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OFFICE OF THE CITY CLERK
OAKLAND

2015 SEP 17 9:23 AM **AGENDA REPORT**

TO: Sabrina B. Landreth
City Administrator
ORSA Administrator

FROM: Mark Sawicki
Director

SUBJECT: City Center DDA Assignment

DATE: September 4, 2015

City Administrator Approval

Date:

9/16/15

RECOMMENDATION

Staff recommends that the City Council/Successor Agency adopt:

- 1) **An Oakland Redevelopment Successor Agency Resolution Authorizing the Assignment, to the City of Oakland, of the Oakland Redevelopment Successor Agency's Rights and Obligations under the City Center Disposition and Development Agreement with Oakland T12 LLC for Development of Property Located at 601 12th Street; and,**
- 2) **A City Council Resolution Authorizing the Assumption, by the City of Oakland, of the Oakland Redevelopment Successor Agency's Rights and Obligations under the City Center Disposition and Development Agreement with Oakland T12 LLC for Development of Property Located at 601 12th Street**

EXECUTIVE SUMMARY

In December of 2008, Oakland T12 LLC, a Delaware limited liability company ("Oakland T12"), an affiliate of Shorenstein Properties LLC ("Shorenstein"), suspended construction of a 26-story 596,000 square foot Class A office building (the "Project") on the property located at 601 12th Street (the "Property"), owned by the former Oakland Redevelopment Agency ("Redevelopment Agency"). As a result, in February of 2011, the Oakland Redevelopment Successor Agency ("ORSA"), the City, and Oakland T12 executed a 13th Amendment to the City Center Project Disposition and Development Agreement (as amended, the "City Center DDA" or "DDA"), extending development completion deadlines for the Project from April 2012 to April 2015, with two additional extension options of 12 months each for a total potential extension of up to five years. Oakland T12 did not exercise its option to extend the completion date of the Project past the initial April 2015 deadline. Oakland T12 is now in default under the terms of the DDA. In April of this year, Oakland T12 informed the City that it was evaluating a restart of Project construction. However, Oakland T12 still has to secure an anchor tenant for the building to move forward. Since development deadlines previously established in the 13th Amendment to the DDA have expired, they must be extended by a 14th Amendment to the DDA.

Item: _____

CEC Committee
September 29, 2015

The proposed assignment of ORSA's rights and obligations under the DDA to the City will facilitate and expedite this and any necessary future DDA amendments. Staff and Oakland T12 reviewed the proposed assignment with the California Department of Finance ("DOF"), and DOF appears willing to approve the legislation once it has been enacted by ORSA, the City, and the Oversight Board for ORSA. After DOF approval of the proposed assignment and Oakland T12's satisfaction of California Environmental Quality Act ("CEQA") requirements for the Project, the City would be able to amend the DDA by ordinance without having to seek any further approvals from the Oversight Board and DOF. It is anticipated that a 14th DDA Amendment will be presented to the City Council for approval this coming December or January. The assignment of the DDA will be executed only if the City and Oakland T12 reach agreement on the terms of the 14th Amendment.

BACKGROUND / LEGISLATIVE HISTORY

The original DDA between the Redevelopment Agency and Grubb & Ellis Company was executed on November 4, 1970 and covered a twelve-block area of downtown Oakland known as City Center, which includes the Property. The DDA was amended 13 times and assigned to Shorenstein and its affiliated entities pursuant to the Eighth DDA Amendment in 1996.

On December 7, 2007, the Redevelopment Agency sold the Property to Oakland T12 for \$5.2 million. Oakland T12 started Project construction in October of 2008. In December of 2008, after completing the environmental clean-up of the Property, the developer suspended all construction activities at the site. Oakland T12 cited the widening national recession, rising vacancies in the regional office real estate market, and the loss of American President Lines, one of the anchor tenants in Shorenstein's former holdings in Oakland, as primary reasons for their action.

In February of 2011, pursuant to Redevelopment Agency Resolution No. 2010-0106 C.M.S. and City Ordinance No. 13037 C.M.S., the Redevelopment Agency, the City and Shorenstein executed a 13th Amendment to the DDA extending development completion deadlines for the Project from April 2012 to April 2015, with two additional extension options of 12 months each for up to five years. However, Oakland T12 did not exercise an option included in the 13th Amendment to extend the development completion deadline for the Project past April of 2015. Oakland T12 is now in default under the terms of the DDA.

After dissolution of the Redevelopment Agency in February of 2012, ORSA was established as the successor to the Redevelopment Agency and it assumed all rights and obligations of the Redevelopment Agency under the DDA.

In April of this year, Oakland T12 informed the City that it was evaluating resumption of Project construction given the current momentum in the regional office market. Since Oakland T12 must sign up an anchor tenant for the building before moving forward, the developer decided that the Project can only be marketed effectively if they can show prospective tenants a fully-approved and fully-permitted Project that can be delivered by a certain date. Oakland T12 is therefore diligently working with City staff to secure planning and building approvals required for the resumption of Project construction activities.

Oakland T12 has also requested a 14th Amendment to the DDA to allow for new Project start and completion dates that has yet to be fully negotiated. The developer plans to resume construction as soon as they have received all approvals and building permits, and secured a tenant.

ANALYSIS AND POLICY ALTERNATIVES

The Assignment and Redevelopment Law

The proposed assignment of ORSA's rights and obligations under the DDA to the City would remove ORSA as a party to the agreement and the City Center DDA would no longer be listed on ORSA's schedule of enforceable obligations. As a result, the City and Oakland T12 could enter into a 14th Amendment, once terms have been negotiated, without having to seek approvals from the Oversight Board or DOF. This will provide certainty to the developer and the City that the DDA can be amended subject only to City Council approval. The assignment of the DDA will be executed only if the City and Oakland T12 reach agreement on terms and are prepared to execute the 14th Amendment.

Oakland Oversight Board and California Department of Finance (DOF) Approvals

The proposed assignment of ORSA's rights and responsibilities to the City must be submitted to the Oakland Oversight Board and DOF for approval. Staff and Oakland T12 reviewed the proposed action with DOF, and DOF staff appears willing to approve the assignment to the City once it has been authorized by ORSA, the City, and the Oversight Board.

The 14th Amendment

Oakland T12 has asked for a 14th Amendment to the DDA to extend performance deadlines. Specifically, Oakland T12 is seeking to establish a new Project construction commencement date that would occur no later than one year from the City Council's approval of the amendment. Oakland T12 is also requesting the option for two further one-year extensions of the date to start construction. Oakland T12 is prepared to make a payment to the City for the initial one-year extension upon execution of the 14th Amendment, and, if necessary, additional payments for years two and three. The City and Oakland T12 have not yet concluded negotiations over the terms of the 14th Amendment. Staff plans to conclude negotiations before the end of 2015 and present its recommendation to approve a 14th Amendment to the City Council at that time.

Policy Alternative

Instead of pursuing a 14th Amendment to the DDA, the City and ORSA have the option to declare Oakland T12 in default for failing to complete the building by the April 2015 deadline and seek performance. If Oakland T12 does not cure the default in a timely manner, ORSA could file a lawsuit against Oakland T12 and seek to recover the Property. Pursuant to the terms of the DDA, under this scenario, ORSA would not be required to pay upfront for the Property. ORSA could take it back subject to any liens or encumbrances and the right of Oakland T12 to recapture its purchase and other development costs out of a future sale of the property. Oakland T12 has stated that they have invested approximately \$40 million for the purchase and

development of the Property, and they would therefore be entitled to receive the balance of the sales proceeds. ORSA would also be able to subtract its transaction costs from the sales proceeds.

While the option to take back the Property would give ORSA and the City control over the development of the Property, there are several risks and challenges to this approach:

- The legal process involved in declaring the developer in default is time-consuming and would delay development of the Property.
- If ORSA were to attempt to recover the Property, there is a possibility that a Court would require ORSA to pay Oakland T12's acquisition price upfront even if the DDA does not require immediate payment. Neither ORSA nor the City has budgeted any funding to repurchase the Property.
- If ORSA were to sue for damages, the damages might be difficult, if not impossible, to ascertain and ultimately may not be recoverable.
- If ORSA recovers the land from Oakland T12, it would be responsible for maintaining the excavated Property at its sole expense until a sale. ORSA would also forego annual property tax revenues currently paid by Shorenstein of approximately \$25,000.
- It is not certain whether it would be financially feasible for another developer other than Oakland T12 to deliver an office building on the site. Oakland T12's substantial prior investment in the Project, including complete construction drawings and the fact that the steel for the proposed high-rise has been stored since 2008 in a warehouse in New Mexico, allows them to resume construction quickly, perhaps as early as January of 2016. Another office developer would incur higher costs during predevelopment and construction based on a new project and escalating construction costs.
- The City could also pursue a residential development on the site, but given the absence of new office building construction in downtown Oakland over the last 15 years, it is in the City's best interest to work with Oakland T12 and pursue development of a new office tower on the Property.

FISCAL IMPACT

The City Center DDA is currently listed on ORSA's Recognized Obligation Payment Schedule ("ROPS") as an "enforceable obligation". The ROPS is the vehicle by which ORSA is able to claim property tax increment revenue to pay for continuing redevelopment project costs, such as the administrative costs associated with the City Center DDA. By assigning the DDA to the City, the agreement and any related staff time would be removed from the ROPS, and all future administrative responsibilities and costs related to the DDA would be transferred to the City. The administrative costs related to the preparation of the proposed assignment are being covered by ROPS 15-16A, which covers the period beginning July 1, 2015 and ending December 31, 2015. Ongoing costs until project completion are estimated at approximately \$48,000. As part of the 14th Amendment, staff will be seeking payments from Oakland T12 for

the benefit of additional extension periods and to cover City administrative costs. The assignment of the DDA will be executed only if the City and Oakland T12 reach agreement on terms and are prepared to execute the 14th Amendment.

If the Project moves forward to construction, it will be subject to the City's Jobs/Housing Impact Fee, which is currently \$5.46 dollars per gross square foot of office space, less 25,000 square feet. As currently proposed, the Project includes approximately 596,000 square feet of office space which would result in a total impact fee of \$3.1 million. These funds will be deposited in the City's Affordable Housing Trust Fund.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic sustainable opportunities associated with the proposed assignment. However, if the Project proceeds, Oakland T12 is required to make a good faith effort to comply with the City's local business and employment participation requirements during project development. In addition, the new office building will add significant numbers of construction (300) and permanent jobs (2,750) to Oakland's economy. The businesses that would occupy the office space in the Project will further expand the economic and employment base in the City.

Environmental: There are no environmental sustainable opportunities associated with the proposed legislation. Nonetheless, the Project is designed to achieve Leadership in Energy & Environmental Design (LEED) Platinum certification.

Social Equity: There are no sustainable opportunities related to social equity associated with the proposed legislation. However, if the Project moves forward, a significant new office building will be added to Oakland's Central Business District that would transform an abandoned construction site into an economically viable use. Moreover, as indicated above in the Fiscal Impact section of the report, the Project will be subject to the City's Jobs/Housing Impact Fee. As currently proposed, the Project would result in a total impact fee of \$3.1 million to be deposited in the City's Affordable Housing Trust Fund.

CEQA

The City has determined, after independent review and consideration, that the proposed authorization of an assignment to the City of ORSA's rights and obligations under the DDA and acceptance thereof by the City is exempt from CEQA review pursuant to Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only covers activities which have the potential for causing a significant effect on the environment.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the following resolutions to assign ORSA's rights and obligations under the City Center DDA to the City:

- 1) An Oakland Redevelopment Successor Agency Resolution Authorizing the Assignment to the City of Oakland of the Oakland Redevelopment Successor Agency's Rights and Obligations under the City Center Disposition and Development Agreement with Oakland T12 LLC for Development of Property Located at 601 12th Street.
- 2) A City Council Resolution Authorizing the Assumption by the City of Oakland of the Oakland Redevelopment Successor Agency's Rights and Obligations under the City Center Disposition and Development Agreement with Oakland T12 LLC for Development of Property Located at 601 12th Street.

For questions regarding this report, please contact Jens Hillmer, Urban Economic Coordinator at 238-3317.

Respectfully submitted,



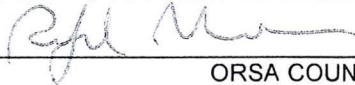
Mark Sawicki
Director, Economic & Workforce Development
Department

Reviewed by:
Patrick Lane, Acting Director
Economic & Workforce Development Department
Project Implementation Division

Prepared by:
Jens Hillmer, Urban Economic Coordinator
Economic & Workforce Development Department
Project Implementation Division

2015 SEP 17 PM 12: 51

APPROVED AS TO FORM AND LEGALITY:

BY: 
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION No. 2015 - _____

A RESOLUTION AUTHORIZING THE ASSIGNMENT TO THE CITY OF OAKLAND OF THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY'S RIGHTS AND OBLIGATIONS UNDER THE CITY CENTER DISPOSITION AND DEVELOPMENT AGREEMENT WITH OAKLAND T12 LLC FOR DEVELOPMENT OF PROPERTY LOCATED AT 601 12TH STREET

WHEREAS, the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency"), the City of Oakland ("City") and Oakland T-12 LLC ("Oakland T12") were parties to a Disposition and Development Agreement ("DDA"), as amended, whereby Oakland T12 is the master developer of a twelve-block area in the Central District Redevelopment Project Area, which is commonly referred to as the City Center Project; and

WHEREAS, on December 7, 2007, pursuant to the terms of the Twelfth Amendment to the DDA, the former Redevelopment Agency sold Block T12 of the City Center Project ("Property") to Oakland T12 for development of an office tower ("T12 Project"); and

WHEREAS, Oakland T12 started T12 Project construction in October of 2008; and

WHEREAS, in December of 2008, Oakland T12 suspended construction on the T12 Project because of the national recession, and requested an extension of the date to complete the T12 Project; and

WHEREAS, in February 2011, pursuant to Redevelopment Agency Resolution No. 2010-0106 C.M.S. and City Ordinance No. 13037 C.M.S., the Redevelopment Agency, the City and Oakland T12 executed a Thirteenth Amendment to the DDA extending development completion deadlines for the T12 Project from April 2012 to April 2015, with two additional extension options of 12 months each; and

WHEREAS, Oakland T12 did not exercise its option to extend the development completion deadline for the T12 Project for another year past the initial deadline of April 2015; and

WHEREAS, after dissolution of the Redevelopment Agency in February of 2012, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor to the Redevelopment Agency and assumed all rights and responsibilities of the Agency under the DDA; and.

WHEREAS, in April 2015, Oakland T12 informed the City and ORSA that it was evaluating resuming construction of the T12 Project given the current momentum in the regional office market; and

WHEREAS, Oakland T12 requested a Fourteenth Amendment to the DDA to allow for new T12 Project start and completion dates; and

WHEREAS, the City desires to assume ORSA's rights and obligations under the DDA; now therefore be it

RESOLVED: That the ORSA Board hereby authorizes ORSA , to assign ORSA's rights and obligations under the DDA to the City; and be it further

RESOLVED: That ORSA finds and determines, after independent review and consideration, that this action complies with CEQA because it is exempt from CEQA pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines, as it can be seen with certainty that there is no possibility that the contemplated assignment and assumption of the DDA will have a significant effect on the environment; and be it further

RESOLVED: That the ORSA Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it further

RESOLVED: That the ORSA Administrator or her designee is further authorized to negotiate and enter into an assignment and assumption agreement with the City and Oakland T12, and take whatever action is necessary with respect to an assignment of ORSA's rights and obligations under the DDA to the City consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the assignment and transfer of ORSA's rights and responsibilities under the DDA to the City pursuant to this Resolution shall be reviewed and approved by ORSA Counsel, and copies shall be placed on file with the ORSA Secretary.

BY SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____, 2015

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

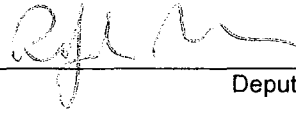
ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
Secretary of the Oakland
Redevelopment Successor Agency

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 SEP 17 PM 12:50

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE ASSUMPTION BY THE CITY OF OAKLAND OF THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY'S RIGHTS AND OBLIGATIONS UNDER THE CITY CENTER DISPOSITION AND DEVELOPMENT AGREEMENT WITH OAKLAND T12 LLC FOR DEVELOPMENT OF PROPERTY LOCATED AT 601 12TH STREET

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency"), and Oakland T-12 LLC ("Oakland T12") were parties to a Disposition and Development Agreement ("DDA"), as amended, whereby Oakland T12 is the master developer of a twelve-block area in the Central District Redevelopment Project Area, which is commonly referred to as the City Center Project; and

WHEREAS, on December 7, 2007, pursuant to the terms of the Twelfth Amendment to the DDA, the former Redevelopment Agency sold Block T12 of the City Center Project ("Property") to Oakland T12 for development of an office tower ("T12 Project"); and

WHEREAS, Oakland T12 started T12 Project construction in October of 2008; and

WHEREAS, in December of 2008, Oakland T12 suspended construction on the T12 Project because of the national recession, and requested an extension of the date to complete the T12 Project; and

WHEREAS, in February 2011, pursuant to Redevelopment Agency Resolution No. 2010-0106 C.M.S. and City Ordinance No. 13037 C.M.S., the Redevelopment Agency, the City and Oakland T12 executed a Thirteenth Amendment to the DDA extending development completion deadlines for the T12 Project from April 2012 to April 2015, with two additional extension options of 12 months each; and

WHEREAS, Oakland T12 did not exercise its option to extend the development completion deadline for the T12 Project for another year past the initial deadline of April 2015; and

WHEREAS, after dissolution of the Redevelopment Agency in February of 2012, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Redevelopment Agency and assumed all rights and responsibilities of the Agency under the DDA; and.

WHEREAS, in April 2015, Oakland T12 informed the City and ORSA that it was evaluating resuming construction of the T12 Project given the current momentum in the regional office market; and

WHEREAS, Oakland T12 requested a Fourteenth Amendment to the DDA to allow for new T12 Project start and completion dates; and

WHEREAS, ORSA desires to assign its rights and obligations under the DDA to the City to facilitate development of the T12 Project; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City to assume and accept an assignment of ORSA's rights and obligations under the DDA; and be it further

RESOLVED: That the City finds and determines, after independent review and consideration, that this action complies with CEQA because it is exempt from CEQA pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines, as it can be seen with certainty that there is no possibility that the contemplated assignment and assumption of the DDA will have a significant effect on the environment; and be it further

RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it further

RESOLVED: That the City Administrator or her designee is further authorized to negotiate and enter into an assignment and assumption agreement with ORSA and Oakland T12, and take whatever action is necessary with respect to accepting an assignment of ORSA's rights and obligations under the DDA to the City consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the assignment and transfer of ORSA's rights and responsibilities under the DDA to the City pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2015

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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