

HAYWARD CITY COUNCIL

RESOLUTION NO. 20 –

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING GOVERNMENT CODE SECTION 52201 SUMMARY REPORT AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH BMODDRE2, LLC, FOR SPECIFIED PROPERTIES LOCATED NEAR MISSION BOULEVARD AND CARLOS BEE BOULEVARD FOR THE CONSTRUCTION OF A NEW AUTO DEALERSHIP AND MAKING SPECIFIED FINDINGS IN ASSOCIATION THEREWITH

WHEREAS, the City and BMODDRE2, LLC (the “Developer”), entered into an Exclusive Negotiation Rights Agreement, dated as of November 27, 2018 (the “ENRA”) regarding the potential development of specified property located along Mission Boulevard and Carlos Bee Boulevard; and

WHEREAS, the City and the Developer successfully completed the obligations under the ENRA and now desire to enter into a Disposition and Development Agreement (the “DDA”); and

WHEREAS, the City holds title to a 4.9 acre parcel to be transferred for the development of an auto dealership (the "Dealership Development Parcel") and a 5.2 acre parcel to be transferred subject to a use restriction for affordable housing purposes (Adjacent Parcel), (the “Property”); and

WHEREAS, portions of the properties subject to the DDA, have been acquired from Caltrans for the purpose of exchange which is not subject to the requirements of California Government Code Section 54220 et seq., and for the creation of economic opportunity pursuant to Government Code Section 52000 et seq., which is an alternative to any other authority granted by law to cities to dispose of city-owned property. The City is required to transfer the sales proceeds to Caltrans in satisfaction of the City's obligations under a Purchase and Sale Agreement by and between Caltrans and the City; and

WHEREAS, the City also currently owns fee title to six parcels of property located at 24744-24874 Mission Boulevard in the City of Hayward, CA (collectively, the “Swap Parcel”). The City acquired a property for a transportation project and has held the remnant Swap Parcel for economic development purposes; and

WHEREAS, under Government Code Section 37350 the City may purchase, lease, receive, hold, and enjoy real and personal property and control and dispose of it for the common benefit; and

WHEREAS, the developer will construct and operate a first class new +/- 57,000 sq. ft. auto dealership for sales and auto repair facility under the Subaru brand subject to an operating covenant with a term of 10 years on the Dealership Development Parcel; and

WHEREAS, the Adjacent Parcel will be subject to a land use covenant restricting future development to affordable housing; and

WHEREAS, the City intends to transfer to the Developer: (1) the fee interest in the Dealership Development Parcel and the Adjacent Parcel subject to the terms and conditions of the DDA and the Operating Covenants; and

WHEREAS, once the City's obligations to Caltrans have been satisfied, the City and the Developer intend to conduct a like-kind exchange swapping ownership of the Adjacent Parcel and the Swap Parcel, such that the Developer will obtain fee ownership of the Swap Parcel in exchange for transferring fee simple title to the Adjacent Parcel to the City; and

WHEREAS, the City will accept title to the Adjacent Parcel with the intent of making the Adjacent Parcel available for subsequent development of affordable housing in accordance with applicable laws; and

WHEREAS, pursuant to the Local Alternative Transportation Improvement Program (LATIP) statutes, under Government Code Section 14528.65 (a)(2) the sale of the Caltrans properties are exempt from the priorities and procedures regarding the disposal of residential property under Government Code Section 54235 et. seq.; and

WHEREAS, as further outlined in the Staff Report accompanying this Resolution and incorporated into this Resolution by this reference (the "Staff Report"), the transfers contemplated under the DDA will further the public purpose of economic development creating jobs, increased property tax and securing a site for future development of affordable housing in an area that has suffered from historic under development as a result of the proposed and now defunct freeway project, all of which serve the common benefit; and

WHEREAS, the City has placed on file a copy of the summary report called for in Government Code Section 52201 (the "Section 52201 Summary Report"), and has made the Section 52201 Summary Report available for public inspection and copying pursuant Government Code Section 52201; and

WHEREAS, as further outlined in the Staff Report, the City has determined that the sale of the properties pursuant to the DDA will create economic opportunity and: (1) result in an increase of property tax revenues to all property tax collecting entities, and will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the

City, (2) result in the creation of approximately 400-500 full-time equivalent (FTE) temporary construction jobs and an estimated 70-100 permanent jobs, and (3) restrict development on the Adjacent Parcel for the future development of affordable housing units to meet the demonstrated affordable housing need and attainment of the affordable housing goals set forth in the 2015-2023 Housing Element of the General Plan of the City of Hayward, without any investment of City funds; and

WHEREAS, as further outlined in the Staff Report and the Section 52201 Summary Report, the City is not providing any form of direct or indirect financial assistance to the Developer; and

WHEREAS, the City Council conducted a duly noticed public hearing on the DDA and the 52201 Summary Report pursuant to Government Code Section 52201, for the purpose of receiving the input and comments of the public on the DDA and the 52201 Summary Report; and

WHEREAS, the City has conducted the required review under the California Environmental Quality Act, California Public Resources Code §21000- §21177, as amended ("CEQA").

NOW, THEREFORE, BE IT RESOLVED that the City Council finds that the above recitals are true and correct and have served, together with the Section 52201 Summary Report and the Staff Report, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, pursuant to Government Code Section 52200.2, the City Council hereby finds that the sale of the properties pursuant to the DDA will create economic opportunity and result in: (1) an increase of property tax revenues to all property tax collecting entities, and will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the City; (2) result in the creation of approximately 400-500 temporary and 70-100 permanent jobs (without public investment); and (3) secure a site for the future development of affordable housing in accordance with the goals set forth in the 2015-2023 Housing Element of the General Plan of the City of Hayward. This finding is based on the facts and analysis set forth in the Staff Report and the Section 52201 Summary accompanying this Resolution.

BE IT FURTHER RESOLVED, pursuant to Government Code Section 52201, the City Council hereby finds that the consideration to be paid and the property to be exchanged under the DDA is not less than the fair market value at its highest and best use. This finding is based on the facts and analysis set forth in The Staff Report and the Section 52201 Summary accompanying this Resolution.

BE IT FURTHER RESOLVED, pursuant to Government Code Section 52201, the City Council hereby approves the Section 52201 Summary Report, in substantially the form on file with the City Clerk, and approved execution by the City Manager of the DDA and all

ancillary documents in a form to be approved by the City Attorney and consistent with the terms and conditions identified in the accompanying Staff Report.

BE IT FURTHER RESOLVED, pursuant to Government Code Section 37350, the City Council hereby finds that the disposition and exchange of the properties pursuant to the DDA is for the common benefit.

BE IT FURTHER RESOLVED, the City finds and determines that the sale of the Dealership Development Parcel and the Adjacent Parcel is exempt from California Environmental Quality Act, California Public Resources Code §21000- §21177, as amended ("CEQA") pursuant to Government Code Section 14528.65.

BE IT FURTHER RESOLVED , the City further finds that the transfer and development of the Dealership Development Parcel is exempt from CEQA under 14 California Code of Regulations Section 15332 in that the Development: (1) is consistent with the applicable general plan and zoning designations and regulations; (2) the proposed development will occur within the City limits, and the Dealership Development Parcel is less than five acres; (3) the Dealership Development Parcel has no value as habitat for endangered, rare, or threatened species; (4) the approval of the proposed Development will not result in any significant effects relating to traffic, noise, air quality or water quality; and (5) the Dealership Development Parcel can be served by all required utilities and public services.

BE IT FURTHER RESOLVED, the City further finds that the transfer of the Adjacent Parcel is exempt from CEQA under 14 California Code of Regulations Section 15061(b)(3) as it can be seen with certainty that there is no possibility that this transfer will have a significant impact on the environment.

BE IT FURTHER RESOLVED, the City further finds that the transfer of the Swap Parcel to the Developer and the continued use of the Swap Parcel, consistent with its existing use, is exempt from CEQA under 14 California Code of Regulations Section 15301 as continued operation of an existing facility and use.

BE IT FURTHER RESOLVED that the City Manager or designee is directed to cause a notice of exemption to be filed with the Alameda County clerk, pursuant to the CEQA Guidelines, following adoption of this Resolution.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager or designee to execute the DDA on behalf of the City in substantial conformance to the terms outlined in the staff report, subject to such nonsubstantive or minor modifications or amendments as may be necessary to complete the transactions contemplated hereby, and subject further to the City Attorney's approval as to form.

BE IT FURTHER RESOLVED, that the City Manager or designee shall execute such other instruments, and take any and all other action, as may be reasonably necessary to complete the disposition and acquisition of prooperties, and to close escrow on, as contemplated in the DDA. Without limiting the generality of the foregoing, the City Manager or designee is hereby authorized to execute a certificate of acceptance of the grant deed for the Adjacent Parcel, pursuant to Government Code Section 27281.

BE IT FURTHER RESOLVED that the City Council designates the City Clerk as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the office of the City Clerk, at 777 B Street, Fourth Floor, Hayward, CA 94541.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect from and after its passage.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2020

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward