

Approved as to Form and Legality


Deputy City Attorney

ORDINANCE NO. 13350 C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND TDP WEBSTER, LLC OR A RELATED ENTITY OR AFFILIATE THAT PROVIDES FOR (1) THE SALE OF TWO CONTIGUOUS CITY-OWNED PARCELS LOCATED AT 2330 WEBSTER STREET AND 2315 VALDEZ STREET TO DEVELOPER FOR THEIR COMBINED APPRAISED MARKET VALUE OF \$9,450,000; (2) TDP WEBSTER'S CONSTRUCTION ON THE PROPERTY OF A RESIDENTIAL MIXED-USE PROJECT, INCLUDING GROUND FLOOR RETAIL SPACE AND A PUBLIC PARKING GARAGE; (3) THE CITY'S PURCHASE FROM TDP WEBSTER, LLC OF THE PUBLIC PARKING GARAGE FOR A COST NOT TO EXCEED \$13,468,780; (4) NEGOTIATION AND EXECUTION OF AGREEMENTS PROVIDING FOR EASEMENTS AND ENTRY RIGHTS AND OTHER MATTERS REQUIRED FOR THE OPERATION AND MAINTENANCE OF THE PUBLIC PARKING GARAGE; AND (5) NEGOTIATION AND EXECUTION OF AMENDMENTS TO EXISTING PARKING LICENSE AGREEMENT WITH THIRD PARTIES TO FACILITATE DEVELOPMENT OF THE PROJECT

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OFFICE OF THE CITY CLERK
OAKLAND

WHEREAS, the City of Oakland ("City") owns approximately 1.42 acres of land located at 2330 Webster Street and 2315 Valdez Street (the "Property"); and

WHEREAS, the Property serves as a public surface parking lot and is encumbered by two parking license agreements (the "Parking Agreements") with the CIM Realty Group (CIM) (200 spaces) and the California Nurses Association (CNA) (42 spaces) for a total of 242 spaces; and

WHEREAS, the Property is located in the Central District Redevelopment Project Area

and was owned by the former Oakland Redevelopment Agency (“Agency”) prior to its dissolution pursuant to AB 1X 26 and AB 1484 (collectively, “Redevelopment Dissolution Act”); and

WHEREAS, the Property is located within the Broadway-Valdez District Specific Plan area which encourages the development of housing, entertainment, retail, and public parking to support such uses; and

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

WHEREAS, in May 2014, the City received an unsolicited proposal from Harrison TDP, to develop the Property into a mixed-use development consisting of a 5-story residential building with 234 units, of which 15% (36 units) will be available to very low-, low- and moderate-income households, approximately 17,000 square feet of ground level retail space, and a 330 space parking garage (the “Project”); and

WHEREAS, on July 29, 2014, the City Council pursuant to Resolution No. 85137 C.M.S authorized a one-year Exclusive Negotiating Agreement (ENA), with a discretionary administrative 90-day extension option, with Harrison TDP to determine the feasibility of the Project, and the City Administrator granted a 90-day extension to the ENA term on July 28, 2015 for the purposes of completing California Environmental Quality Act (“CEQA”) review and negotiating the terms and conditions of a Disposition and Development Agreement (“DDA”); and

WHEREAS, during the ENA term, Harrison TDP reorganized its corporate structure and became TDP Webster, LLC; and

WHEREAS, TDP Webster LLC or a related entity or affiliate (“TDP Webster” or “Developer”) will develop the Project; and

WHEREAS, TDP Webster has satisfied all requirements of the ENA; and

WHEREAS, a June 2015 appraisal conducted by Yovino & Young concluded that the as-is Fair Market Value of the land is \$9.45 million, considering the highest and best use of the Property to be a mixed-use multi-unit residential project; and

WHEREAS, Developer is offering to pay \$9.45 million for the Property; and

WHEREAS, staff has negotiated a Disposition and Development Agreement (“DDA”) with TDP Webster which sets forth the terms and conditions of the sale of the Property to TDP Webster and governs the development of the Project and the use of the Property by TDP Webster

and any successors to the Property subsequent to sale through recorded covenants running with the land; and

WHEREAS, the Parking Agreements with CIM and CNA for a total of 242 spaces have to be amended in order to relocate temporarily each entities' parking rights to the Franklin Street Garage during construction of the Project; and

WHEREAS, staff has negotiated with TDP Webster the terms and conditions under which the City will acquire from TDP Webster a condominium ownership interest in the Project consisting of approximately 242 parking spaces and ancillary parking facilities developed as part of the Project to satisfy the terms of the Parking Agreements with CNA and CIM, make the Property available for redevelopment, and serve current and future patrons and of the Broadway-Valdez neighborhood (the "City Garage"); and

WHEREAS, the purchase price of the City Garage will not exceed \$13,468,780; and

WHEREAS, the City will pay the purchase price of the City Garage through a combination of land sales proceeds, interest thereon, and excess tax allocation bond proceeds; and

WHEREAS, the expenditure of excess tax allocation bond proceeds (TA Bond Series 2009T Fund (5613), CIP Central District (94889), CD Major Development Project (C473240), Undetermined Program (0000)) is consistent with City Resolution No. 84516 C.M.S., which approved a plan for spending excess tax allocation bond proceeds and allocation of such funds to projects and programs in the Central District Redevelopment Project Area, including the development of parking garages, such as the City Garage; and

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

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

WHEREAS, staff is recommending a sale of the Property instead of a ground lease because a sale is necessary to promote the economic development and housing goals of the City for the reasons set forth in the Agenda Report for this item; now therefore

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

SECTION 1. The City Council hereby finds, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to sell rather than lease the Property for the reasons described in the Agenda Report for this item, and hereby authorizes the City Administrator to negotiate and execute documents for the conveyance of the Property to the Developer pursuant to the terms of the documents described in Section 5 hereof for the price of \$9.45 million.

SECTION 2. The City Council, pursuant to Oakland Municipal Code Section 2.42.170(B), 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 TDP Webster has the experience, capacity and other qualifications, as well as demonstrated interest in developing a project on the site, including development of a City-owned garage, 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 TDP Webster.

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

- A. The sale of the Property will assist in the creation of economic opportunity;
- B. The Property is being conveyed at its fair market value at its highest and best use.

SECTION 4. The City Council hereby authorizes the City Administrator or her designee to negotiate and execute, without returning to the Council, a Purchase and Sales Agreement (PSA) for purchase of the City Garage from TDP Webster, for a purchase price in an amount equal to the lesser of the following:

- (1) The lesser of (i) \$12,214,000, plus interest on the \$9,400,000 land sale carry-back note 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 (calculated from the close of escrow on the transfer of the Property to Developer through the close of escrow on the transfer of the Public Parking to the City), or (ii) \$13,468,780; or
- (2) The prorated cost of developing the City Garage, plus interest at a compound annual rate equal to the interest rate required by the Developer's construction loan (calculated from the close of escrow) on the transfer of the Property to Developer through the close of escrow on the transfer of the Public Parking to the City.

SECTION 5. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) a Disposition and Development Agreement and related documents with the Developer, for the sale and development of the Property, all of the foregoing documents to be in a form and content substantially in conformance with the Term Sheet attached as Exhibit A to this Ordinance; (2) a Purchase and Sale Agreement for the acquisition of the City Garage by the City from TDP Webster; (3) grant deeds and any other agreements or documents as necessary to convey the Property to the Developer and accept the City Garage from the Developer; (4) amendments to the Parking Agreements with CIM and CNA for the temporary relocation of their parking; (5)

agreements, including common interest documents, providing for easements and entry rights, allocation of shared costs, and other matters required for the operation and maintenance of the City Garage; (6) such other additions, amendments or other modifications to any of the foregoing terms, Term Sheet, provisions set forth in Section 6 of this Ordinance, or any other terms, agreements or documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (7) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the sale and development of the Property and the City's purchase of the City Garage 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. The purpose of this Ordinance is solely to authorize the City Administrator or his/her designee to negotiate and execute, in his or her sole discretion, documents and agreements described herein; nothing in this Ordinance shall entitle the Developer or any third party to obtain conveyance of the Property or to rely on or obtain any rights whatsoever in the Property.

SECTION 6. That the transaction shall include, but not be limited to the following terms and conditions:

- \$50,000 of the purchase price of \$9,450,000 for the Property to be payable as a "good-faith" negotiation deposit in cash at close of escrow for the sale of the Property to TDP Webster, and to be applied to the purchase price of the City Garage;
- \$9,400,000 of the purchase price, to be paid in the form of a promissory note in that amount executed by TDP Webster in favor of and delivered to the City at the close of escrow for the sale of the Property to TDP Webster;
- The note to bear compound interest at a rate that is 1% above the interest rate required by the Developer's construction loan per annum, to be secured by a deed of trust on the Property subordinate to Project financing as negotiated by the City Administrator, with interest payments deferred for the term of the note until the City's purchase of the City Garage from TDP Webster;
- The principal and interest balance on the note to be repayable in the form of the conveyance of the City Garage by TDP Webster to the City, with the difference between the "good faith" negotiation deposit, principal and deferred accrued interest on the note and the purchase price for the City Garage to be paid by the City to the Developer at the close of escrow for the purchase of the City Garage by using excess tax allocation bond revenues in an amount not to exceed \$2,764,000.
- TDP Webster to comply with provisions of the Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law;
- The plans and specifications for the Project and the City Garage to be reviewed and approved by the City;
- Transfer of the Property to be restricted prior to Project completion;

- Project commencement and completion and other development performance dates to be set in the DDA as negotiated by the City Administrator;
- Application of the City's employment and contracting programs (local employment, local/small local business enterprise contracting, living wage, or first-source hiring), to the City Garage;
- No application of the City's employment and contracting programs (local employment, local/small local business enterprise contracting, living wage, or first-source hiring) to the remainder of the Project;
- Payment of prevailing wages for the entire Project.
- Any other appropriate terms and conditions as the City Administrator or her designee may establish in her discretion.

SECTION 7. The City Council authorizes the City Administrator to allocate an amount not to exceed \$2,764,000 from the Central District: TA Bond Series 2009T Fund (5613), CIP Central District (94889), CD Major Development Project (C473240), Undetermined Program (0000) toward the purchase price of the City Garage, pursuant to the terms of the DDA, and to be released to Developer upon the close of escrow for the purchase of the City Garage by the City from TDP Webster.

SECTION 8. The City Council authorizes the City Administrator to deposit the "good faith" negotiation payment in an amount of \$50,000 made by TDP Webster to the City upon execution of the DDA in the Miscellaneous Capital Project Fund (5999), Central District Redevelopment (85245), in 2315 Valdez-2330 Webster Project (P478420); to credit the \$50,000 deposit to the purchase price on sale of the Property; and then allocate the funds to the project for the purchase of the City Garage, pursuant to the terms of the DDA.

SECTION 9. The City, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), prepared a detailed CEQA Analysis for the Project which concluded 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). In addition, the CEQA Analysis constitutes an Addendum to the Broadway Valdez District Specific Plan Environmental Impact Report ("EIR"). Based on the analysis included in the CEQA Analysis/Addendum, the City has determined, pursuant to Public Resources Code section 21166 (CEQA Guidelines Section 15162) that 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 EIR and the CEQA Analysis is necessary.

SECTION 10. The City Administrator or his/her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

SECTION 11. The City Administrator, without returning to the City Council, shall determine satisfaction of conditions precedent to the conveyance of the Property to the Developer.

SECTION 12. All agreements associated with the Property, the Project and the City Garage shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

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

SECTION 15. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 16. The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 19 2016 2015

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~, and
PRESIDENT GIBSON McELHANEY - 7

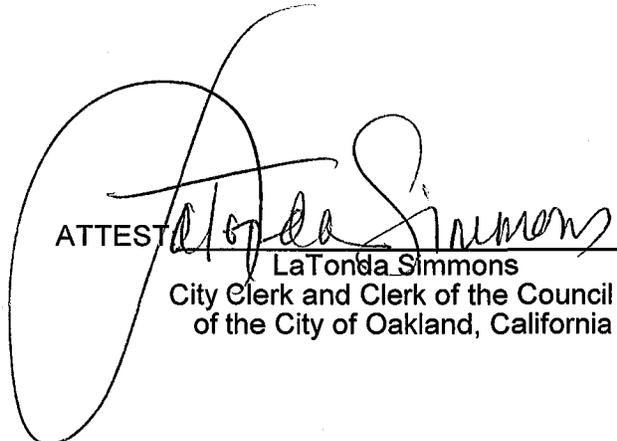
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date

JAN 05 2016

NOTICE AND DIGEST

An Ordinance Authorizing the City Administrator, without returning to the City Council, to negotiate and execute a Disposition And Development Agreement and related documents between the City of Oakland, and TDP Webster, LLC (or its Related entities or Affiliates) for sale of property on the block bounded by Webster Street to the west, 23rd Street to the south, Valdez Street to the east, and 24th Street to the north, commonly known as Webster-Valdez, for no less than \$9.45 million and development as a residential mixed-use project, including a public parking garage, all of the foregoing documents to be in a form and content substantially in conformance with the term sheet attached as Exhibit A, but subject to modification by the City Administrator as set forth in the Ordinance.

EXHIBIT A

DDA TERM SHEET

DDA TERM SHEET
2315 VALDEZ – 2330 WEBSTER DEVELOPMENT PROJECT

1	OWNER	City of Oakland
2A	DEVELOPER	TDP-Webster, LLC a California limited liability company, (“Developer”)
2B	GUARANTY	<p>Developer to provide City a Guaranty as part of DDA. Guarantor must be financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion, to guarantee project completion, as determined by City.</p> <p>A “Form of Guaranty” will be included as an attachment to the DDA and will need to be executed by the City-approved guarantor at close of escrow.</p>
3	PROPERTY	Two adjacent parcels containing a total of approximately 1.42 acres of property located within the block bounded by Webster Street, 23 rd Street, Valdez Street, and 24 th Street in the northerly section of Oakland’s Central Business District (“Property”). The Property is improved as a vehicle parking lot managed by Oakland Parking Partners.

4	<p>PROJECT DESCRIPTION</p>	<p>Approximately 234 residential units, including 36 below-market rate units (15% of total units, 17,000 square feet of leasable ground floor retail, public parking uses (“Public Parking”), residential parking uses (the “Residential Parking”) and associated common areas. The Public Parking will consist of:</p> <ul style="list-style-type: none"> • Subterranean Level (entire): 159 Parking Spaces, with 17 additional “tandem” spaces; and • Ground Level (portion): 66 Parking Spaces. <p>The Residential Parking shall consist of 88 “unbundled” Parking Spaces on a portion of the second level.</p> <p>“Tandem” parking space means a parking space within a group of two or more parking spaces arranged one behind the other such that the space nearest aisle serves as the only means of access to the other space(s).</p> <p>The parties anticipate that the Developer may acquire the right to purchase one or more adjacent parcels within the same block as the Property. Should the Developer proceed with such acquisition, the parties anticipate that the Developer will submit an application for an amendment to the existing Project entitlements for a mixed use project that includes the Public Parking and expanded residential or retail uses, and City staff will cooperate with the Developer to process for consideration by the City Council such amendments to the DDA as may be necessary and appropriate at that time.</p>
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<p>5</p>	<p>AFFORDABLE HOUSING</p>	<p>Pursuant to a recorded regulatory agreement, the form of which will be attached as an exhibit to the DDA, for a term of not less than 55 years, 15% of the total residential units (36) will be affordable to households at the following income levels (“DDA Affordable Requirement”):</p> <ul style="list-style-type: none"> • 14 very low income households (50% of Area Median Income) • 11 low income households (80% of Area Median Income) • 11 moderate income households (100% of Area Median Income) <p>The affordable units will be distributed throughout the Project (by location and unit type) in proportion to the market rate units.</p> <p>To the extent allowed by law, preference in initial occupancy of affordable housing units will be given to (i) current eligible residents in the Broadway Valdez District Specific Plan (BVDSP) area, and (ii) teachers and staff of the Oakland Unified School District.</p> <p>If the City adopts an inclusionary housing requirement or affordable housing impact fee following the execution of the DDA (an “AH Requirement”) that applies to the Project: (a) if such AH Requirement is an inclusionary requirement, the number of affordable units required by this item 5 shall be reduced by the number of units required to be provided at the same affordability level by the AH Requirement, and (b) if such AH Requirement is an impact fee with an option to provide affordable units onsite, the number of affordable units required by this item 5 shall be reduced by the number of units provided onsite at the same affordability level to meet the AH Requirement. Notwithstanding the foregoing, in no event shall the Developer be required to meet an affordability requirement that is more than the greater of the two requirements, and if necessary to accomplish this result, the parties shall implement an equitable adjustment to the DDA Affordable Requirement based on a mutually agreed upon formula.</p>
<p>6</p>	<p>PURCHASE PRICE</p>	<p>The purchase price for the Property shall be Nine Million Four Hundred and Fifty Thousand Dollars (\$9,450,000) (the “Land Purchase Price”).</p>

7	TERMS OF PAYMENT; CLOSE OF ESCROW	<p>Land Purchase Price shall be paid through the close of escrow on the Property. The Developer shall deposit into escrow a Promissory Note ("Note") in the amount of the Land Purchase Price less the good faith deposit of \$50,000 (as described in Section 8). The outstanding principal amount of the Note shall bear interest 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 Note shall be secured by a second deed of trust (the "2nd DOT"). The City, Developer and Developer's construction lender shall enter into an intercreditor agreement which subordinates the 2nd DOT to the lien of the deed of trust for the construction loan and is otherwise in a form reasonably acceptable to the City and construction lender. Developer shall deposit the Note, 2nd DOT and inter-creditor agreement into escrow at least five (5) business days before close of escrow. The City shall deposit the inter-creditor agreement into escrow at least five (5) business days before the Close of escrow.</p> <p>Escrow to close within ten (10) business days following satisfaction (or written waiver) of all contingencies, including the issuance of Developer's building permit.</p>
8	DEPOSIT	<p>Upon executing the DDA, Developer will provide a \$50,000 nonrefundable good faith deposit. Except as otherwise provided hereinbelow, such good faith deposit shall be credited against the Land Purchase Price at closing. Should the Property not be conveyed to Developer by the outside date for closing in the DDA, , the City may exercise its option to terminate the DDA and retain the good faith deposit as liquidated damages, unless the failure to close is for reasons beyond Developer's control (which reasons shall not include financial inability).</p>

9	REPURCHASE OPTION	If construction on the Project does not start within 30 days of close of escrow or the Project is not completed within 24 months of close of escrow (each as may be extended due to force majeure delay); then City will have the option to repurchase the Property. If the repurchase option is exercised prior to the commencement of construction, the repurchase price will be equal to the Land Purchase Price. If the repurchase option is exercised after the commencement of construction, the City may at its option a) require the Developer at its sole cost to demolish any improvements on the Property and repurchase the Property for the Land Purchase Price, or b) repurchase the Property with any improvements constructed thereon by the Developer for the Land Purchase Price plus the fair market value of the improvements. There will be a 30-day notice and cure process for any such default. Time periods subject to extension for force majeure events. The repurchase rights shall be subject to the mortgage protection provisions included in the DDA.
10	SCHEDULE OF PERFORMANCE	Please see Attachment A.
11	OFF-SITE IMPROVEMENTS	Developer to be responsible for the cost of required off-site improvements in connection with the Project.
12	TITLE INSURANCE	Developer to secure title insurance policy, if desired, at its own cost and expense. City to provide standard owner affidavits regarding tenants, work on site, etc. to permit Title Company's issuance of ALTA policy. Subject to the satisfaction of the conditions precedent set forth in Item 33 below, Developer acknowledges that it will take title to the Property subject to the existing parking licenses.
13	CLOSING COSTS	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.
14	LIMITATIONS ON PROPERTY RIGHTS	Developer accepts and acknowledges the Property is subject to deed restrictions and a recorded covenant to restrict use of property. Developer to comply with provisions of the 1) Central District Redevelopment Plan and nondiscrimination provisions of redevelopment law and 2) Broadway Valdez District Specific Plan.

15	CONDITION OF PROPERTY AT DELIVERY	<p>The Property and all structures on the Property shall be conveyed in an “as is” physical condition.</p> <p>Seller to deliver the Property in a tenant-free condition and free of all personal property and material rubbish at closing.</p> <p>However, it shall be a condition precedent to Developer’s obligation to close escrow that no adverse, material physical change has occurred at the Property since the completion of Developer’s due diligence.</p>
16	ENVIRONMENTAL REMEDIATION	<p>The DDA shall include as attachments reports by the City’s environmental consultants, Ninyo & Moors, regarding a Phase I Environmental Site Assessment (January 2010) and Phase II Environmental Site Assessment (March 2010) for 2330 Webster and 2315 Valdez Street.</p> <p>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>
18	INDEMNIFICATION	<p>Developer shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developer to negotiate the various levels of indemnification as part of the DDA; however, Developer’s obligations shall exclude any matters arising out of the existing condition of the Property or the indemnified parties’ sole active negligence or willful misconduct.</p>
19	DEVELOPER MAINTENANCE	<p>Upon close of escrow, Developer is responsible for all maintenance within the Property.</p>
20	NO COMMISSION	<p>Neither the City nor the Developer shall not pay or be liable for any commissions or brokerage fees. The parties shall defend and hold each other harmless against any claims for commissions or brokerage fees.</p>
21	SIGNAGE	<p>Developers may not install or place signage on any existing City street on the Property or the public corridor. Developer may install and place signage on the remaining Property in compliance with City codes, or other applicable codes or regulations.</p>

22	STANDARD OF PROPERTY	Developer to maintain the Property and Project in first-class condition and will ensure at no time does the Property violate the City Blight Ordinance. This obligation will be memorialized in the DDA, grant deed and/or recorded covenants.
23	CITY PROGRAMS & COMMUNITY BENEFITS	In developing the Public Parking component, the Developer shall be required to comply with the following City programs: living wages, local and small local business, equal benefits, and apprenticeship/job training/first source hiring programs.
24	PREVAILING WAGES	Developer shall comply with prevailing wage requirements for the construction of the Project. Developer shall indemnify the City with respect to any claim that Developer failed to comply with prevailing wage requirements pursuant to State law.
25	PAYMENT & PERFORMANCE BONDS	Developer shall obtain payment bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer. Developer shall obtain performance bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer. Bonds may be provided by Developer or its general contractor.
26	RIGHT OF ENTRY	<p>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. Developer shall be required to provide City with indemnity and evidence of insurance (in form and amounts to be further described in an exhibit to the DDA) and meet other standard City conditions to entry. Indemnity obligation shall not include matters arising out of the mere discovery of existing conditions at the Property or City's gross negligence or willful misconduct.</p> <p>City to have right of entry onto the property following close of escrow to inspect the Property and the Project during standard operating hours and upon required notice except for emergencies; this provision does not otherwise limit City's right to enter under its separate regulatory authority.</p>
27	FINANCING	DDA will include an objective standard (experience, size, etc.) of what an "Approved Lender" is, subject to administrative approval. The DDA will include customary mortgagee protections in favor of any Approved Lender.

28	STANDARD CONDITIONS	DDA to include standard City conditions, including without limitation, completion guaranty executed on or prior to closing date, labor and completion bonds, City approval of financing plan, restrictions on assignment and transfer prior to completion of construction, default and cure provisions, termination provisions, and requirements for submission of copies of all required regulatory approvals and insurance policies prior to closing.
29	FINAL CONSTRUCTION PLANS	<p>The Developer and its design consultants must meet or exceed requirements of City's Green Building Ordinance as it pertains to this project and, with respect to construction of the public parking components of the Project, shall comply with the requirements set forth in the document entitled "Energy Efficiency Requirements During the Project Implementation Process," dated September 17, 2015.</p> <p>The Final Construction Plans shall include a plan and schedule to incorporate public art into the Project as required pursuant to any regulatory approvals.</p>
30	CHANGES IN FINAL CONSTRUCTION PLANS	<p>If Developer wishes to make (1) any change that exceeds \$50,000; or (2) any set of changes that exceeds \$100,000; or (3) any substantial change in building materials or equipment, specifications, or the architectural or structural design of the Project, the Developer shall first submit the proposed change to the City for its written approval. DDA to include provisions regarding standard of City approval and timelines for both Developer and City submittals/approvals.</p> <p>In addition, with respect to the Public Parking component of the Project, if Developer wishes to make (1) any change that exceeds \$10,000; or (2) any set of changes that exceeds \$25,000, the Developer shall first submit the proposed change to the City for its written approval.</p> <p>Any changes to the Final Construction Plans for the Public Parking that may impact the operations of the Public Parking must be submitted to the City for its review and prior written approval.</p> <p>The City will have staff or third party consultant peer review all plans and proposed costs during the DDA period and will continue to review all documents and monitor the progress during the construction period.</p>

31	PARKING PSA	<p>As a precondition to the disposition of the Property, City and Developer shall have (a) negotiated and be prepared to execute a Purchase and Sale Agreement (“PSA”) providing for acquisition by the City of marketable fee simple interest in the Public Parking developed as part of the Project, (b) agreed upon the Common Interest Documents (discussed further in Item 35 below) and (c) provided for mutual first rights of refusal in the event the applicable party elects to sell its respective parking facility.</p> <p>The PSA will provide:</p> <ul style="list-style-type: none"> • The price of the Public Parking (“Parking Purchase Price”) shall be an amount equal to the lesser of the following: <ul style="list-style-type: none"> a. The lesser of (i) \$12,214,000, plus interest on the Land Purchase Price less the good faith deposit of \$50,0000 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 (calculated from the close of escrow on the transfer of the Property to Developer through the close of escrow on the transfer of the Public Parking to the City) or (ii) \$13,468,780; or b. the prorated cost of developing the Public Parking calculated pursuant to Exhibit L, plus interest at a compound annual rate equal to the interest rate required by the Developer’s construction loan (calculated from the close of escrow on the transfer of the Property to Developer through the close of escrow on the transfer of the Public Parking to the City). • The City shall pay the Parking Purchase Price at close of escrow on the Public Parking by crediting the amounts due under the Note and making an additional payment through escrow in an amount equal to the difference between the Parking Purchase Price and the Land Purchase Price.
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32	CITY PARKING	<p>The City to own, operate, and maintain the Public Parking, which shall comply with the final approved Final Construction Plans.</p> <p>Residents living in the Project may have the option to license monthly parking spaces within the City Parking Lot, but only if spaces are available based on the following priority list:</p> <ol style="list-style-type: none"> 1) Licensees parking under the existing License Agreements (up to 242 parking spaces) 2) Transient parkers (number of spaces determined by the City's designated parking management company) 3) Monthly parkers - residents), as available 4) Monthly parkers – non-residents, as available <p>All residents shall pay the same hourly or monthly fee charged to other users of the Public Parking, not including City employees or contractors doing work for the City or other drivers using the garage at discounted rates.</p> <p>The City to have staff or third party consultant peer review all plans and proposed costs during the DDA period and will continue to review all documents and monitor the progress during the construction period.</p>
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33	PARKING RELOCATION	<p>City to make reasonable efforts for provision of alternative parking to the extent required under applicable parking license agreements with third parties during construction, which efforts may include paying rent for replacement facilities if the parking licensees cannot be accommodated in City-owned facilities.</p> <p>The City shall make commercially reasonable efforts to secure the following, provided the City shall not be obligated to incur any out-of-pocket costs other than reasonable staff costs:</p> <ol style="list-style-type: none"> 1. The parking licensees' approval of the City's plan to meet parking obligations at an alternative location through the duration of the construction period; and 2. The licensees' agreement to quitclaim their interests in the non-garage portion of the Project upon recordation of subdivision instrument and conveyance of the Public Parking to the City (the "License Amendments"). <p>The foregoing shall be a condition precedent to Developer's obligation to close escrow under the DDA. If the City is unable to provide Developer with copies of the fully executed License Amendments by the date that is 90 days after the effective date of the DDA (Item 3 in the Schedule of Performance), all dates for Developer's performance under the DDA shall be tolled, up to a maximum of six months, until the City provides Developer with copies of the fully executed License Amendments. If the condition is not satisfied prior to the expiration of the six month tolling period, Developer shall either a) terminate the DDA and receive a refund of the Deposit, or b) waive the condition.</p>
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34	SUBDIVISION INSTRUMENTS	<p>City, in its proprietary (and not regulatory) capacity, and the Developer will cooperate in the preparation of a vesting tentative map, final map and condominium plan ("Subdivision Instruments") at the Developer's cost, which shall subdivide the Project into a condominium development consisting of three condominium types: the Public Parking; three commercial condominiums containing approximately 17,000 square feet of ground floor commercial space within the first level and a portion of the second level (the "Retail Units"); and approximately 234 residential condominiums on top of the second level (the "Residential Units") (with the remainder of the Project designated as general or exclusive use common area). The Residential Parking shall be exclusive use common area available to 88 occupants/owners of the Residential Units. The parties' approval of the Subdivision Instruments shall be a precondition to the City's obligation to convey the Property and to the Developer's obligation to purchase the property. The City shall be responsible for the payment of a proportionate share of all applicable governmental fees (not including in-lieu, impact or mitigation fees) and for any escrow fees and title premiums for the processing and recordation of the Subdivision Instruments in connection with conveyance of the Public Parking to City, and the Developer shall be responsible for the costs of surveys and preparation of the Subdivision Instruments.</p>
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35	COMMON INTEREST DOCUMENTS & BRE APPROVALS	<p>The Common Interest Documents shall include the Articles of Incorporation, By-Laws, CC&R's, condominium map and budget for the Project owners' association, and any other documents required by law, which documents shall provide for the ongoing maintenance and operation of the Project components.</p> <p>Details of the PSA and Common Interest Documents to be mutually agreed prior to closing on the Property, and shall include customary rights and obligations of the owners and board members for a project of this type, including the following:</p> <p>(a) To the maximum extent practicable, the Final Construction Plans shall minimize the improvements common to the Public Parking and the balance of the Project.</p> <p>(b) The Common Interest Documents shall provide for easements (access, maintenance, support, utility, etc.) over the condominiums and common area as necessary to provide for the proper operation of the Project.</p> <p>(c) The Common Interest Documents shall provide for the equitable allocation of shared costs as the parties mutually agree. The Project association shall have standard remedies for an owner's failure to pay its assessments, including the right, after proper notice and hearing, to file an assessment lien against the owner's condominium and foreclose on the same.</p> <p>(d) Subject to (i) the coordination/maintenance of the common entry gate and other common costs and (ii) rights of ingress and egress through the Public Parking for the benefit of the Residential Parking, the Public Parking and the Residential Parking shall be operated to the extent feasible as separate facilities.</p> <p>(e) The City's parking operator shall ensure that the 88 residents parking in the Residential Parking shall have "24/7" access through the main entry gate.</p> <p>(f) The Developer shall be responsible for collecting all parking charges from its residents parking in the Residential Parking and shall pay any parking taxes or similar charges directly to the applicable City department.</p>
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		Developer shall submit the Common Interest Documents to the City for the City's review and approval prior to submission to the BRE and no later than the dates set forth in the Schedule. Not later than the date set forth in the Schedule, Developer shall submit to the City evidence of the BRE's approval of any Common Interest Documents that require BRE approval under applicable law/regulation.
36	PARKING OPERATIONS	<p>City and Developer shall be entitled to separately establish the levels of service to be provided at the Public Parking and the Residential Parking. To the extent that the parking uses will require coordinated services beyond the maintenance of the main gate (such as adding and deleting parking access authorizations or after hours access), the parties may elect to contract separately with the service provider or have such services coordinated by the City (in which case the City shall be entitled to a reimbursement of expenses).</p> <p>The City shall be able to charge the Developer for the resident's unauthorized use of the Public Parking (as the same may be determined by the parking system).</p>
37	PROHIBITION ON GENERATION OF CONDOMINIUM CONVERSION RIGHTS	The DDA shall include an acknowledgment and agreement by Developer that the Project shall not generate, and the Developer shall not assert, condominium "conversion rights" under Chapter 16.36 of the Oakland Municipal Code, but nothing in the DDA shall limit Developer's right to create condominium units on the Project or require "conversion rights" in order to create condominium units in the Project.

Exhibit A: Schedule of Performance

Attached

EXHIBIT A
SCHEDULE OF PERFORMANCE - By DDA Milestone

Property: 2330 Webster Street & 2315 Valdez Street
 Developer: TDP-Webster, LLC
 CED approval: December 15, 2015
 City Council Approval: January 19, 2016
 Negotiation Period: 18 months
 Execution of DDA: February 2, 2016
 DDA Expiration: July 31, 2017
 Project Expense Payment: \$50,000

Milestone Item	DDA Schedule of Performance	AGGRESSIVE		CONSERVATIVE		City Comments
		Within Number of Calendar days of the Execution of the DDA Period	Approx due date assuming February 2 execution	Within Number of Calendar days of the Execution of the DDA Period	Approx due date assuming February 2 execution	
Pre-Conveyance of Property						
1	Submit good faith deposit to City	3	February 5, 2016	3	February 5, 2016	
2	Submit Governmental Approvals to City	90	May 2, 2016	90	May 2, 2016	
3	[City] Provide amended parking license agreements whereby the licensee's agree to quit claim their interest in the non-garage portion of the project upon recordation of the subdivision agreement and conveyance of the completed garage to the City	90	May 2, 2016	90	May 2, 2016	
4	Submit confirmation that all required and appropriate utilities will serve the Project.	90	May 2, 2016	90	May 2, 2016	
5	Submit Parcel Map for City parking	90	May 2, 2016	90	May 2, 2016	
6	Submit Subdivision Documents to City prior to submission to California Bureau of Real Estate ("BRE"): includes articles of incorporation and bylaws of owners' association, CC&Rs, and a condominium budget analysis	120	June 1, 2016	180	July 31, 2016	
7	Submit 50% complete Construction Plans to City for approval.	150	July 1, 2016	240	September 29, 2016	
8	[City] Provide comments on 50% complete Construction Plans			270	October 29, 2016	
9	[City] Provide parking relocation plan for the construction period	240	September 29, 2016	270	October 29, 2016	
10	Submit 90% complete Construction Plans to City for approval.	180	July 31, 2016	300	November 28, 2016	
11	[City] Provide comments on 90% complete Construction Plans	210	August 30, 2016	330	December 28, 2016	
12	Submit Final Construction Plan to City and Apply for Building Permits: - All construction documentation upon which Developer and Developer's general building contractor will rely on constructing the Project. - Plan to meet or exceed requirements of City's Green Building Ordinance - Plan and schedule to incorporate public art	240	September 29, 2016	350	January 17, 2017	
13	Submit form Construction Contract to City	240	September 29, 2016	350	January 17, 2017	
14	Submit final Construction Contract to City	300	November 28, 2016	350	January 17, 2017	
15	[City] Provide comments on Final Construction Plans	270	October 29, 2016	380	February 16, 2017	
16	Submit form Construction Loan Documents to City	330	December 28, 2016	500	June 16, 2017	
17	Submit final Construction Loan Documents to City	360	January 27, 2017	500	June 16, 2017	
18	Submit Financial Plans to City, which includes, but is not limited to: - Project development budget - Cash flow projection - Firm commitments on all financing - Audited financial statements evidencing sources of capital - Any other evidence requested by City demonstrating economic & financial feasibility of Project.	360	January 27, 2017	510	June 26, 2017	
19	Submit evidence of Subdivision approvals from the BRE	240	September 29, 2016	510	June 26, 2017	
20	Submit Approved Building Permits	360	January 27, 2017	530	July 16, 2017	
21	Conveyance/Close of Escrow (Conveyance of Property)	365	February 1, 2017	535	July 21, 2017	
22	Submit performance and payment 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 to be executed by Developer. Bonds may be provided by Developer or its general contractor.	360	January 27, 2017	535	July 21, 2017	
Construction of the Project						
23	Commence Project construction work	390	February 26, 2017	565	August 20, 2017	
24	Complete Project construction work (27 Months)	1,210	May 27, 2019	1,385	November 18, 2019	