



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2017 JUN - 1 PM 4: 31

# AGENDA REPORT

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

**FROM:** Mark Sawicki,  
Director, EWD

**SUBJECT:** DDA with TDP-Webster, LLC for  
2330 Webster Street and  
2315 Valdez Street

**DATE:** June 1, 2017

City Administrator Approval

Date:

6/1/17

## RECOMMENDATION

**Staff Recommends That City Council Adopt An Ordinance:**

1. Consenting To A Change In The Ownership Structure And Control Of TDP-Webster, LLC ("Developer") With Which The City Has Previously Entered Into A Disposition And Development Agreement ("DDA") For The Sale And Development Of Two Contiguous City-Owned Parcels Located At 2330 Webster Street And 2315 Valdez Street, Including Construction Of A New City Parking Garage ("City Garage");
2. Authorizing The City Administrator, Without Returning To The City Council, To Negotiate And Execute An Amendment To The DDA To (A) Change The Interest Rate Calculated On The City's Seller Carryback Loan To Developer For The Developer's Acquisition Of The Property, (B) Change The Formula Used To Calculate The Purchase Price To Be Paid By The City For The Acquisition Of The City Garage, (C) Increase The Required Minimum Net Worth Of The Guarantor Providing The Completion Guaranty, (D) Waive Performance And Payment Bond Requirements, Unless Otherwise Required By Lender, And (E) Modify The Affordability Level Of The Project's Moderate Income Housing Units;
3. Allocating And Appropriating Up To \$350,000 To Create A Contingency Account For Finish And Equipment Enhancements Related To Security And Energy Efficiencies;
4. Authorizing The City Administrator, Without Returning To The City Council, To Negotiate And Execute An Amendment To The Parking License Agreement Between The City Of Oakland And CIM Oakland 1 Kaiser Plaza, L.P. ("CIM") Providing For The Temporary Relocation Of CIM's Parking Rights To The Franklin Garage And Recordation Of Such Amendment And Related Documents On Title For The Franklin Garage Until The City Is Able To Transfer CIM's Parking Rights To The New City Garage; And
5. Making Related CEQA Findings Pursuant To Public Resources Code Section 21166 (CEQA Guidelines Section 15162)

Item: \_\_\_\_\_  
CED Committee  
June 13, 2017

## **EXECUTIVE SUMMARY**

The proposed legislation will authorize a change of ownership of the Council-approved Developer entity with whom the City has a DDA; modify terms of the existing DDA including the interest rate calculation on the City's seller carryback loan and calculation of the garage purchase price, increasing the net worth requirement of the entity providing a completion guaranty, waiving bond requirements and raising the moderate income housing affordability level to mitigate the impact on feasibility from increased construction and financing costs; create a City-controlled contingency account for security and energy-related finishes and equipment; and provide for recordation of an amended parking license agreement between the City and CIM that currently applies to the Project site against the Franklin Plaza Garage (where licensed parkers will be temporarily moved during Project construction).

## **BACKGROUND / LEGISLATIVE HISTORY**

On January 19, 2016, the City Council adopted Ordinance No. 13350 C.M.S. authorizing the City Administrator to negotiate and execute a DDA with the Developer. The DDA, which has an effective date of September 1, 2016, includes terms for the following:

1. The sale of two contiguous City-owned parcels located at 2330 Webster Street and 2315 Valdez Street ("Property") from the City to the Developer for its appraised value of \$9,450,000 for development of a mixed-use project consisting of 234 residential units (fifteen percent of which will be affordable to moderate-, low- and very low-income households), approximately 17,000 square feet of ground floor retail space, 111 spaces of residential parking and a 244-space public parking garage (the "Project"). The City will carry back an interest-bearing promissory note in the amount of the sales price of the Property, minus a \$50,000 good faith deposit, from the Developer from the time of Property conveyance until completion of Project construction. Interest on the note would be equal to that paid on Developer's construction loan plus one percentage point.
2. Calculation of the City's purchase price of the public garage ("City Garage") located inside the Project at a cost not to exceed \$13,468,780, which includes interest on construction costs borne by Developer during the construction period at a rate equal to that paid on Developer's construction loan.
3. The City shall make commercially reasonable efforts to secure agreements from parking license holders who have rights to 242 spaces at the existing parking lot on the Property to temporarily relocate those rights to another parking site, and to quitclaim their interest in the Property with the understanding that the licenses will continue to encumber the City Garage once it is built and conveyed to the City.

Construction drawings were submitted to the City's Bureau of Building in October 2016, comments were received, and a building permit is expected to be issued in June 2017. A tentative parcel map combining the two parcels comprising the Project site was approved by the Planning and Zoning Division in May 2017.

## **ANALYSIS AND POLICY ALTERNATIVES**

### **1. Proposed Change of Ownership of the Developer Entity**

The Developer proposes to change the ownership of TDP-Webster LLC ("TDP") in order to add as an investor/owner Trammell Crow Residential ("Trammel Crow"), a nationally-recognized well-capitalized development entity. The principals of the current Developer team, Bruce Dorfman and Will Thompson, will remain as officers of TDP and will continue to conduct day-to-day management of the Project. Mr. Dorfman is also a Managing Director of Development for Trammell Crow's Northern California operations.

Trammell Crow is a national leader in multi-family residential development and will add depth and financial strength to the development team. Over the last 35 years, Trammell Crow has developed 230,000 units of multi-family housing across the United States. Other than this project, Trammel Crow has four other active residential projects in Northern California that each include a parking garage and total over 700 units. Trammel Crow has another eight active projects and four completed projects in Southern California together totaling over 3,100 units.

Three years of certified financial statements (2013 – 2015) of Trammell Crow entities were reviewed on behalf of the City by two different financial consulting firms: Willdan Financial Services and Century Urban. Century Urban also reviewed unaudited financial statements for the first six months of 2016 to confirm no major recent changes in the entities' financial standings occurred. Both of the financial analysts concluded that the proposed entity change would strengthen the Developer's financial standing and make it more attractive to institutional lenders. Each consultant also attested to Trammell Crow's reputation as a builder of quality multi-family housing developments across the United States.

The DDA includes terms requiring the Developer to provide a Completion Guaranty (the "Guaranty") from a financially strong person or entity (the "Guarantor"). The Guarantor must have significant assets, with a proven net worth of at least 25 percent of estimated project costs available, or supply a letter of credit equal to 25 percent of Project costs (at least \$29.25 million). Trammell Crow, or a related entity, will provide the Guaranty under the terms of the DDA. Both of the City's financial consultants confirmed that Trammel Crow and its related entities have the financial capacity to provide the Guaranty required by the DDA.

The specific changes in ownership of TDP include:

1. A Trammell Crow limited partnership named NCCH 104 Webster, LP will be created as a new entity for the purpose of developing the Project. 99.75 percent ownership of NCCH 104 Webster will be held by Trammell Crow equity entities that invest in Trammell Crow projects as Limited Partners. A General Partner will own the remaining 0.25 percent interest in the company, and is also a Trammell Crow entity.
2. NCCH 104 Webster, LP will buy out the ownership interests of Waverly-Webster, LLC, an entity of the Oakland based Masri family which owns 33 percent of TDP-Webster, LLC. TDP-MM Webster, LLC, which has a 67 percent ownership interest in TDP-Webster, LLC will also be bought out by the new developer entity. TDP-MM Webster,

LLC is 99 percent-owned by Thompson Dorfman Company, Inc., which proposed the Project and has led the negotiations of the DDA. NCCH 104 Webster, LP will become the sole owner and controlling manager of TDP-Webster, LLC.

Organization charts depicting the current and proposed ownership structures of TDP-Webster, LLC are attached as **Attachment A** and **Attachment B**, respectively.

Retention of the Thompson-Dorfman team for the duration of Project construction will be a term included in the assignment document to ensure continuity of project management and a Bay Area presence.

**Pros:** The Developer states that it will not be able to secure financing and meet the Guaranty provisions of the DDA without the ownership change. Trammell Crow is financially solid and experienced in urban multi-family development, and it is unlikely that another entity would be an improvement over what is proposed. If the assignment is denied, it is possible that the Project will be stalled or terminated.

The proposed change in ownership will add financial strength to the Developer team, which is attractive to institutional investors. Day-to-day management of the Project will remain with the same people who have been involved in the Project since its inception – a condition that will be included in the assignment document. All other terms and conditions of the DDA will remain in effect.

**Cons:** Trammell Crow is a Dallas, Texas-based company that develops nationally and does not have strong roots in the Bay Area and therefore may not understand the local market as well as the Developer. This potential downside is mitigated by the continued presence and management of the current development team, which is based in the Bay Area and has many multi-family residential projects in its portfolio.

## **2. Amend Terms of the DDA to Improve Project Feasibility**

Bids for construction of the Project have come in significantly higher than the estimated costs. The lowest bid received by the Developer exceeds estimates by approximately \$10,000,000, or about eight and one half percent (8.5%) above expected costs. The Developer is investigating a number of ways to address the impacts of Project feasibility, including value engineering, making a higher equity investment, increasing the loan for the Project, adjusting interest rate terms and the garage purchase price formula, and adjusting the affordability level mix of the inclusionary below market rate housing units.

### **2.A. Change of Interest Rate Calculation on Seller Carryback Loan**

The DDA includes terms for the City to carry an interest-bearing promissory note from the Developer equal to the outstanding value of the land, or \$9,400,000, plus compound interest. The interest rate on the note, in the current DDA terms, is to be based on the Developer's interest rate on its construction loan (estimated in the DDA for illustrative purposes to be about five percent) *plus* an additional one percent.

Since executing the DDA, TDP has firmed up its financing plan, consistent with the DDA's schedule of performance. The Developer is now pursuing a "participating mortgage" rather than a conventional construction loan followed by long-term permanent financing, which means that the lender will finance a larger share of the Project costs than is typical of most loans. In this case the lender will cover ninety-three percent (93%) of the costs, rather than a more standard sixty-five percent (65%) loan-to-value ratio. In exchange for contributing more funding, the lender receives not only interest payments on its investment, but also fifty percent (50%) of the net revenue stream generated by the Project over a ten-year period from the start of operations. In this scenario, the lender provides both the construction loan and permanent financing, creating a higher blended interest rate than what would be charged on a conventional construction loan.

Because of how this hybrid financing affects their borrowing interest rate, the Developer requests a change to the interest rate calculation by basing it on the 12-month London Interbank Offered Rate (LIBOR) effective at the time of the sale of the Property, plus a spread of 375 basis points (3.75%), rather than basing it on the actual interest charged on its "participating mortgage" financing. As of March 27, 2017, the 12-month LIBOR rate was 1.8 percent (1.8%). Adding the 375 basis point spread would set the Developer's interest rate on the City's carry-back financing for the purchase of the Property at 5.55 percent (5.55%). At the same time, the revised interest rate calculation method will require TDP to charge LIBOR plus 275 basis points (2.75%) for a total of 4.55% on the cost of constructing the City's garage.

**Pros:** The financial feasibility of the overall Project will benefit by this change by keeping interest costs in line with those anticipated in the DDA. If the change is not made, higher interest costs paid to the City by the Developer will eat into funds available for actual construction costs. Although the Developer is obligated to meet the not-to exceed price of the garage even if the actual costs exceed that, higher interest costs create an unnecessary burden on the Project.

**Cons:** Linking the interest rate calculations to the 12-month LIBOR rate rather than to the Developer's construction loan interest rate will likely lower the interest the Developer pays the City on its carryback note for the sale of the Property. The City will still be receiving a market rate of return.

## **2.B. Change Formula for Calculating Garage Purchase Price**

In the current DDA terms, the purchase price of the garage is based on the lesser of:

- a) A maximum price of \$13,468,780; or
- b) \$12,214,000 plus compound interest on the outstanding purchase price of the land. Interest is to be set at one percent (1%) above the Developer's construction loan interest rate; or
- c) The actual construction cost of the garage plus compound interest on construction costs as they accrue. Interest is to be equal to the Developer's construction loan interest rate.

As noted in 2.A. above, the Developer has requested a change in how interest rates are calculated, which would apply for both the land sale by the City and the City's purchase price of the City Parking when completed. The proposed interest rate applied to part b) of the formula

(discussed in the preceding section). The interest rate applied to part c) of the formula above, which applies to the garage construction costs, is 12-month LIBOR plus 275 basis point, or 2.75%.

If the floating LIBOR rate increases, the spread between the interest paid by the Developer for the land purchase, and the interest paid by the City for the garage purchase, will increase interest costs in the City's favor, even though the amount of the Developer's debt on the land is lower than the City's debt for garage construction costs. This is because the Developer's interest expense will accrue over a longer period of time at a higher rate than the City's interest expense.

**Pros:** Changing the method of calculating the garage purchase price by changing the interest rate calculations on the City's carryback note and on accrued construction costs will result in less money directed toward interest payments, and more money available for construction costs.

**Cons:** Lowering the interest rate for the City and the Developer will decrease the balance of interest accrued in the City's favor over the Project period. The difference is estimated to be less than \$15,000, representing approximately 0.1% of the maximum garage purchase price, and will not be a significant loss to the City.

## **2.C and 2.D. Increase Net Worth of Guarantor and Waive Bond Requirements**

The DDA requires the Developer to provide a Completion Guaranty from a financially strong guarantor and performance and payment bonds to ensure completion of the Project the event the Developer, general contractor or its subcontractors can no longer perform according to the terms of their contracts.

The Guaranty (Section 2.1.6 of the DDA) is a guaranty by a third party with adequate resources to complete the Project according to all terms of the DDA if the Developer is unable to meet its obligations. The guarantor, often a developer's parent company, must have significant assets and the financial wherewithal to complete the Project in its entirety. The DDA currently requires that the entity providing the Guaranty has a net worth of at least 25 percent of the estimated Project costs, not including any amounts invested by the Guarantor in the Developer or the Project.

Labor and material bonds and performance bonds (Section 2.1.7 of the DDA) are purchased by the developer to ensure that all subcontractors and suppliers on the job get paid, and the job is completed in the event the general contractor cannot meet its contractual obligations. If called upon, they do not directly benefit the City because failure to pay workers and suppliers is a liability against the Developer and the contractor, not the City. However, the combination of the Guaranty and the performance and payment bonds may offer a double layer of security for the City, often likened to "belt and suspenders", assuring a means to complete the Project if the general contractor and Developer fail.

The estimated cost of the bonding requirement is approximately \$700,000, adding significantly to the total Project costs. The Developer proposes that the bond requirement be waived in

exchange for a significant increase in the minimum net worth of the guarantor providing the completion guaranty – from 25 percent of the estimated Project costs to 100 percent. If approved, the net worth requirement for the guarantor will increase from \$29,200,000 to \$117,000,000, which adds assurance to the City that the guarantor has the financial strength to complete the Project if the Developer cannot.

**Pros:** Waiving the bond requirement will lower costs, making the Project more financially feasible. While waiving the bonds removes a safeguard that would provide the City with additional protection to ensure Project completion, staff believes that the Guaranty posted by Trammell Crow, which has net assets in excess of the total Project costs and the means to complete the Project per the terms of the DDA, is sufficient.

**Cons:** Waiving the bond requirement will remove an extra level of assurance that contractors and suppliers get paid, perhaps avoiding events that could lead to delays or foreclosure on the Project by the lender. If foreclosure were to happen, the City would call on the Guaranty to get the Project done. Moreover, waiving the bonding requirement for the Project may be viewed as setting a precedent and prompt other developers to ask the City to also waive bonds.

## 2.E. Change Below Market Rate Housing Affordability Level For Moderate Income Units

The Project includes construction of 234 residential units, thirty-six (36) of which will be affordable to households of very-low, low and moderate incomes. This represents fifteen percent (15%) of the total units, which will be provided without City subsidies. The Developer had previously proposed, and the City Council had approved, the following affordability mix:

Table 1

<b>Affordability Level</b>	<b>Affordable To:</b>	<b>Number of Units</b>
50% AMI*	Very low income households	14
80% AMI	Low income households	11
100%* AMI	Moderate income households	11

\*Area Median Income

To improve the Project revenue necessary to finance development, the Developer requests modifying the upper-limit affordability level of the eleven moderate-income units from 100% AMI to 120% AMI. This remains consistent with the federal Department of Housing and Urban Development (HUD) definition of moderate-income households for the purpose of assisted housing eligibility, which includes households earning between 81% and 120% of area median income. Table 2 below shows that by raising the income eligibility ceiling, the rental rates on the eleven moderate units will increase by \$366-\$517 per month, depending upon unit type. The number of available units in the 50% AMI and 80% AMI categories will remain as proposed.

Table 2

Unit Type	Monthly Rent		
	100% AMI (existing)	120% AMI (proposed)	Market
Jr. 1BD/1BA	\$1,828	\$2,194	\$2,830
1BD/1BA	\$1,828	\$2,194	\$3,175
2BD/2BA	\$2,194	\$2,633	\$4,055
3BD/2BA	\$2,524	\$3,041	\$4,800

**Pros:** As noted above, raising the eligible income level for moderate-income households will increase the Developer's revenue stream, which will strengthen its ability to secure the additional financing sought to offset the construction cost increase over preliminary estimates.

**Cons:** Raising the eligible moderate-income level will likely price available units out of reach for those households on the lower end of the moderate-income spectrum.

### 3. Allocate \$350,000 to Budget Contingency for Energy Efficiency and Security Upgrades

The City Garage will be constructed as a turn-key project for the City, as provided for in the DDA and Purchase and Sale Agreement for the City Garage. During the development of architectural drawings, Public Works staff identified design enhancements to the schematic drawings that will improve security and energy efficiencies in the garage, such as improved illumination using a denser array of individually-controlled lighting fixtures and light paint on the concrete walls. Such modifications may add costs to the construction budget, and would require a separate contingency fund, controlled by the City, for such approved additional cost expenditures. To allow for this, staff recommends allocating \$350,000 from former redevelopment bond funds into a City-controlled contingency account. Any funds remaining in the contingency account will be returned to the fund from which they were allocated.

Other changes to the schematic design that staff negotiated during the Design Development phase will be absorbed into the construction budget. These include the addition of two more parking spaces for a total of 244, caged unsecured long-term public bike parking, an increased number of floor drains and water spigots for improved maintenance, and the addition of a secure office and lavatory for parking attendants.

**Pros:** The additional funding will create a City-controlled contingency account for finishes and equipment enhancements to improve security and energy efficiency in the garage. If implemented, such improvements will support City goals to improve energy efficiency through individually adjustable light fixtures, and passive means such as the option to paint walls and ceilings a light color.

Photometric analyses show that the existing lighting design leaves many areas of the garage dimly lit. While the light levels are within standard acceptable ranges, the variations between light and dim areas may create a less secure feeling for garage patrons. It is expected that improved lighting will improve parkers' sense of safety in the garage



**Cons:** The existing 100% complete Design Development Plans meet the basic City and industry standards as drawn. The proposed enhancements are desirable, but not required by code or policy. Although enhancements may increase the sense of safety, it is unclear whether the additional expenditures will increase garage revenues.

#### **4. Amend CIM Parking License Agreement**

The Project site is currently a surface parking lot subject to parking licenses with CIM Oakland 1 Kaiser Plaza, LP ("CIM") for 200 parking spaces, and with Lake Merritt Tower LLC for 42 parking spaces, for the convenience of their tenants in nearby properties. The terms of the parking licenses are codified in lease agreements that stipulate that if there is construction on the lot, the City will use commercially reasonable efforts to temporarily relocate their licensed spaces during construction, and then move back into the new parking facility when complete.

The City must use commercially reasonable efforts to locate temporary parking within about a two block radius of the existing parking lot, but the City does not control any parking within those boundaries. Instead, staff proposes to relocate the licensed parking to the Franklin Garage at 19th and Franklin Street during the period of construction, which is another few blocks outside of the prescribed radius. Lake Merritt Tower agreed to the relocation without additional terms. CIM is willing to relocate its licensed parking to the Franklin Garage for 36 months, but is concerned that if construction gets delayed or the Project does not get completed, its licensed parking spaces will be stuck indefinitely at a less desirable spot for its tenants with no recourse.

The \$9,450,000 appraisal of the Project site assumes a fair market value of the land unencumbered by the license agreements. The terms of the DDA between the City and TDP require the City to use commercially reasonable efforts to negotiate and execute amendments to the parking license agreements attached to the land to temporarily relocate the licenses at no cost or liability to the Developer.

According to the DDA Schedule of Performance, the Developer will have a 27-month construction window. CIM will agree to relocate its licensed parking rights to the Franklin Garage for 36 months from the date of relocation. If the City is unable to assign the licensed spaces to the new City Garage within that 36 month period, all CIM's licensed monthly parkers at the Franklin Garage will be eligible for a 15 percent discount off the market rate monthly parking fee for the earlier of a) re-assignment of the licensed spaces to the new garage or another location acceptable to CIM, or b) December 30, 2068 when the term of the license expires.

CIM currently does not fully utilize the 200 licensed parking spaces on the Project site. In fact, only an estimated ten to twelve CIM tenants currently use the surface lot for monthly parking. Under the Master Fee Schedule, a 15% discount on all 200 licensed spaces would represent a potential loss in revenue of \$68,400/year to the City, provided that CIM and its tenants make use of all 200 spaces allocated to them in the Franklin Garage. The term of the parking license expires on December 30, 2068. If the licensed parking spaces are relocated to the Franklin Garage and never reassigned to a new garage on the project site or another site acceptable to CIM, the total potential loss in revenue to the City at current monthly parking rates is equal to approximately \$3.7 million ( $\$68,400/\text{year} \times 54 \text{ years} = \$3,693,600$ ). The probability of this most

extreme scenario is low, and the City is insured against the possibility of the garage never being built by a completion guaranty provided by a third-party with proven financial strength to finish the Project if the Developer fails to do so.

CIM's second condition for consenting to the temporary relocation of the licensed parking spaces is that the terms of the Second Addendum to the license agreement and all associated documents be recorded against title of the Franklin Garage until the licensed spaces can be re-assigned to the new garage on the project site. This encumbrance on the Franklin Garage's title will negatively affect the garage's sale value if the City wishes to sell it while CIM has a stake in the Franklin location. However, staff also considers it a low probability that the City would consider selling the Franklin Garage before the licensed spaces can be reassigned to the new garage on the project site.

CIM has been clear that it will not agree to an amendment to its license agreement to relocate its licensed parking spaces without the terms above. If the City cannot temporarily relocate the licensed parking spaces from the existing surface parking lot to allow construction of the new parking garage, the Project may be stalled indefinitely.

Based on the foregoing analysis, staff recommends authorizing an amendment to the license agreement between the City and CIM providing for the temporary relocation of CIM's parking rights to the Franklin Garage, discounted parking to licensed monthly parkers if relocation does not occur within thirty-six (36) months from the time of relocation, and recordation of the amended license agreement on the Franklin Garage's title until the City is able to transfer CIM's parking rights to the new City parking garage.

**Pros:** Consenting to CIM's conditions to temporarily relocate its licensed parking spaces to the Franklin Garage will allow the Project to move forward. The risk of the Project not being completed within the 36-month construction window is mitigated by the Developer's delivery of a third-party completion guaranty at the time of land transfer. Without it, the Project may be stalled indefinitely.

**Cons:** Accepting the terms of the Second Addendum to the Parking Lease Agreement between the City and CIM will expose the City to the risk of accepting reduced parking garage revenues over an extended period of time, reducing the potential sale value of the Franklin Garage, and clouding its title. The risk is mitigated by a construction completion guaranty.

### **FISCAL IMPACT**

Adoption of the proposed ordinance authorizing a change in the Developer's ownership structure will not have a fiscal impact on the City. The potential loss to the City in interest revenue if a change in the method for calculating interest is approved will not have a significant impact on the overall cost of the garage.

Authorization of a construction contingency account will require allocation of \$365,000 from the Central District TA Bond Series 2009T Fund (5613), CIP Central District (94889), CD Major Development Project (1000184), Undetermined Program (0000). It is uncertain at this time how

much of that money will be spent. All remaining contingency funds will be returned to the account from which they were allocated.

Authorization of an amendment to the license agreement between the City and CIM may have a fiscal impact to the City, but the magnitude depends on whether there are significant delays of construction, and for how long. If construction of the new garage is delayed beyond 36 months after the licensed parking spaces are assigned to the Franklin Garage, the City could suffer a loss of 15% of the market-rate monthly parking revenue, or approximately \$360 per year for each CIM-licensed parker who uses the Franklin Garage. If all 200 licensed spaces are claimed, a delay in construction completion beyond 36 months would cost the City \$72,000 per year in lost revenue (currently, none of the licensed spaces are claimed by CIM). In the very worst scenario where all 200 licensed spaces are claimed and they are not re-assigned to the new City garage by 2068 when the license term expires, the City would lose approximately \$8,121,000 over the 48-year license period remaining, factoring in a three percent compounded annual inflator over time. However, staff believes the risk of such an extreme scenario is low, and is mitigated by the Guaranty for the Project.

The completed Project is estimated to generate an additional \$811,000 annually in taxes and parking revenue to the City.

### **PUBLIC OUTREACH / INTEREST**

A noticed public hearing will be held when the full Council considers the proposed ordinance, followed by a second reading of the ordinance at a subsequent Council meeting. No comments from the public have been received by staff as of the time of publication of this report.

### **COORDINATION**

Staff coordinated this report with Parking Operations, Electrical Engineering and Transportation Planning Divisions of the Office of Public Works, the Housing and Community Development Department, the Controller's Bureau and the City Attorney's Office.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Approval of the DDA assignment will allow the Project to move forward, which will put underutilized City-owned land into more productive use. The construction of the Project will provide significant construction employment at the site, approximately 40 permanent jobs, and will generate an estimated \$811,000 annually in additional combined tax and parking revenues over the current revenue stream.

**Environmental:** The proposed enhancements to the garage design are intended to increase security and energy efficiencies. Adding more light fixtures may cause a net increase of energy consumption, but that will be mitigated by adding zoned controls allowing operators to lower

output in brighter areas, and adding a light colored paint to the walls to reflect light and decrease power demands.

**Social Equity:** Approval of the DDA assignment will help keep momentum in the Project, bringing related construction and permanent jobs to Oakland residents sooner.

### **CEQA**

A detailed CEQA analysis was prepared for the Project itself which concluded that the Project qualifies for two separate CEQA statutory exemptions. And that the Broadway Valdez District Specific Plan Environmental Impact Report (the "BVRSP EIR") adequately addressed the potential environmental effects of the Project.

Specifically, the CEQA Analysis provides substantial evidence to support the findings that the Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines Section 15813) and/or the "Qualified Infill Exemption" under Public Resources Code section 21094.5 (CEQA Guidelines Section 15183.3), and that, pursuant to Public Resources Code section 21166 (CEQA Guidelines Section 15162), there are no changes to the Project, new information, or changes in circumstances that would result in new significant environmental impacts or substantially more severe impacts from those previously identified requiring subsequent or supplemental environmental analysis, and that therefore no additional environmental analysis beyond the BVRSP EIR and the CEQA Analysis is necessary.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that City Council adopt an ordinance:

1. Consenting to a change in the ownership structure and control of TDP-Webster, LLC ("Developer") with which the City has previously entered into a Disposition and Development Agreement ("DDA") for the sale and development of two contiguous City-owned parcels located at 2330 Webster Street and 2315 Valdez Street, including construction of a new City parking garage ("City Garage");
2. Authorizing the City Administrator, without returning to the City Council, to negotiate and execute an amendment to the DDA to (a) change the interest rate calculated on the City's seller carryback loan to Developer for the Developer's acquisition of the property, (b) change the formula used to calculate the purchase price to be paid by the City for the acquisition of the City Garage, (c) increase the required minimum net worth of the guarantor providing the completion guaranty, (d) waive performance and payment bond requirements, unless otherwise required by lender, and (e) modify the affordability level of the Project's moderate income housing units;
3. Allocating and appropriating up to \$350,000 to create a contingency account for finish and equipment enhancements related to security and energy efficiencies;

4. Authorizing the City Administrator, without returning to the City Council, to negotiate and execute an amendment to the parking license agreement between the City of Oakland and CIM Oakland 1 Kaiser Plaza, L.P. ("CIM") providing for the temporary relocation of CIM's parking rights to the Franklin Garage and recordation of such amendment and related documents on title for the Franklin Garage until the City is able to transfer CIM's parking rights to the new City Garage; and
5. Making related CEQA findings, pursuant to Public Resources Code Section 21166 (CEQA Guidelines Section 15162)

For questions regarding this report, please contact Janice Lang, Economic and Workforce Development Department, 510-238-6430.

Respectfully submitted,



MARK SAWICKI  
Director, Economic and Workforce  
Development Department

Reviewed by:  
Jens Hillmer, Urban Economic Development  
Coordinator

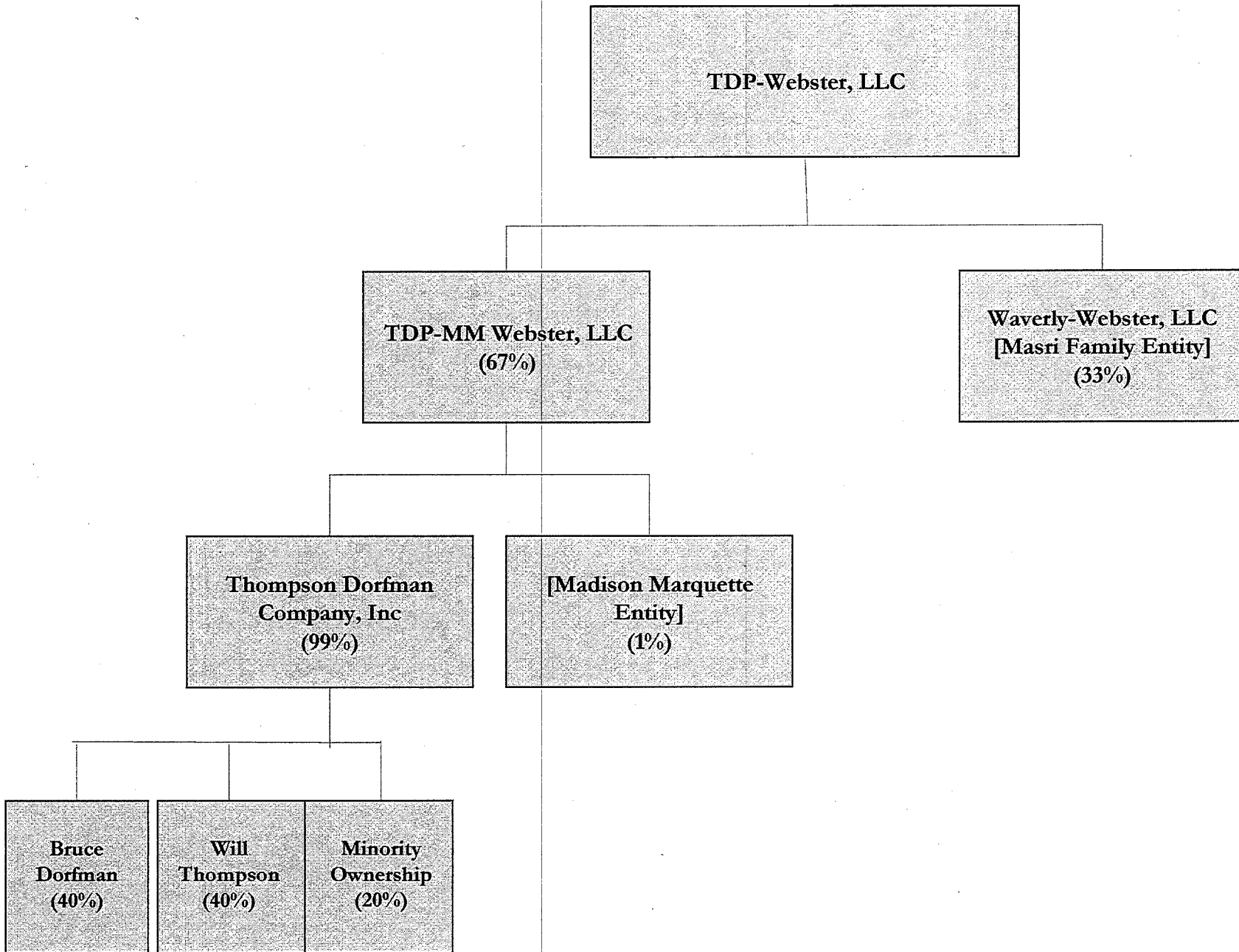
Prepared by:  
Janice Lang, Urban Economic Analyst  
Project Implementation Division

Attachments (2):

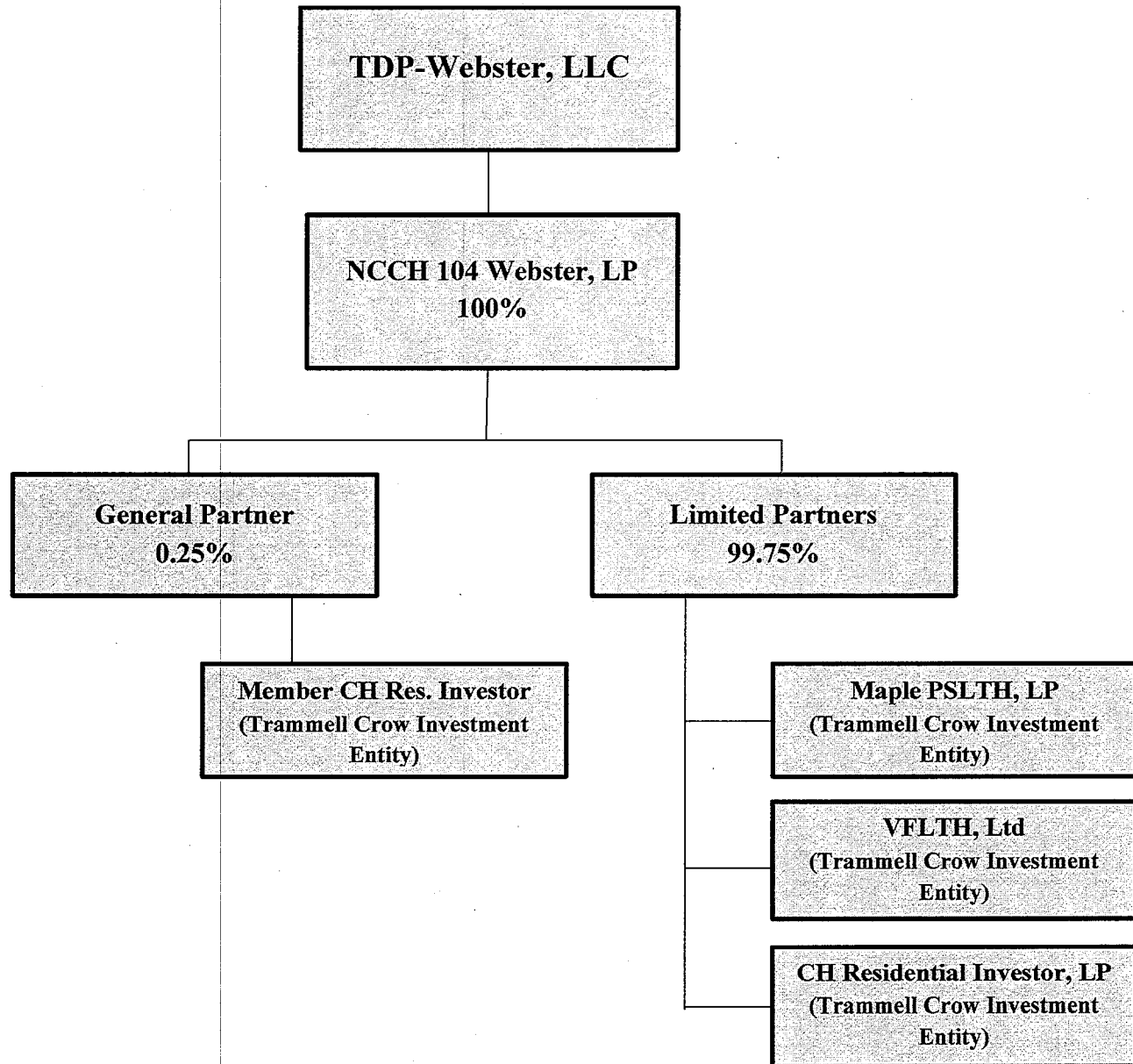
- Attachment A: TDP-Webster, LLC Organization Chart (Current)**
- Attachment B: TDP-Webster, LLC Organization Chart (Proposed)**

Item: \_\_\_\_\_  
CED Committee  
June 13, 2017

**ATTACHMENT A – Existing TDP-Webster, LLC Organization Chart**



**ATTACHMENT B – Proposed TDP-Webster, LLC Organization Chart**



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2017 JUN - 1 PM 4: 32

APPROVED AS TO FORM AND LEGALITY:

BY: *Rafael*  
Deputy City Attorney

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

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**AN ORDINANCE: (1) CONSENTING TO A CHANGE IN THE OWNERSHIP STRUCTURE AND CONTROL OF TDP-WEBSTER, LLC (“DEVELOPER”) WITH WHICH THE CITY OF OAKLAND (“CITY”) HAS PREVIOUSLY ENTERED INTO A DISPOSITION AND DEVELOPMENT AGREEMENT (“DDA”) FOR THE SALE AND DEVELOPMENT OF TWO CONTIGUOUS CITY-OWNED PARCELS LOCATED AT 2330 WEBSTER STREET AND 2315 VALDEZ STREET, INCLUDING CONSTRUCTION OF A NEW CITY PARKING GARAGE (“CITY GARAGE”); (2) AUTHORIZING THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE DDA TO (A) CHANGE THE INTEREST RATE CALCULATED ON THE CITY’S SELLER CARRYBACK LOAN TO DEVELOPER FOR THE DEVELOPER’S ACQUISITION OF THE PROPERTY, (B) CHANGE THE FORMULA USED TO CALCULATE THE PURCHASE PRICE TO BE PAID BY THE CITY FOR THE ACQUISITION OF THE CITY GARAGE, (C) INCREASE THE REQUIRED MINIMUM NET WORTH OF THE GUARANTOR PROVIDING THE COMPLETION GUARANTY, (D) WAIVE PERFORMANCE AND PAYMENT BOND REQUIREMENTS, UNLESS OTHERWISE REQUIRED BY LENDER, AND (E) MODIFY THE AFFORDABILITY LEVEL OF THE PROJECT’S MODERATE INCOME HOUSING UNITS; (3) ALLOCATING AND APPROPRIATING UP TO \$350,000 TO CREATE A CONTINGENCY ACCOUNT FOR FINISH AND EQUIPMENT ENHANCEMENTS RELATED TO SECURITY AND ENERGY EFFICIENCIES; (4) AUTHORIZING THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE PARKING LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND CIM OAKLAND 1 KAISER PLAZA, L.P. (“CIM”) PROVIDING FOR THE TEMPORARY RELOCATION OF CIM’S PARKING RIGHTS TO THE FRANKLIN GARAGE AND RECORDATION OF SUCH AMENDMENT AND RELATED DOCUMENTS ON TITLE FOR THE FRANKLIN GARAGE UNTIL THE CITY IS ABLE TO TRANSFER CIM’S PARKING RIGHTS TO THE NEW CITY GARAGE; AND (5) MAKING RELATED CEQA FINDINGS PURSUANT TO PUBLIC RESOURCES CODE SECTION 21166 (CEQA GUIDELINES SECTION 15162)**

**WHEREAS**, on September 1, 2016, the City of Oakland (“City”), pursuant to City Ordinance No. 13350 C.M.S., entered into a Disposition and Development Agreement (“DDA”) with TDP-Webster, LLC (“Developer”) for the development of a mixed-use residential project and public parking garage on City-owned property located at 2330 Webster Street and 2315 Valdez Street (the “Project”); and



**WHEREAS**, the existing partners in the Developer entity wish to transfer their ownership to NCCH 104 Webster, LP ("NCCH"), or a related entity; and

**WHEREAS**, NCCH is a controlled affiliate of Trammell Crow Residential, LLC ("Trammell Crow"), which is a Texas-based multi-family housing developer with projects across the United States, including northern California; and

**WHEREAS**, based on analysis of financial and other documents provided by NCCH by two different outside experts hired by the City to review the proposed transfer of ownership and control of the Developer, staff concludes that NCCH and Trammell Crow will add financial strength to the Project and help attract institutional investors; and

**WHEREAS**, the day-to-day management of the Project will be unchanged, and will remain with Thompson Dorfman Partners; and

**WHEREAS**, construction contractor bids came in substantially higher than estimated costs, causing the Developer to seek ways to mitigate the difference between expected and real costs including increasing the Developer's equity investment, value engineering, and increasing its loan amount; and

**WHEREAS**, Section 3.2.2 of the DDA provides for Developer to pay a portion of the purchase price of the Property by delivering to the City a \$9,400,000 promissory note (the "Note"), which will bear interest at a compound annual rate equal to a percentage that is one percent greater than the highest interest rate required by the Developer's construction financing; and

**WHEREAS**, the Developer proposes to change the interest rate in the Note to a compound annual rate equal to the 12-month London Interbank Offered Rate ("LIBOR") at the time of land conveyance plus 3.75 percent; and

**WHEREAS**, Section 2.5 and Exhibit F-2 (Section 2) of the DDA outline a formula for calculating the purchase price of the City Garage; and

**WHEREAS**, the Developer proposes to modify such formula as shown in Exhibit A to this Ordinance; and

**WHEREAS**, Sections 2.1.7.1 and 2.1.7.2 of the DDA require the Developer to secure a performance bond and a labor and material payment bond, respectively, each in an amount not less than 100 percent of construction costs; and

**WHEREAS**, Section 2.1.6.1 of the DDA requires the Developer to provide a completion guaranty from a person or institution having a net worth of at least 25 percent of the estimated Project costs; and

**WHEREAS**, the Developer requests a waiver of the bonding requirements in the DDA in exchange for an increase in the required net worth of the guarantor providing the completion guaranty from 25 percent of the estimated Project costs (\$29,259,000), to 100% of the estimated Project costs (\$117,036,000), not including any amounts invested by the Guarantor in the Developer or the Project; and

**WHEREAS**, the performance and payment bonds requirement adds significant costs to the Project; and

**WHEREAS**, the proposed changes to the DDA will reduce overall costs to the Developer, making the Project more financially feasible; and

**WHEREAS**, the DDA requires that the Project include thirty-six (36) units of below-market-rate housing, eleven (11) of which will be eligible to moderate income households earning up to one hundred percent (100%) area mean income (AMI); and

**WHEREAS**, to improve the Project revenue stream to support increased financing the Developer requests a change in the affordability level of the moderate income units from one hundred percent (100%) of AMI to one hundred twenty percent (120%) AMI; and

**WHEREAS**, during the design development phase of the Project, Public Works staff identified several security and energy efficiency enhancements that may require additional expenditures and payments to the Developer as these items are currently not in the budget for the development of the new City Garage; and

**WHEREAS**, CIM Oakland 1 Kaiser Plaza ("CIM") is the licensee under a parking license agreement with the City for two hundred (200) parking spaces on the Project site; and

**WHEREAS**, CIM and City staff have negotiated terms of an amendment to such parking license agreement (the "Parking License Amendment") to transfer the licensed spaces to the Franklin Garage, located at 19<sup>th</sup> and Franklin Streets, during the construction period on condition that (1) if the relocation lasts more than 36 months, the parking rates for the licensed parkers at the Franklin Garage will be reduced by 15 percent of the market rate charged to monthly parkers at that location, and (2) that the Parking License Amendment and associated documents will be recorded against the Franklin Garage at the time of relocation and shall remain on title until the earlier of the date on which City is able to transfer CIM's parking rights to the new City Garage or termination of the parking license agreement; now therefore,

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

**SECTION 1.** The City Council hereby consents to in the proposed transfer of ownership and control of TDP-Webster, LLC to NCCH or a related entity.

**SECTION 2.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to change the interest rate on the City's seller carryback loan to the Developer reflected in the Note to a rate based on the 12-month London Interbank Offered Rate ("LIBOR") at time of Property conveyance plus 3.75 percent.

**SECTION 3.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to change the formula used to calculate the purchase price paid by the City for the acquisition of the City Garage as shown in attached Exhibit A.

**SECTION 4.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to increase the required net worth of the guarantor providing the completion guaranty from 25 percent of the estimated Project costs presented in Exhibit G of the DDA to 100 percent of the estimated Project costs, not including any amounts invested by the Guarantor in the Developer or the Project.

**SECTION 5.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to waive performance, and labor and material payment bond requirements.

**SECTION 6.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the DDA to modify the affordability level of the Project's moderate income housing units from 100% AMI to 120% AMI.

**SECTION 7.** The City Council hereby allocates and appropriates up to \$350,000 from the Central District: TA Bond Series 2009T Fund (5613), CIP Central District (94889), CD Major Development Project (1000184), Undetermined Program (0000) for finish and equipment enhancements related to security and energy efficiencies.

**SECTION 8.** The City Council hereby authorizes the City Administrator or her designee, without returning to the City Council, to negotiate and execute an amendment to the parking license agreement between the City of Oakland and CIM Oakland 1 Kaiser Plaza, LP ("CIM") providing for the temporary relocation of CIM's parking rights to the Franklin Garage and to record such amendment and related documents on title for such property until the City is able to transfer CIM's parking rights to the new City Garage.

**SECTION 9.** The City Council hereby finds that the CEQA Analysis for the Broadway Valdez Redevelopment Specific Plan provides substantial evidence to support the findings that the Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines Section 15813) and/or the "Qualified Infill Exemption" under Public Resources Code section 21094.5 (CEQA Guidelines Section 15183.3), and that,

pursuant to Public Resources Code section 21166 (CEQA Guidelines Section 15162), there are no changes to the Project, new information, or changes in circumstances that would result in new significant environmental impacts or substantially more severe impacts from those previously identified requiring subsequent or supplemental environmental analysis, and that therefore no additional environmental analysis beyond the BVRSP EIR and the CEQA Analysis is necessary.

**SECTION 10.** The City Administrator is hereby authorized to negotiate and execute documents and take other action with respect to the transfer of ownership and control of the Developer, amendment of the DDA as described in this Ordinance, and the Parking License Amendment consistent with this Ordinance and its basic purposes.

**SECTION 11.** The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of the Council, or upon the seventh day after final adoption if adopted by fewer votes.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2017**

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON-McELHANEY,  
GUILLEN, KALB, KAPLAN, AND CHAIRPERSON REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
Secretary of the Oakland  
Redevelopment Successor Agency

***Exhibits (1):***

Exhibit A – Sections 2.5.1 and 2.5.2 of DDA

**Exhibit A**  
**Formula for Calculation of City Garage Purchase Price As Shown In**  
**Section 2.5 and Exhibit F-1 (Section 2) of DDA Between**  
**The City of Oakland**  
**And**  
**TDP-Webster, LLC**  
**Dated September 1, 2016**

The purchase price of the City Parking shall be an amount equal to the lesser of the following:

- a. The lesser of (i) Twelve Million Two Hundred Fourteen Thousand and 0/100 Dollars (\$12,214,000.00), plus interest on the Purchase Price less the good faith deposit of Fifty Thousand and 0/100 Dollars (\$50,000) calculated at a compound annual rate equal to ~~a percentage that is one percent (1%) greater than the interest rate required by the Developer's construction loan~~ the 12-month London Interbank Offer Rate (LIBOR) at the time of close of escrow on the conveyance of the Property to the Developer, plus 3.75 percent, for the period from close of escrow on the conveyance of the Property to the Developer through the close of escrow on the conveyance of the City Parking to the City, or (ii) Thirteen Million Four Hundred Sixty Eight Thousand Seven Hundred Eighty and 0/100 Dollars (\$13,468,780.00); or
- b. The actual prorated cost of developing the City Parking calculated in the manner used to calculate the estimated costs as shown in Exhibit G ("Actual City Parking Cost"), plus interest on such cost calculated at a compound annual rate equal to ~~the interest rate required by the Developer's construction loan~~ the 12-month LIBOR at the time of close of escrow on the conveyance of the Property to the Developer, plus 2.75 percent, for the period from close of escrow on the conveyance of the Property to the Developer through the close of escrow on the conveyance of the City Parking to the City. The Actual City Parking Cost shall be determined by a cost certification prepared by a neutral third party mutually selected by the parties.