



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 FEB -2 PM 5:14 **AGENDA REPORT**

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: Assignment of 1100 Broadway Project
Agreements

DATE: January 23, 2017

City Administrator Approval

Date:

2/2/17

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing Assignment Of (1) An Owner Participation Agreement for the Development of 1100 Broadway, And (2) A Purchase And Sale Agreement For The Purchase Of The City's Condominium Interest in the University of California Office of the President (UCOP) Garage Located At 1111 Franklin Street, From SKS Broadway, LLC To 1100 Broadway Owner, LLC Or An Affiliated Entity.

EXECUTIVE SUMMARY

SKS Broadway, LLC ("SKS") owns the vacant land at 1100 Broadway, and has an Owner Participation Agreement (OPA) with the City for the development of a twenty-story office tower with ground floor retail. The project will integrate and rehabilitate the historic Key Systems Building, which is also owned by SKS. SKS also has a Purchase and Sale Agreement (PSA) with the City to acquire the City's ownership interest in the UCOP Garage, located at 1111 Franklin adjacent to the development site. The garage will serve the project's parking needs. The OPA and PSA were both recently amended to set the start of construction and garage purchase dates to June 25, 2017. The developer has an option to extend those dates by two years (June 25, 2019) with proper notification and payment of extension fees.

SKS wishes to sell the 1100 Broadway site to 1100 Broadway Owner, LLC, a joint venture between Ellis Partners and Intercontinental Real Estate Company, and assign the OPA and PSA to the new developer entity, which requires City Council authorization. All terms of the agreements will remain in effect.

BACKGROUND / LEGISLATIVE HISTORY

The development of the 1100 Broadway Project and rehabilitation of the adjacent Key System Building has been an objective of the Redevelopment Agency since it first entered into a Disposition and Development Agreement (DDA) with Amin-Broadway, LLC in April 2000 for construction of a hotel at this location. Over the past 16 years, the Property has changed ownership three times. The most recent owner is SKS who purchased the site in 2007.

Item: _____
CED Committee
February 14, 2017

In 2007, SKS entered into an OPA with the then Oakland Redevelopment Agency (the "Agency") to develop the 1100 Broadway Project, which includes renovating and incorporating the adjacent historic Key System Building into the Project. After dissolution of the Agency in February of 2012, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor to the Agency and it assumed all rights and obligations of the Agency under the OPA.

The OPA, among other things, sets certain deadlines for the development of the Project. ORSA has the right to collect \$440,000 in liquidated damages in the event of a default on the OPA. These funds are secured by a letter of credit.

In 2007, the Agency and SKS executed a PSA for the purchase of the UCOP Garage by SKS, in order to provide required parking for the Project. The terms of the PSA are linked to the terms of the OPA, so that the sale of the garage is tied to the start date of construction of the Project, as stipulated in the OPA. SKS is automatically in default of the PSA if it defaults on the terms of the OPA. As a consequence of the Agency's dissolution, ownership of the UCOP Garage transferred to the City in 2014 as a future development property under the Long Range Property Management Plan, and the City is now a signatory to the PSA with SKS.

Shortly after execution of the amended and restated OPA in 2007, the US economy began its decline toward the Great Recession, putting a freeze on real estate and financial markets. Both agreements have been amended a number of times to extend performance deadlines and modify terms in an effort to help make the project financially feasible.

OPA and PSA Amendments/Assignment to City – 2010-2013

In 2010, the Agency authorized a first amendment to the OPA to extend the terms of the agreement by two years to allow time for the economy to recover enough to support a feasible project, setting the construction start date and the UCOP Garage sale at June 25, 2013, with a two-year extension option (Agency Resolution No. 2010-0054 C.M.S.) The PSA was similarly amended and, according to its terms, SKS forfeited a \$100,000 deposit the Agency held in escrow.

As economic conditions continued to languish, ORSA staff advised SKS that the schedule of development milestones set forth in the OPA would be suspended as staff worked toward gaining approvals for another amendment to the OPA and PSA. Upon dissolution of the Oakland Redevelopment Agency in February 2012, ownership of the UCOP Garage was transferred to the City, and with it, the PSA.

On December 18, 2012, a second OPA amendment was approved by ORSA (ORSA Resolution No. 2012-013 C.M.S.), and a second PSA amendment was approved by City Council (Ordinance No. 13375 C.M.S.) to extend the terms of both agreements. The second PSA Amendment was executed on September 6, 2013. Though the Oakland Oversight Board approved the OPA amendment in March 2013, the California Department of Finance (DOF) denied it. Therefore, the second amendment to the OPA was never executed, and, per the suspension of performance and option deadlines pending DOF's approval of the deal, SKS did not exercise its option to extend the construction start date.

Recent Amendments To The OPA And PSA

As conditions in Oakland's office market continued to gradually improve, feasibility was not yet sufficient to justify construction of a Class A office tower. In 2015-2016, although both parties to the agreements wished to further extend the terms, it was unlikely that DOF would change its position on that. Therefore, on June 7, 2016, ORSA approved assignment of the OPA to the City (ORSA Resolution No. 2016-003 C.M.S.) with the understanding that the City's amendment of the OPA would include terms to direct all extension fees and liquidated damages collected under the agreement to ORSA. At the same time, City Council approved the terms of the Second Amendment to the OPA (Resolution No.: 86207 C.M.S.) and the Third Amendment to the PSA (Ordinance No. 13375 C.M.S.). The Oakland Oversight Board and DOF approved the assignment of the OPA. The Second Amendment to the OPA and Third Amendment to the PSA were executed in December 2016.

Background Of The Proposed New Entity

1100 Broadway Owner, LLC is a Delaware limited liability company registered to do business in California and is wholly owned by 1100 Broadway Venture, LLC ("Venture") a Delaware limited liability company. The company and its subsidiary were formed to acquire, construct, develop, maintain, own, operate, and lease the proposed development of a new high rise office building integrated with the existing Key System building (collectively "the Property"). Affiliates of Intercontinental Real Estate Corporation (IREC) and Ellis Partners LLC (EPL) are the two members of Venture and have joint control over key decisions. EPL has been appointed as the managing member of the entity and is responsible for the day-to-day execution of the business plan and decisions made by the members. Ownership interests in the Venture are based on pro rata capital contributions, initially 50-50 until the acquisition of the Property and then 95 percent IREC and five percent EPL.

Authority To Assign New Project

Section 15 of the Amended and Restated Owner Participation Agreement addresses permitted circumstances for the transfer or assignment of the Property or Project before the completion of construction. It states that "The Agency (now City) shall approve a proposed Transfer if the transferee demonstrates to the Agency's reasonable satisfaction that it has the financial capacity and development experience to complete the Project."

ANALYSIS AND POLICY ALTERNATIVES

The 1100 Broadway Project has been stalled for years, and staff believes the proposed new entity can bring in the energy and wherewithal to move it forward to completion. EPL is a local developer that brings experience constructing projects with difficult foundation variables and a track record of successful historic renovation in urban areas. IREC has the financial capital and investment goals to support the Project through construction. Staff recommends approval of

assignment of the OPA and PSA from SKS to 1100 Broadway Owner LLC, subject to the terms of the amended agreements.

Representatives of the new developer entity have stated that they are poised to begin work on the project immediately upon taking over the site, and they are already expending funds in anticipation of a quick start. SKS Broadway and 1100 Broadway Owner have indicated they will close the land sale within fifteen days of Council approval of assignment of the OPA and PSA. Staff from Economic and Workforce Development and the City Attorney's Office have reviewed and approved the form of assignments for both the OPA and the PSA. If approved by City Council, the actual assignment documents will be executed after the land sale is consummated.

Developer Experience

IREC will be the equity partner in the 1100 Broadway Project. IREC is a Boston-based SEC registered investment adviser and real estate investment management firm with more than 50 years' experience acquiring, building and managing real property assets. Through its investment fund, IREC acquires, develops and manages a diversified investment portfolio of office, residential, hotel, retail, and mixed-use properties.

Ellis Partners is a San Francisco-based real estate investment and development company with ties to Oakland. EPL will be the managing partner in the 1100 Broadway Project. EPL has developed several mid-rise, steel frame and/or concrete buildings with complex foundation systems, site conditions and the protection and renovation of historic structures. Given the presence of the Key Systems building, the underground BART tube and urban siting, this is probably the most important experience needed to insure a successful project at the 1100 Broadway site. EPL's ground-up projects include 55 Harrison, a six-story steel frame building on the waterfront, and 255 Second Street, a seven-story concrete garage, both at Jack London Square, directly adjacent to the CalTrans tunnels to Alameda. Emery Tech in Emeryville is another pertinent project developed by EPL. It is a very complex, 225,000 square foot project that involved incorporating a new structure inside a historic, city-block sized shell. In terms of historic renovations of highrise office buildings, EPL completed the full gut, seismic upgrade and rehabilitation of 111 Sutter, a 22-story, 1920's office building located on Montgomery and Sutter in San Francisco, as well as a core and shell rehabilitation of 114 Sansome Street, a 14-story historic office building also located in downtown San Francisco.

EPL has also recently designed and entitled three 6-story steel frame office buildings in San Jose, two concrete residential high rises at Jack London Square (18 and 26 stories) and a 6-story office building in Campbell.

Developer Financial Capacity

IREC, which will be the 95 percent equity investor in the Project, sponsors a real estate investment fund called U.S. Real Estate Investment Fund, LLC (US REIF). The fund pools institutional investment funds (pension and retirement funds, endowments, charitable

foundations, etc.) for the purpose of acquiring and operating institutional quality real estate assets. The 1100 Broadway Project would be one of those assets.

City staff and the economic consulting firm Century | Urban reviewed public documents provided by EPL and IREC, and performed on-line searches of both companies regarding their assets and holdings. This review concluded that the new developer entity has the financial wherewithal to complete the Project. US REIF currently comprises 105 properties located throughout the United States. The properties are 92.8 percent leased, and the Fund has a gross asset value of \$5.8 billion. A signed statement provided by the directors of EPL and IREC confirm that they do have adequate resources on hand to fund the estimated equity capital necessary to complete the design and construction of the 1100 Broadway Project.

As the City does not own the Project site and is not contributing funds to the Project, a completion guarantee is not required by the OPA. City staff will have another opportunity to review Developer financial data in the future to assess its financial capacity for the Project. Under the terms of the OPA, the Developer is obligated to submit construction plans to the City by February 4, 2017, as well as a financing plan that demonstrates the Developer has adequate funds available to complete the Project consistent with the construction plans. On January 25, 2017, staff received written notice advising that SKS would exercise its option to extend performance dates, and a \$50,000 extension fee was deposited to an ORSA account on January 30, 2017. If assignment of the OPA is approved, the new developer entity will be required to submit final construction and financing plans for the Project by February 4, 2019.

Conclusion and Recommendation

After review of documents provided by the new developer entity, public document searches, outside consultation and written assurances from the directors of both parties to the venture, staff believes that 1100 Broadway Owner, LLC has demonstrated it has the financial wherewithal and construction experience to complete the Project according to the terms of the OPA. The City must, therefore, reasonably approve the assignment of both the OPA and the PSA to 1100 Broadway Owner, LLC or an affiliated entity.

FISCAL IMPACT

Transfer taxes will be generated to the City upon sale of the Project property, which is contingent upon approval of the assignment of the OPA and PSA. The transfer tax is calculated at .015 percent of the property sale price, which the parties have not disclosed as the final sale is pending.

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: Assignment of the OPA and PSA will likely increase the development feasibility of the 1100 Broadway Project. If the Project moves forward, approximately 310,000 square feet of office space and almost 10,000 square feet of retail space will be added to downtown Oakland, a longstanding vacant and blighted downtown property will be redeveloped. Based upon the Small Business Administration's guidelines assuming one office worker per 250 square feet of space, the Project could support up to 1,200 office workers. Another twenty-two or more retail workers might be supported based upon a 450 square-foot-per-employee rule of thumb.

Environmental: The current building design is a particularly green project that has been pre-certified as Leadership in Energy and Environmental Design (LEED) platinum.

Social Equity: A number of potential jobs created may be available to low and moderate income workers. 1100 Broadway Owner, LLC will be encouraged to use the services of the West Oakland Jobs Resource Center, which links employers – particularly in the construction industry – with qualified Oakland residents.

CEQA

The 1100 Broadway Project is fully entitled and has all its CEQA clearances. Approving assignment of the OPA and PSA to a different developer entity will cause no changes to the Project, add new information, or change any circumstances that would result in new significant, or increased severity of significant environmental impacts. Therefore, no further environmental evaluation is required.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve:

A Resolution authorizing assignment of (1) an Owner Participation Agreement for the development of 1100 Broadway, and (2) a Purchase And Sale Agreement for the purchase of the city's condominium interest in the UCOP Garage located at 1111 Franklin Street, from SKS Broadway, LLC to 1100 Broadway Owner, LLC or an affiliated entity.

For questions regarding this report, please contact Janice Lang, Office of Economic and Workforce Development at (510) 238-6430.

Respectfully submitted,

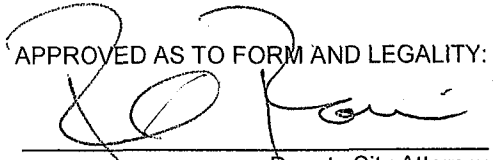


Mark Sawicki
Director, Office of Economic and
Workforce Development

Reviewed by:
Jens Hillmer, Urban Economic Coordinator
Office of Economic and Workforce
Development

Prepared by:
Janice Lang, Project Manager
Project Implementation Department

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APPROVED AS TO FORM AND LEGALITY:

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING ASSIGNMENT OF (1) AN OWNER PARTICIPATION AGREEMENT FOR THE DEVELOPMENT OF 1100 BROADWAY, AND (2) A PURCHASE AND SALE AGREEMENT FOR THE PURCHASE OF THE CITY'S CONDOMINIUM INTEREST IN THE UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT GARAGE AT 1111 FRANKLIN STREET, FROM SKS BROADWAY, LLC, TO 1100 BROADWAY OWNER, LLC, A JOINT VENTURE BETWEEN ELLIS PARTNERS AND INTERCONTINENTAL REAL ESTATE COMPANY, OR AN AFFILIATED ENTITY

WHEREAS, SKS Broadway, LLC, ("SKS") is the owner of the vacant parcel located at 1100 Broadway (the "Property"); and

WHEREAS, the City of Oakland (the "City") and SKS are parties to an amended and restated owner participation agreement (the "OPA") with respect to the development of a mixed-use office project (the "Project") at the Property; and

WHEREAS, the OPA establishes various parameters for the Project, provides the City certain approval rights regarding the Project, and requires SKS to accomplish a number of specific development milestones by specific deadline dates; and

WHEREAS, the City owns a condominium interest in real property consisting of a public parking garage with 145 parking spaces and ramps located within portions of the ground floor and basement levels of the University of California Office of the President Building located at 1111 Franklin Street (the "UCOP Garage"); and

WHEREAS, the City and SKS are parties to a Purchase and Sale Agreement (the "PSA") for the sale of the City's interest in the UCOP Garage; and

WHEREAS, the terms of the OPA and PSA are linked such that the date of purchase of the UCOP Garage provided for in the PSA coincides with the start of construction date provided for in the OPA; and

WHEREAS, SKS desires to sell the Property and assign all of its rights and obligations under the OPA and PSA to 1100 Broadway Owner, LLC, a Delaware limited

liability company registered to do business in California, and 1100 Broadway Owner desires to purchase the Property and assume all of SKS' obligations under the OPA and PSA; and

WHEREAS, 1100 Broadway Owner, LLC, is a joint venture between Ellis Partners and Intercontinental Real Estate Company; and

WHEREAS, the terms of the OPA and PSA allow the transfer of those agreements to a different entity upon reasonable approval by the City; and

WHEREAS, City staff has determined that 1100 Broadway Owner, LLC, has the experience and financial wherewithal to meet the obligations of the OPA and PSA; now therefore be it

RESOLVED: That the City Council hereby authorizes the assignment of the OPA by SKS Broadway, LLC, to 1100 Broadway Owner, LLC, or to another entity affiliated with Ellis Partners and Intercontinental Real Estate Company as approved by the City Administrator in her discretion; and be it further

RESOLVED: That the City Council hereby authorizes the assignment of the PSA by SKS Broadway, LLC, to 1100 Broadway Owner, LLC or to another entity affiliated with Ellis Partners and Intercontinental Real Estate Company as approved by the City Administrator in her discretion; 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; 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 all documents necessary to effect the assignment of the OPA and PSA executed pursuant to this Resolution shall be reviewed and approved by the City Attorney, and shall be placed on file with the City Clerk; and be it further

RESOLVED: That the City Administrator is authorized to negotiate and execute assignment agreements and associated documents and take whatever other action is necessary with respect to the Project, the Property, and the assignment of the OPA and PSA consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, Californi