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OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

2019 JUL -3 AM 3:11

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. 13558 C.M.S.

**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 Section 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 consideration for the sale of the Property is not less than the fair market value at its highest and best use and will support the City’s economic development goals which include:
  - Creating and expanding employment opportunities, including approximately 690 construction jobs and 7,200 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,

**JUL 16 2019**

PASSED BY THE FOLLOWING VOTE:

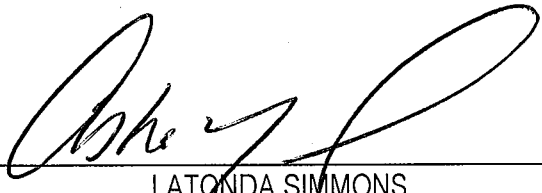
AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN — 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

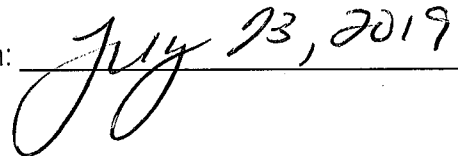
ATTEST:

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

**Introduction Date**

**JUL - 9 2019**

Date of Attestation:

  
\_\_\_\_\_  
July 23, 2019

## 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.