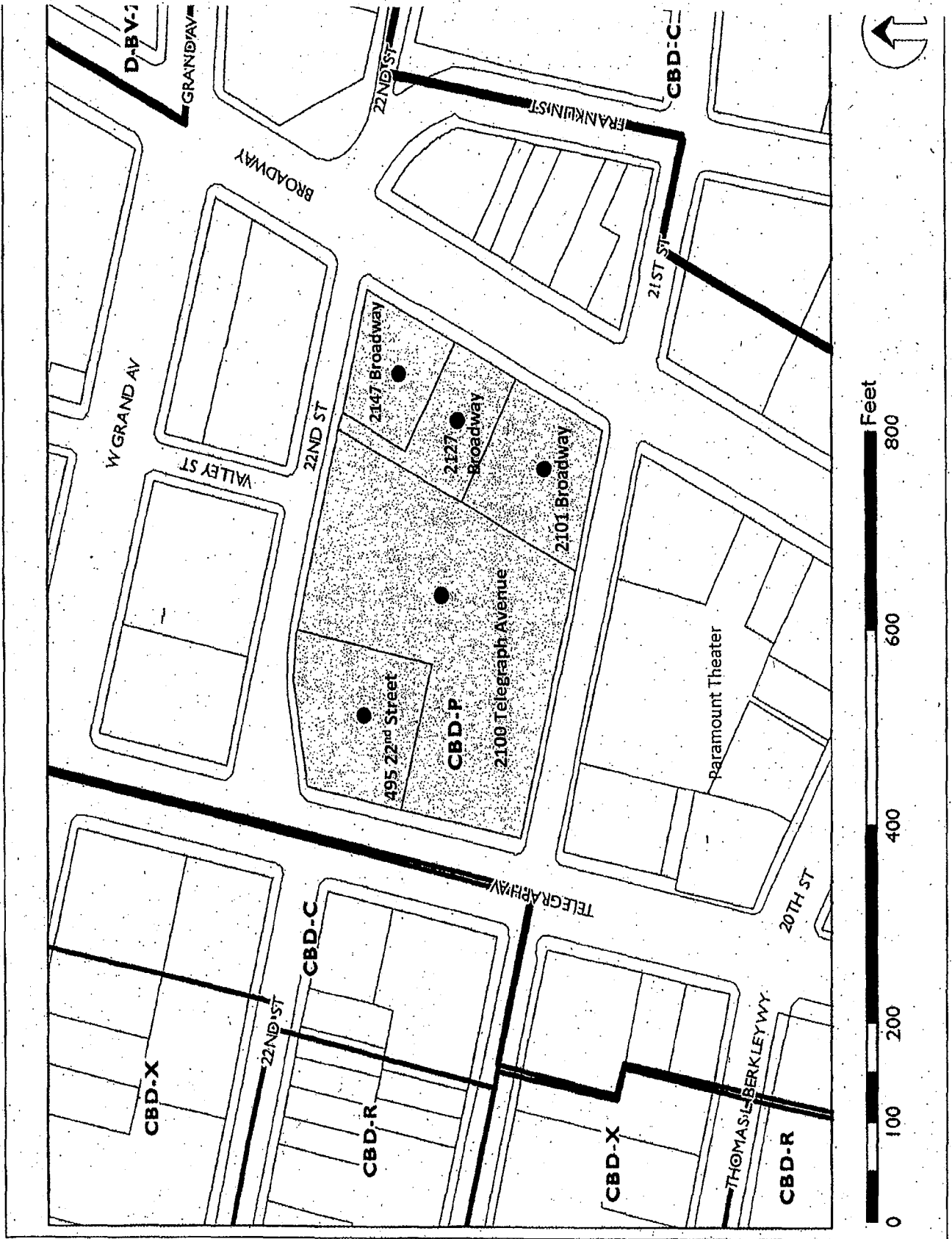
Prepared by:  
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Public/Private Development Division

Attachments:  
*Attachment A – Property Site Plan*  
*Attachment B – DDA Term Sheet*

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# ATTACHMENT A

## 2100 Telegraph Site Plan



**ATTACHMENT B**  
**Term Sheet**

**CONFIDENTIAL DRAFT**  
**REAL ESTATE DISPOSITION AND DEVELOPMENT TERM SHEET**  
**2100 TELEGRAPH DEVELOPMENT PROJECT**

<b>1.</b>	<b>OWNER</b>	City of Oakland (“City”)
<b>2.</b>	<b>DEVELOPER</b>	W/L Telegraph Owner, LLC a California limited liability company (the “Developer”)
<b>3.</b>	<b>PROPERTY</b>	Approximately 1.66 acres of property in downtown Oakland that is within the block bounded by Broadway, 21st Street, Telegraph Avenue, and 22nd Street, currently occupied by a City-owned parking garage (as more particularly described on Exhibit A).
<b>4.</b>	<b>PROJECT DESCRIPTION</b>	<p>Based upon the final development scope and design, the Project is anticipated to be constructed on the Property and on four adjacent parcels owned by the Developer (“Developer Parcels”), and a portion of 22nd Street (22nd Street fragment) (hereinafter collectively referred to as the “Project Site”). Some or all of the Developer Parcels, and the 22nd Street fragment, may be reconfigured or combined with the Property pursuant to the Subdivision Instruments, as such term is defined herein.</p> <p>Developer obtained approval from the Oakland Planning Commission, on July 18, 2018, of a Final Development Plan (FDP), in the form of either a Scheme A or a Scheme B project. Descriptions of the two FDPs are set forth in Exhibit C.</p> <p>Consistent with the “Final Development Plan (“FDP”) – Scheme A, dated June 20, 2018” attached hereto, the Project may consist of an Office/Residential/Retail development including: approximately 989,550 gross square feet of office (consisting of approximately 880,500 gross square feet of office and 109,000 gross square feet of service and mechanical). The project also includes a Residential Tower of approximately 373,750 gross square feet (consisting of 356,750 sf of residential program and 17,000 square feet of service and mechanical). The project also includes approximately 84,520 gross square feet of ground floor</p>

		<p>retail, approximately 18,500 gross square feet of community space, with parking in the basement and the first three building levels above the ground floor.</p> <p>If developed, Scheme A shall include a minimum of 90% of the gross square footage of each of the approved uses in the FDP.</p> <p>Consistent with the “Final Development Plan (“FDP”) – Scheme B, dated June 20, 2018” attached hereto, the Project may consist of an Office/Retail development including: approximately 1,600,000 gross square feet of office (consisting of approximately 1,500,300 gross square feet of office and 92,300 gross square feet of service and mechanical space). The project also includes approximately 68,300 gross square feet of ground floor retail, approximately 20,735 gross square feet of community space, with parking in the basement and the first three building levels above the ground floor.</p> <p>If developed, Scheme B shall include a minimum of 90% of the gross square footage of each of the approved uses in the FDP.</p> <p>Parking garage spaces shall be separately licensed or rented, and not included in the tenants’ space rent.</p>
5.	<b>CONVEYANCE PRICE</b>	<p>The Conveyance Price will be \$28 Million which is the market value based on the appraised fair market value at highest and best use.</p> <p>The Conveyance Price for the Property shall be due and payable in cash submitted into escrow 3 days before close of escrow, or on such other terms as may be negotiated.</p>
6.	<b>DDA TERM AND TERMS OF PAYMENT</b>	<p>1. The parties acknowledge that a Project of the scale proposed will take considerable time to finance, market, prepare final design and construction documents and build. As such, Developer will have three (3) years to Close Escrow for the conveyance of the Property for development of the Project from the effective date of the DDA (the “Commencement Period”). At Developer’s sole discretion, subject to there being no default and Developer payment of the Extension</p>



		<p>Fee (see below), Developer may extend the Commencement Period by up to four (4) additional one-year extensions (each an "Extension"). Each Extension shall be exercisable no early than 120 days and no later than 30 days prior to the then existing expiration date of the Commencement Date.</p> <p>2. Upon receipt of written notice of Developer's exercise of any eligible Extension, Developer shall pay an Extension Fee of \$300,000 for the first one-year Extension, \$500,000, for the second one-year Extension, \$700,000 for the third one-year extension, and \$900,000 for the fourth one-year extension (each an "Extension Fee"). Each Extension Fee shall be non-refundable and non-applicable to the Conveyance Price.</p>
7.	<p><b>CLOSE OF ESCROW: STANDARD CONDITIONS</b></p>	<p>Developer will be required to satisfy the City's standard conditions of closing, as well as the following conditions precedent, prior to the dates that will be set forth in the Schedule of Performance, as conditions precedent to City's obligation to close escrow for the Conveyance (the "Close of Escrow"):</p> <ol style="list-style-type: none"> <li>1. Developer shall have obtained all discretionary land use approvals from the City for the development of the Project, including satisfaction of environmental review pursuant to the California Environmental Quality Act ("CEQA") (collectively, the "Discretionary Approvals");</li> <li>2. Developer shall have obtained all regulatory approvals and permits for development of the Project, not including BART approval of the design, separately discussed below, (the "Regulatory Permits");</li> <li>3. Developer shall have submitted and secured City approval (in its proprietary capacity) of the Design Development Plans at the 50% completion stage for the Improvements prior to the deadline stated in the Schedule of Performance. Design Development Plans shall be based on the schematic design plans for the Project and define and describe 50% of all important aspects of the Project so that all that remains is the formal documentation step of construction contract documents. 50% Design Development Drawings shall include, without limitation, the following components:</li> </ol>

A site plan, floor plans, a roof plan, exterior elevations, interior design, building sections, reflected ceiling plan, enlarged floor plans and sections (as applicable), structural drawings, mechanical drawings, plumbing drawings, HVAC drawings, electrical drawings, specification outline, technical specifications, tabulation of areas, an updated itemized statement of probable construction costs (appropriate amounts for contingency and inflation shall be included) broken down by trade, landscape design, and a schedule for construction. Developer shall have submitted Final Development Plans for the Project to the City for approval.

Developer shall have received the City's regulatory final plan check approval for the construction drawings ("Final Construction Documents") for the Project.

4. Developer shall have received a letter from the Building Department indicating its readiness to approve and issue permits for the Improvements (the "Building Permits"), upon (a) payment of the applicable fees, and (b) evidence of compliance with the Subdivision Map Act.
5. Developer shall have provided the City with a copy of the contract with the general contractor(s) with a budget showing the total hard construction costs for the Initial Improvements consistent with the Budget and based on the Final Development Plans (the "General Contract") and requiring compliance with the City's Local Business and Employment programs.
6. Developer shall have provided the City with an itemized budget for the development of the Improvements (including all hard and soft costs) showing all construction-related and non-construction-related costs including the funding sources for each item, which budget shall be based on the Final Construction Documents and the General Contract (the "Budget").
7. Developer shall have provided an itemized operating budget and 20-year cash flow statement demonstrating project financial feasibility. The operating budget must include a full rent schedule, and reasonable replacement and operating reserves. Operating expenses shall include all

customary and reasonable operating expenses, and include Common Area Maintenance charges. If the lease structure is a NNN lease, in which the tenant or lessee is responsible for paying a portion of all operating and common expenses related to the leased property in addition to base rent, then the Developer shall itemize said NNN items that will be the responsibility of the tenant/lessee.

8. Developer shall have identified fully committed debt and equity funds equal to 100% of the Budget. Funds from equity contributions will be evidenced by the corporate documents requiring the applicable equity partner(s) to fund any remaining equity contribution upon the Close of Escrow. Funds from secured or unsecured debt will be evidenced by a binding loan agreement indicating the availability of requisite funds.
9. Developer shall have provided the City with a financial statement for Developer compiled by an outside, independent accountant in a form reasonably acceptable to the City evidencing sources of capital sufficient to fund the Developer equity identified in Item (8) above and to provide the Guaranty referenced in Item (10) below.
10. Developer shall have provided the City with a completion guaranty ("Guaranty") substantially in the form attached to the DDA as described in Section 29, approved by the City.
11. Developer shall have provided evidence of required insurance.
12. There is no third-party litigation challenging the Project or the City's authority to sell the Property.
13. Developer has provided the City with the formation documents of the entity taking possession of the land and evidence that such entity has a current City business license.
14. Developer shall have submitted and secured City approval (in its regulatory capacity) of the Final Construction Plans for the Improvements and a Guaranteed Maximum Price contract from a General Contractor Construction Plans shall include Demolition Plans and Foundation Plans. Final Construction Plans shall include, without limitation

(each to the extent applicable to any cold-shell portions of the Initial Improvements), a final site plan, final floor plans, a final roof plan, final exterior elevations, final interior design and building sections, final reflected ceiling plan, final enlarged floor plans and sections (as applicable), final structural drawings, final mechanical drawings, final plumbing drawings, final HVAC drawings, final electrical drawings, final specification outline, final technical specifications, final tabulation of areas, an updated itemized statement of probable construction costs (appropriate amounts for contingency and inflation shall be included) broken down by trade, civil and landscape design, and a schedule for construction.

15. Developer shall have provided evidence that it has (a) secured lease commitment letters from or entered into leases with qualified tenants for at least fifty (50) percent of the leaseable area in the Project, or (b) if the Project is a speculative development, provide evidence that full Project financing is available from bonafide lenders and equity partners acceptable to the City.
16. Developer shall have satisfied Condition of Approval 19 for its PUD addressing the 22nd Street right of way.
17. Developer is not in default of its obligations under the DDA.
18. Developer and City shall execute a lease of the City Parking Garage on the terms set forth in Section 10, unless construction will commence within 60 days of the close of escrow.
19. The BART Structural Design Review Team has approved the Basis of Design for the structural plans for the Project.

Once all the conditions above are met, Escrow shall close 30 days thereafter and Commencement of Construction shall commence not later than 180 days after Close of Escrow.

Commencement of Construction is defined as:

- (a) Demolition of all existing structures on the Project Site.

		(b) Start of Excavation and Remediation of all Hazardous Materials present on the Project Site.
8.	<b>DEPOSIT</b>	Upon executing the DDA, Developer will provide a good faith Deposit equal to \$500,000. Per #6 above (DDA Term and Terms of Payment), additional deposit payments will be due for each of the four DDA term extensions, if exercised by Developer. If Developer fails to fulfill the conditions or meet the obligations set forth in the DDA, City may retain the 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. Upon Close of Escrow, the deposits will be applied to the Purchase Price.
9.	<b>NOTICE AND CURE</b>	<p>There will be a 90-day notice and cure process for any non-monetary default under the terms of the DDA. After the notice is given to Developer, Developer has 30 calendar days to respond and 30 calendar days to commence cure 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 of 90 days after City gives Developer notice of a default. The City, in its proprietary capacity, shall cooperate with Developer regarding any City approvals (e.g. permitting) necessary to cure a default.</p> <p>There will be a 15-day notice and cure process for any monetary default under the DDA, including but not limited to payments of the Extension Fee, Deposits and the Conveyance Price. After the notice is given to Developer, Developer has 15 calendar days to cure any such default.</p>

<p><b>10.</b></p>	<p><b>EXISTING CITY PARKING GARAGE</b></p>	<p>The parties acknowledge the Property includes an existing, operating 350-space City-owned public Parking Garage. From the date of Closing until thirty days prior to the Commencement of Construction, the City shall have the right to operate the Parking Garage pursuant to a lease from Developer on the terms set forth herein (“Garage Lease”).</p> <p>City shall be responsible for all management, operation, maintenance, security, cost and liability from the City Parking Garage. The City shall retain all responsibility for insurance of the City Parking Garage and shall indemnify and hold Developer harmless from any liability regarding the City Parking Garage for the term of the Garage Lease.</p> <p>Developer agrees to lease the City Parking Garage to the City for \$1 per year at the Close of Escrow, terminable upon notice by Developer at least 30 days prior to Commencement of Construction. City shall retain all net revenues generated by the operation of the City Parking Garage, except for reimbursement of Property Taxes attributable to the Parking Garage and paid by Developer during the term of the Garage Lease. City shall assume all liability connected to the City Parking Garage during the term of the Garage Lease.</p>
<p><b>11.</b></p>	<p><b>DEFAULT REMEDIES</b></p>	<p>The parties acknowledge that each year of delay of Project completion will cause the City significant losses of annual taxes and assessment revenues that the Project would otherwise generate. Therefore, in the event of an uncured Developer default prior to the Commencement of Construction on such date as indicated on the attached Schedule of Performance, City shall have the following default remedies:</p> <ul style="list-style-type: none"> <li>• At the close of escrow, Developer shall provide a four million dollar (\$4,000,000) letter of credit that the City may draw upon in the event of a default, with a two million dollar (\$2,000,000) draw in the first year of the default, and an additional five hundred thousand dollar (\$500,000) draw each subsequent year of default up to a total of five (5) years.</li> </ul>

		<ul style="list-style-type: none"> <li>• Specific Performance</li> <li>• Completion Guaranty</li> <li>• Reconveyance rights to be negotiated.</li> <li>• All other remedies available under law and equity</li> </ul>
12.	<b>SCHEDULE OF PERFORMANCE</b>	Construction shall commence within 180 days of Close Of Escrow. See Attached Exhibit D Schedule of Performance.
13.	<b>OFF-SITE IMPROVEMENTS/ PERMIT CONDITIONS</b>	Developer to be responsible for the costs of required off-site physical infrastructure (e.g., right-of-way, sewer, storm water) improvements and all other permit conditions required to be satisfied in connection with the Regulatory Approvals.
14.	<b>TITLE INSURANCE</b>	Developer to secure title insurance policy, if desired, at its own cost and expense.
15.	<b>CLOSING COSTS</b>	Developer to pay all escrow fees and closing costs including, without limitation, City and any other county transfer taxes.
16.	<b>22ND STREET RIGHT OF WAY</b>	Developer shall have satisfied Condition of Approval 19 for its Planned Unit Development addressing the 22nd Street right of way.
17.	<b>CONDITION OF PROPERTY AT DELIVERY</b>	Developer to take the Property in its "as-is" condition subject to Sections 18 and 19, and the covenants described in Section 23.
18.	<b>GARAGE DEMOLITION</b>	<p>The City shall hold in escrow a portion of the Conveyance Price in an amount not to exceed \$3.7 million , which is the Developer's estimated cost to demolish the existing City parking garage on the Property.</p> <p>Prior to the Close of Escrow, as indicated in the Schedule of Performance and prior to incurring any demolition costs in connection with the City Garage, the Developer shall make available to the City for review and approval the proposed scope, method and budget for demolition of the garage which shall be the basis for determining the escrow hold back amount referenced above. Developer shall be reimbursed for demolition</p>

		<p>costs up to the amount held in escrow for that purpose upon submission to the City of invoices and other supporting documents for actual costs of City garage demolition.</p>
<p><b>19.</b></p>	<p><b>ENVIRONMENTAL REMEDATION</b></p>	<p>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 B. 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.</p> <p>Notwithstanding the foregoing, City shall hold a portion of the Conveyance Price, not to exceed \$1.9 million in escrow to be credited back to Developer for the Incremental Remediation Costs incurred by Developer during the construction of the Project for Environmental Remediation , if any, required by a regulatory order. "Incremental Remediation Costs" shall mean the incremental construction, removal and disposal costs required and reasonably incurred by the Developer, consistent with technical and professional standards related to environmental remediation and approved by City, that would not have been incurred by Developer but for the completion of the Environmental Remediation necessary to satisfy any such regulatory order.</p> <p>Incremental Remediation Costs include but are not limited to, expenses associated with: development of Remediation plans and securing regulatory approval for such plans, the implementation of such Remediation plans, additional investigation and analysis, compliance with regulatory agency notification requirements, compliance with applicable public notification requirements, removal of underground hazardous materials storage tanks and associated pipes, special handling and disposal of excavated soils classified as hazardous waste treatment and special disposal of displaced groundwater classified as hazardous waste, and abatement or removal of any Hazardous Materials. Without limiting the Agency's right to</p>



		<p>otherwise reject ineligible remediation requests, Incremental Remediation Costs shall not include any of the following: (1) the cost of excavation and construction of the Initial Improvements including, without limitation, shoring and excavation, soil removal and de-watering as necessary to develop such Initial Improvements, assuming that remediation was not required; (2) any legal costs, whether In House or outside counsel; (3) any Developer overhead, administrative or staff costs; (4) any costs associated with regulatory negotiations undertaken without the City's knowledge and prior written approval; and (5) unless previously approved by the City, the costs of any environmental insurance.</p> <p>Prior to the Close of Escrow, as indicated in the Schedule of Performance and prior to incurring any Incremental Remediation Cost in connection with the Project, the Developer shall make available to the City and its environmental consultants for review and approval, the proposed scope, method and budget for remediation of Hazardous Materials, which shall be the basis for determining the escrow hold-back amount referenced above.</p>
20.	<b>INDEMNIFICATION</b>	The parties agree to provide standard commercial hold harmless and defend provisions to the other, including each entity's employees, City Councilmembers, officers, directors, shareholders, partners and agents. City and Developer to negotiate the various levels of indemnification as part of the DDA.
21.	<b>SITE MAINTENANCE</b>	Upon Close of Escrow, Developer is responsible for all maintenance of the Property, except during the lease-back period of the City Parking Garage under Section 10 above.
22.	<b>NO COMMISSION</b>	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.

23.	<b>SIGNAGE</b>	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 (including the Developer Parcels) in compliance with City codes, or other applicable codes or regulations.
24.	<b>STANDARD OF PROPERTY</b>	Provided City covenants the Property is transferred in a condition not in violation of the City's Blight Ordinance and following transfer of title, 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.
25.	<b>CITY PROGRAMS &amp; COMMUNITY BENEFITS</b>	<p>Developer shall make best efforts for a Project Labor Agreement.</p> <p>Developer shall comply with City's contracting and hiring programs including:</p> <ul style="list-style-type: none"> <li>• the City's 2012 Local and Small Local Business Enterprise Program ("SLBE Program," attached as Attachment (TBD)), which includes the City's Local Employment Program and Oakland Apprenticeship Program;</li> <li>• Payment of Prevailing Wages;</li> <li>• The City's Equal Benefits Ordinance;</li> <li>• The City's Living Wage Ordinance;</li> <li>• Payment of a \$2 million contribution to the City's workforce development program; and</li> <li>• Provision of community space at below market rate rent (defined as 50% of market rate for such space) for tenants such as arts organizations, gallery/exhibit uses and nonprofits, and/or similar organizations (approximately 18,500 square feet under Scheme A or approximately 20,700 square feet under Scheme B). Developer shall submit documentation annually to City to verify that community space continues to be leased at 50% of then current market rate for such space.</li> </ul> <p>The Developer or future owners of the Project shall apply the City's Local Employment Program to Project operations (i.e. property management, maintenance, engineering, parking</p>

		<p>operations, etc.) for new jobs (that is, jobs not filled by such owner's existing employees) for five years from the date of occupancy.</p> <p>As long as the Developer follows procedures to comply with the City Programs, in no event will the penalties associated with the City Programs be in excess of \$10 million.</p>
26.	<b>PERFORMANCE AND PAYMENT BONDS</b>	Developer shall obtain performance and payment bonds, in the amount of 100% of the hard costs of construction of the Project pursuant to the Construction Contract to be executed by Developer.
27.	<b>RIGHT OF ENTRY</b>	Developer to have the right to enter onto the Property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developer's cost, required as part of its due diligence.
28.	<b>FINANCING</b>	The 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.
29.	<b>PERMITTED TRANSFERS</b>	Developer may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement, including any right or obligation to acquire an interest in the Site, Construct the Improvements or otherwise do any of the above or make any contract or agreement to do any of the same (each a " <b>Transfer</b> "), without in each instance obtaining the prior written approval of City Administrator, which approval may not be unreasonably withheld or conditioned but may include seeking approval by City Council. Developer acknowledges and agrees that any Transfer approved hereof shall not include a separately negotiated development agreement, the transferability of which shall be subject to the terms of any such development agreement and law.

(i) In the case of any Transfer, the required experience of any transferee shall consist of the following (a "Qualified Transferee"):

(a) A successful track record in developing and operating at least two (2) large, complex commercial projects;

(b) Experience with complex projects that included identifying and securing all necessary approvals and tenants, and managing the construction process;

(c) Demonstrated ability to operate and maintain real estate projects and meet development goals;

(d) Proven ability of transferee to possess or attract equity and debt capital for projects similar in scope and cost to the proposed Project as evidenced by:

(i) Financing of comparable projects;

(ii) Access to sufficient debt and equity for the proposed Project, including submission of audited financial statements for the last three (3) years preceding the contemplated Transfer

(iii) On-going relationships with lenders and investors.

Or (ii) with the prior written approval of City Administrator, which approval may not be unreasonably withheld or conditioned, but may include seeking approval by City Council, if the Transfer is to an owner/user who intends to occupy the building upon completion and if a developer that meets the requirements of a Qualified Transferee is the Development Manager for the Project. Any change of the Development Manager during the Construction Period must be approved in writing by the City Administrator on the same terms.

Development Manager means the entity that is in charge, either because it is the Developer of the Project or has a contract with the Developer to oversee the development, construction and leasing of the Project.

30.	<b>COMPLETION GUARANTY</b>	<p>At Close of Escrow, Developer to provide City a commercially reasonable Completion Guaranty for one hundred percent (100%) of the Project Costs of the Project, less the pre-development costs already spent, a form of which will be attached to the DDA. The guarantor must be a financially strong person or entity with significant assets which, at a minimum, must include having a net worth of at least forty percent (40%) of estimated project costs as set forth in the approved Project Development Budget ("Project Costs"), not including any amounts invested by the Guarantor in the Developer or Project. In lieu of documenting the required net worth, the Guarantor may provide the City with a letter of credit, consistent in form and substance with a "Form of Guaranty" included as an attachment to the DDA, from a financial institution approved by the City, in an amount equal to forty percent (40%) of Project Costs, and which shall be automatically renewable until Developer completes construction.</p>
31.	<b>SUBDIVISION INSTRUMENTS</b>	<p>City (in its proprietary and not regulatory capacity) and the Developer will cooperate in the preparation of a planned unit development, preliminary and final development plan(s), a development agreement with a term of at least eight years, vesting tentative map and final map, and possibly a condominium plan, variance, and encroachment permit (collectively, the "Subdivision Instruments"); all at the Developer's sole cost and expense. Within the non-residential portion, two air space parcels will consist of: (1), the Retail podium and (2) the Office Building. It is expected that the private parking will be part of a Retail or Office Tower parcel but could be a third parcel. A residential parcel could be a fourth parcel (with residential condominiums). Regulatory approval of a vesting tentative parcel map shall be a precondition to the City's obligation to convey the Property and to the Developer's obligation to purchase the Property.</p>

32.	<b>PARKING OPERATIONS</b>	Developer shall offer parking spaces to the public as part of the Project's overall parking at least 130 parking spaces under Scheme A or at least 200 parking spaces under Scheme B. Developer shall increase the amount of public parking spaces to 350 on evenings after 6 P.M. to help accommodate patrons of the Paramount Theatre during performances at the Theatre. Developer shall use best efforts to enter into a Parking License agreement with the Paramount Board of Directors for said parking spaces.
33.	<b>DOCUMENT PREPARATION FEES</b>	Developer acknowledges and agrees that City may engage, in its sole discretion, outside counsel to assist with expedited preparation of the DDA, after Council formally has approved the Term Sheet. City estimates that such amount shall approximate \$50,000 and shall inform Developer if billings are anticipated to exceed such amount. Developer shall reimburse the City for such legal fees within 30 days of receipt of monthly billing statements from City to Developer.

**HEALTH AND ENVIRONMENT**

Developer (and City, where applicable) will comply with the following:

**Public Information:** The City shall share information with the public regarding past soil testing and remediation and the existing requirements for truck routes surrounding the site to those living in the surrounding area as part of the community engagement process;

**Trees:** Project must incorporate and maintain trees on the site and adjacent street frontage (as specified by Oakland Municipal Code Chapter 17.124); there must be a net tree increase, so that trees that are cut must be replaced;

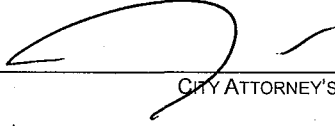
**Renewable Energy:** Project must consider on-site renewable energy infrastructure such as solar, wind, geothermal, or biomass with production capacity of at least 5% of the Project's annual electrical and thermal energy cost;

**Solar:** Project must consider on site solar panel installation, taking into consideration the approved design of the Project, including, but not limited to, applying for grant or subsidy programs when available;

**Low-VOC Paints:** Project must use low-VOC paints;

**Indoor Air Quality:** Project must incorporate measures to improve indoor air quality and reduce exposure to air pollution. **Air Filtration:** Project must install air filtration systems as economically feasible.

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CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT ("DDA") AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND W/L TELEGRAPH OWNER, LLC OR A RELATED ENTITY OR AFFILIATE ("DEVELOPER") IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE TERMS DESCRIBED IN THE AGENDA PACKET**

**WHEREAS**, the City of Oakland (the "City") owns approximately 1.66 acres of property located at 2100 Telegraph Avenue (the "Property"), which is improved with a two-story public parking structure that includes 351 parking spaces (the "City Garage"); and

**WHEREAS**, the City acquired the Property from the Oakland Redevelopment Successor Agency ("ORSA"), successor agency to the Redevelopment Agency of the City of Oakland; and

**WHEREAS**, ORSA approved the Revised Long-Range Property Management Plan ("LRPMP") pursuant to Resolution No. 2014-004 C.M.S., dated May 20, 2014, and the City approved the LRPMP pursuant to Resolution No. 84995, dated May 20, 2014, which provided for the transfer of the Property to the City as a future development parcel; and

**WHEREAS**, the California Department of Finance ("DOF") approved the LRPMP on May 29, 2014, and ORSA conveyed the Property to the City on October 15, 2014; and

**WHEREAS**, on March 26, 2015, pursuant to Resolution No. 85220 C.M.S., dated October 21, 2014, the City and TB2 Retail Complex, LLC ("TB2"), a limited liability company comprising the Strategic Urban Development Alliance ("SUDA") and Hensel Phelps Construction Company ("HPCC"), executed an Exclusive Negotiation Agreement ("ENA") for development of a mixed-use project on the Property; and

**WHEREAS**, on July 5, 2016, the City Council adopted Resolution No. 86267 C.M.S., authorizing (1) an assignment of the ENA from TB2 to W/L Telegraph Owner, LLC ("W/L"), or one of its affiliates, a joint venture partnership between TB2 and Lane Partners/Walton Street Capital LLC, to evaluate the feasibility and negotiate the terms for



development of a mixed-use office/retail project including alternatives with a residential component and/or replacement of public parking currently on the Property (the "Project"); and (2) an amendment of the ENA to extend the ENA term from 24 to 30 months, or from October 21, 2016 to April 21, 2017, with an administrative option to extend the ENA term by an additional six months from April 21, 2017 to October 21, 2017, while also extending certain performance deadlines; and

**WHEREAS**, on April 21, 2017, a second amendment to the ENA was executed, through the six-month administrative option to extend the ENA term to October 21, 2017; and

**WHEREAS**, on October 17, 2017, the City Council adopted Resolution No. 86938 C.M.S. authorizing a third ENA amendment to extend the ENA term by another 12 months to October 21, 2018, with an administrative option to extend by an additional six months. At Developer's request, the City Administrator approved the optional six-month extension, and issued an extension letter setting the termination date to April 21, 2019; and

**WHEREAS**, on July 18, 2018, the City Planning Commission approved alternative proposed development projects (referred to in the Planning Commission approval as the "2100 Telegraph Avenue Project"), which included adoption of California Environmental Quality Act ("CEQA") findings, certification of the Environmental Impact Report ("2100 Telegraph Avenue Project EIR"), rejection of alternatives as infeasible, Statement of Overriding Considerations, and Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, all of which are relied upon herein; and

**WHEREAS**, on April 16, 2019, the City Council adopted Resolution No. 87634 C.M.S. authorizing a fourth ENA amendment to further extend the ENA term by six months to October 21, 2019 to finalize negotiation of a Disposition and Development Agreement ("DDA") term sheet (the "Term Sheet"); and

**WHEREAS**, an October 2018 appraisal conducted by Yovino Young concluded that the fair market value of the land is \$28 million, assuming a clear site free of hazardous material; and

**WHEREAS**, the site is improved with a two-story parking structure and has contaminated soil conditions; and

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

**WHEREAS**, staff recommends a sale of the Property instead of a ground lease because a sale is necessary to promote the economic development of the Property for reasons set forth in the Agenda Report for this item; and

**WHEREAS**, staff has negotiated a Term Sheet for a DDA with Developer which sets forth the terms and conditions of the sale of the Property to Developer for development of the Project and the use of the Property by Developer; and

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

**WHEREAS**, a public hearing of the City Council was held to hear public comments on the sale of the Property to the Developer or affiliated entity 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

**NOW, THEREFORE, THE CITY 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 9 hereof for the price of \$28 million.

**SECTION 2.** The City Council hereby finds and determines, that the sale of the Property is for economic development consistent with the DOF- approved LRPMP and is not subject to the Surplus Lands Act.

**SECTION 3.** The City Council hereby finds that up to \$3.7 million of the land conveyance price received by the City shall be held back in escrow to reimburse the Developer for demonstrable costs associated with demolition of the City garage.

**SECTION 4.** The City Council hereby finds that up to \$1.9 million of the land conveyance price received by the City shall be held back in escrow to reimburse the Developer for demonstrable costs associated remediation of contaminated soil conditions on the Property.

**SECTION 5.** The City Council hereby authorizes the City Administrator to deposit net proceeds from the sale of the Property, ranging from approximately \$22 million to \$27 million, extension fees up to \$2.5 million, deposits, liquidated damages and default payments generated by the Project into the Central District TA Bond Fund 2009T (Fund 5613), Central District Organization (85245), with a Project to be determined for future allocation.

**SECTION 6.** The City Council hereby authorizes the City Administrator to accept and deposit a Developer one-time contribution of \$2 million to support workforce development activities into the Miscellaneous Trust, Donations and Endowments Fund (Fund 7999), Workforce Development Organization (Org. 85311), with Projects to be determined for future allocation.

**SECTION 7.** The City Council, pursuant to Oakland Municipal Code Section 2.42.170(A), hereby waives a competitive Notice of Development Opportunity (“NODO”) process for development of the site, and finds and determines that disposition of the Property through a sole source method, and not a competitive NODO process, is in the best interest of the City because Developer has 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, and that disposition through a competitive NODO process would have been impractical because it would take considerable City resources to undertake a NODO process to identify a Developer with experience and qualifications similar to those already offered by Developer.

**SECTION 8.** The City Council hereby finds and determines the following, based on the appraisal conducted by Yovino Young in October 2018, the 52201 Report and the entirety of the record described in Section 9 below:

- A. The sale of the Property will assist in the creation of economic opportunity;
- B. The Property is being conveyed at fair market value and will support the City’s economic development goals which include:
  - Creating and expanding employment opportunities, including approximately 690 construction jobs and 7,800 permanent jobs; and
  - Increasing tax revenues to the City by approximately \$15 million per year, and one-time impact fees of approximately \$22 million.

**SECTION 9.** The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) a DDA 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) a grant deed(s) 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; (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 10.** All agreements associated with the conveyance of the Property and completion of the 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 11.** The City Council hereby authorizes the City Administrator or his or her designees to (1) determine satisfaction of conditions precedent under the DDA to the conveyance of the Property, and (2) take whatever action is necessary with respect to the conveyance of the Property and completion of the Project consistent with this Ordinance and its basic purposes.

**SECTION 12.** The City Council hereby finds and determines that the anticipated environmental effects of the Project have been evaluated in the 2100 Telegraph Avenue Project EIR and, as supported by substantial evidence in the record, no additional environmental analysis is needed. As specified in the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 (1) there are no substantial changes proposed in the Project or the circumstances under which the Project is to be undertaken that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects, and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

**SECTION 13.** 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;
- C. The 52201 Report; and
- 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 14.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 15.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 16.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

### **AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT (“DDA”) AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND W/L TELEGRAPH OWNER, LLC OR A RELATED ENTITY OR AFFILIATE (“DEVELOPER”) IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE TERMS DESCRIBED IN THE AGENDA PACKET**

This Ordinance authorizes the disposition of property at 2100 Telegraph Avenue to W/L Telegraph Owner, LLC or a related entity or affiliate ( “Developer”) to merge the property with surrounding parcels and create a site for the development of a project referred to as the “Eastline Project,” which has planning approvals for two development scenarios:

Scheme A: Up to 989,550 gross square feet of office, a 395-unit residential tower (374,000 square feet), 84,520 gross square feet of ground floor retail, 18,500 gross square feet of community space offered at below-market rents, with four levels of parking; or

Scheme B: Up to 1,600,000 gross square feet of office, 68,300 gross square feet of ground floor retail, 20,735 gross square feet of community space offered at below-market rents, with four levels of parking.

This Ordinance authorizes the City Administrator to sign the Disposition and Development Agreement (“DDA”) with Developer for this transaction, and makes associated findings with respect to the California Environmental Quality Act (“CEQA”) and other matters.

## EXHIBIT A

### PROPERTY DESCRIPTION

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows;

#### PARCEL 1:

Portions of Lots 1 and 15, in Block D, of "Wilcox Place", according to the map thereof filed September 19, 1868 in Book 36 of Deeds, at Page 173, in the Office of the Recorder of Alameda County, California, described as follows:

Beginning at the point of intersection of the northern line of 21st formerly Hobart Street, with the eastern line of Telegraph Avenue, as the same now exists; and running thence along the last named line northerly 50 feet to the northern boundary line of said Lot 1; thence along the last mentioned boundary line easterly 103.99 feet to the western boundary line of said Lot 15; thence along the last mentioned boundary line northerly 91 feet to a line drawn parallel with the northern boundary line of said Lot 15 and distant southerly 9 feet therefrom, measured at right angles; thence along said parallel line easterly 50 feet to the eastern boundary line of said Lot 15; thence along the last mentioned boundary line southerly 141 feet to said northern line of 21st Street; and thence along the last-named line westerly 154.57 feet to the point of beginning.

#### PARCEL 2:

Portion of Lot 2, in Block D, of "Wilcox Place", according to the map thereof filed September 19, 1868, in Book 36 of Deeds at Page 173, Alameda County Records, described as follows:

Beginning at the point of intersection of the southern line of said Lot 2, with the eastern line of Telegraph Avenue, as the same now exists; and running thence along the last-named line northerly 50 feet to the northern boundary line of said lot; thence along the last mentioned boundary line easterly 103.40 feet to the eastern boundary line of said lot; thence along the last mentioned boundary line southerly 50 feet to said southern boundary line of said lot; and thence along the last mentioned boundary line westerly 103.99 feet to the point of beginning.

#### PARCEL 3:

The southerly 41 feet, front and rear measurement of Lot 3 in Block "D", as said lot and block are shown on the Map of "Wilcox Place Jas T. Stratto Surveyor", recorded September 19, 1868 in Book 35 of Deeds, Page 173, Alameda County Records.

Excepting therefrom the portion taken for the widening of Telegraph Avenue.

PARCEL 4:

Lots 8,9,13 and 14, in Block D, as said lots and block are shown on the map of "Wilcox Place" Recorded September 19, 1868 in Book 36 of Deeds, at Page 173, Alameda County Records.

PARCEL 5:

All of Lot 12, In Block "D" as said lot and block are shown on the map of Wilcox Place, Recorded September 19, 1868 in Book 36 of Deeds, Page 173, Alameda County Records.

Excepting therefrom that portion thereof conveyed to Pacific Southwest Realty C. by Deed Recorded December 14, 1973, Reel 3572, Image 570, Alameda County Records.

PARCEL 6:

All of Lot 10 and the western 2 feet of Lot 11, in Block "D", as said lots and block are shown on the map of "Wilcox Place", Recorded September 19, 1868 in Book 36 of Deeds, Page 173, Alameda County Records, described as follows:

Beginning at a point on the Southern line of 22nd, formerly 21st Street, and formerly Walnut Street, distant thereon easterly 275 feet from the intersection thereof, with the eastern line of Telegraph Avenue, as said street and avenue are shown on said map; running thence easterly along said line of 22nd Street, 52 feet; thence at right angles, Southerly 150 feet; thence at right angles, westerly 52 feet; and thence at right angles, northerly 150 feet to the point of beginning.

PARCEL 7:

Portion of Lot 11, in Block D of the Map of Wilcox Place, filed September 19, 1868, in Book 36 of Deeds, Page 173, Alameda County Records, described as follows:

Beginning at a point on the Southwestern line of 22nd Street, formerly Walnut Street, distant thereon north  $76^{\circ} 55' 58''$  west 145.61 feet from the northwestern line of Broadway, 100 feet wide; running thence along said southwestern line, north  $76^{\circ} 55' 58''$  west 56.39 feet; thence at right angles, south  $13^{\circ} 04' 02''$  west 150 feet to the southern line of said Lot U; thence along the last named line, south  $70^{\circ} 55' 58''$  east 18.04 feet to a line drawn south  $27^{\circ} 24' 32''$  west from the point of beginning; and thence North  $27^{\circ} 24' 32''$  east 154.82 feet to the point of beginning.

APN: 008-0648-016-03



**EXHIBIT B**

**ENVIRONMENTAL ASSESSMENTS**

[To be provided by the City.]

**EXHIBIT C**

**Final Development Plans A and B**

**attached**

**Exhibit D  
Schedule of Performance**

**Pre-Close Items**

<b>Item</b>	<b>Task</b>	<b>Date Due (No later than the outside due dates)</b>
1	Developer to submit Good Faith Deposit to City	Upon Execution of DDA
2	Developer to submit an Itemized Operating Budget and 20-year cash flow statement.	12 months after the Effective Date
3	Submit 50% complete Design Development Plans to City for approval	15 months after the Effective Date
4	Developer to submit Itemized Project Budget to City, which shall include, but is not limited to, all hard and soft costs and funding sources for each item, based on the 50% Design Development Documents	21 months after the Effective Date
5	Developer to submit form of Construction Contract to City	24 months after the Effective Date
6	Developer to submit Tentative Vesting Map to City	30 months after the Effective Date
7	Developer to submit a Financial Statement	32 months after the Effective Date
8	Developer to provide evidence of required insurance	32 months after the Effective Date
9	Developer to provide evidence of lease commitment letters for at least 50% gross leasable space, or letter expressing intention to develop the project as a build to suit facility for a tenant	34 months after the Effective Date
10	Developer to provide City with formation documents of entity taking possession of the land, and a copy of a City business license for that entity	34 months after the Effective Date
11	Developer to submit Final Construction Plans to City for approval	34 months after the Effective Date
12	Developer to submit Final Construction Contract to City	35 months after the Effective Date
13	Developer to submit final Construction Loan/Financing documents to City.	35 months after the Effective Date
14	Developer to provide a \$4,000,000 Letter of Credit in favor of the City	35 months after the Effective Date
15	Developer to submit Performance Bond ("Construction Bond") in an amount not less than one hundred percent (100%) of the cost of construction of the Project pursuant to the Construction Contract executed by Developer. Bonds may be provided by Developer or its general contractor	35 months after the Effective Date
16	Developer to provide a Completion Guaranty from an entity with a proven net worth no less than 40% of the Project Development Costs	35 months after the Effective Date
17	Developer shall identify fully committed debt and equity funds equal to 100% of Project costs	35 months after the Effective Date
18	Developer to provide a letter from the City of Oakland Building Department indicating its readiness to approve and issue Building Permits	36 months after the Effective Date
19	Developer to deposit Purchase Price amount in escrow	36 months after the Effective Date
20	Projected Closing Date	36 months after the Effective Date

Note: The DDA Term Sheet provides a term of 3 years plus 4 years of extensions to close. The months shown above will be extended by 1 year for each 1 year extension granted.

**Post Close Items**

<b>Item</b>	<b>Task</b>	<b>Date Due</b>
21	Developer to submit Final Vested Map to City	1 months after the Closing Date
22	Commence Construction	3 months after the Closing Date
23	Demolition of all existing structures on the Project Site.	6 months after the Closing Date
24	Submit approved Building Permits to the City	18 months after the Closing Date
25	Developer to submit Government Approvals to City	18 months after the Closing Date
26	Excavation and Remediation of all Hazardous Materials present on the Project Site.	18 months after the Closing Date
27	Grading of the Project Site, where appropriate.	18 months after the Closing Date
28	Driving of all piles necessary for the Project.	18 months after the Closing Date
29	Installation of all forms necessary for the first pour of the Project foundation.	18 months after the Closing Date
30	Installation of all steel necessary for the first pour of the Project foundation.	18 months after the Closing Date
31	First pour of concrete for the foundation	18 months after the Closing Date
32	Complete Construction	5 years after the Closing Date

Performance deadlines shall be extended by one year with every one-year extension exercised per the terms of the DDA.