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2017 SEP 14 AM 9:52

AGENDA REPORT

TO: Sabrina B. Landreth
Successor Agency Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: 2016 Telegraph Avenue -
Lease Disposition and
Development Agreement
Amendment

DATE: September 14, 2017

Successor Agency Administrator Approval

Date:

9/13/17

RECOMMENDATION

Staff Recommends That The Oakland Redevelopment Successor Agency ("ORSA") Adopt:

A Successor Agency Resolution Authorizing An Amendment To a Lease Disposition And Development Agreement ("LDDA") Between The Oakland Redevelopment Successor Agency And W/L Broadway Telegraph Owner VII, LLC, Or An Affiliate ("BTO"), For Property Located At 2000-2016 Telegraph Avenue And 490 Thomas L. Berkeley Way To: (1) Change The Project From Primarily Automotive To Residential And Retail Uses, (2) Extend Performance Dates For The Project; (3) Establish And Accept Extension Fees Of \$50,000 To \$125,000; (4) Reduce A Contingent Payment Obligation To BTO From \$1,575,000 To \$1,550,000; And (5) Conform LDDA Terms To Reflect A Sale To The Developer Rather Than A Lease With A Purchase Option; Relying On The 2004 Uptown Mixed Use Project Environmental Impact Report (EIR) And The "2016 Telegraph Avenue Project CEQA Analysis" Addendum Thereto, Finding That The Project Is Exempt From Additional Environmental Review Pursuant To California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183 And 15183.3, And Adopting Related CEQA Findings.

EXECUTIVE SUMMARY

Staff is recommending that ORSA adopt legislation authorizing an amendment to a Lease Disposition and Development Agreement ("LDDA") with W/L Broadway Telegraph Owner VII, LLC ("BTO"), for a development project (the "Project") to be built at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way (the "LDDA Property") to (1) change the Project from a primarily automotive use (and secondarily, retail residential and parking uses) to a mix of

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residential and retail uses (the "BTO Project"), (2) extend development deadlines for the BTO Project by up to 66 months, changing the currently stipulated completion date of October 2018 to a new construction commencement of October 2018 with a completion date of no earlier than April 2021 but no later than April 2024, if BTO desires further extensions to the construction commencement date, as shown in the table below; (3) reduce a contingent payment obligation to BTO from \$1,575,000 to \$1,550,000; (4) require a payment to ORSA as consideration for the use change and deadline extensions, scaled relative to the development deadline extension required, with a \$50,000 fee for a construction commencement date of October 2018 with a completion date of April 2021 and an additional \$25,000 fee for every 12-month extension of the new commencement date through April 2024, resulting in a maximum possible fee of \$125,000, as detailed in the Analysis section of this report; and (5) conform LDDA terms to reflect a sale of the LDDA Property to BTO rather than a ground lease with a purchase option.

If the uses of the Project are not revised and the LDDA development deadlines are not extended, BTO will be in default. In this case, per the terms of the LDDA, ORSA must pay BTO \$1.575 million.¹ If Council approves the change of use from primarily automotive use to residential and retail uses, BTO has agreed to reduce the contingent payment of \$1,575,000 to \$1,550,000.

Extending development deadlines for completion of the BTO Project will avoid a default by BTO for not completing development of the LDDA Property by October 2018, as required in the amended LDDA. The proposed amendment will both substantially reduce and delay ORSA's and the other taxing agencies' contingent liability of having to make the revised new payment of \$1.550 million to BTO in the event of a default by BTO. The proposed extension fee for the amendment will also provide a financial benefit to the taxing entities. Furthermore, the proposed changes in use will better serve the objectives of the Oakland General Plan, the Central District Project Area Redevelopment Plan, and the Uptown Mixed-Use Project, as the revised proposal adds housing that is well-served by transit and in proximity to downtown jobs, provides for a "24-hour" population in downtown Oakland, and creates mixed-use development that adds vibrancy while highlighting the neighborhood's traditional role as a retail and entertainment center. The extension of the development timeframe will also provide additional time for BTO to complete all predevelopment activities and start construction, and thus ensure development of the BTO Project.

¹ The former Redevelopment Agency acquired other property at 1911 Telegraph from Sears for the Uptown Project. Rather than pay Sears for the 1911 Telegraph property at that time, the parties agreed that Sears, at its option, would receive either: (1) the Property; or (2) a payment by the Successor Agency of \$1.6 Million (representing the proportional value of the 1911 Telegraph property). This amount was amended to \$1.575 Million as condition of assigning the LDDA from Sears to BTO and extending the completion deadline from October 2010 to October 2018.

BACKGROUND/LEGISLATIVE HISTORY

On October 18, 2005, the Redevelopment Agency (Agency), pursuant to Resolution No. 2005-38 C.M.S., dated June 21, 2005, acquired a property located at 1911 Telegraph Avenue from Sears as part of the site assembly for the development of the Uptown Apartments. The property at Telegraph Avenue was partially occupied by a Sears Auto Center and ancillary parking. At the time, Sears considered the auto center to be an integral component of its retail operation in downtown Oakland and requested that the Agency, as part of the transaction, deliver a site next to the department store for the relocation of the automotive services facility. Accordingly, the Agency acquired the LDDA Property, which is located across from the department store, in anticipation of transferring fee title to the LDDA Property to Sears for the development of a new auto center.

On October 18, 2005, the Agency, pursuant to Resolution No. 2005-38 C.M.S., entered into a LDDA with Sears for the development of the Project on the LDDA Property. At the time of LDDA execution, the Agency had acquired the right to possess the site, but had not yet acquired full legal title to the property. Because Sears at that time wished to begin Project construction as soon as possible, the transaction was structured as a transfer of the Agency's possessory rights to Sears using a lease (LDDA), with Sears being given an option to purchase the site once the Agency had finished acquiring full legal title to the site. When the Agency later acquired full legal title to the LDDA Property, Sears could exercise its option to purchase the site, at which time the ground lease would then terminate. The Agency subsequently acquired fee title to the site, thus avoiding the need to transfer the site to the developer through a ground lease with an option to purchase under the LDDA. However, the LDDA has not yet been amended to reflect that process.

Sears was to complete the Project within 60 months of execution of the LDDA, or by October of 2010. Sears did not meet this deadline and the LDDA Property was not transferred to them. The LDDA provides that if Sears does not develop the Project, the agreement, as amended, can be terminated and BTO, as Sears' successor in interest, would be entitled to a payment of \$1.575 million. This contingent payment, which is listed on the Recognized Obligation Payment Schedule ("ROPS"), is an obligation of ORSA.

In January of 2012, the LDDA Property was transferred from ORSA to the City of Oakland ("City"). However, as part of the dissolution of the Agency, the California Department of Finance ("DOF") stipulated that the LDDA Property be transferred back to ORSA. Accordingly, ORSA in anticipation of receiving title to the Property shortly, included the site in a Long-Range Property Management Plan required by DOF as property to be held to satisfy an existing contractual obligation, namely the LDDA with Sears. The assignment of the LDDA and any amendments to the LDDA will therefore require Oversight Board and DOF approval.

Subsequently in 2014, BTO came to an agreement with Sears and closed on the purchase of the department store in July of that year. As part of the transaction, BTO also acquired Sears' rights under the LDDA, and ORSA approved Sears' assignment of its interests in the LDDA to BTO for development of the LDDA Property pursuant to Resolution No. 14-10 C.M.S. ORSA also granted an extension of the Project completion date to October 2018.

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BTO now proposes to develop the LDDA Property as an 18-story mixed-use residential and retail building as well as a parking garage, including 230 dwelling units, 4,622 square feet of ground floor retail space, and 78 parking spaces on the northeast corner of Telegraph Avenue and Thomas L. Berkeley Way. The building would have a maximum height of 200 feet and would be built above one level of subterranean parking. Because of this significant change in project scope and design, BTO has asked for additional time to start and complete construction of the building.

ANALYSIS AND POLICY ALTERNATIVE

Change of Project Uses

The LDDA Property was acquired by the City to develop a replacement for the Sears Auto Center that was removed when the City acquired the property at 1911 Telegraph Avenue from Sears. However, Sears ended its operations in Oakland in late 2014, eliminating the need for an auto center.

BTO proposes to develop the LDDA Property with an 18-story mixed-use residential and retail building. This proposal represents significant changes to the project scope, as it does not include the automotive service center that is the centerpiece of the original LDDA.

Staff has reviewed BTO's proposal and determined that the proposed mix of residential and retail uses, when compared to the primarily automotive use with mixed use retail/residential/parking proposed in the original LDDA, better conforms with the objectives of the Oakland General Plan, the Central District Project Area Redevelopment Plan, and the Uptown Mixed-Use Project, and presents another opportunity to develop much needed housing to address the current housing shortage in the East Bay. A full list of plan objectives supported by the BTO proposal is included at the end of this report and covers the addition of housing that is well-served by transit and in proximity to downtown jobs, providing for a "24-hour" population in downtown Oakland, and the creation of mixed-use development that adds vibrancy while highlighting the neighborhood's traditional role as a retail and entertainment center.

Extension of Development Deadlines

BTO and its design team completely revised their proposal for the LDDA Property from the auto center that was the centerpiece of the original LDDA, resulting in a development proposal that better matches the objectives of the City for the Uptown area. This summer, the proposal received its California Environmental Quality Act (CEQA) approvals, as well as approval from the City's Bureau of Planning.

Extending the performance schedule for the start and completion of the Project by up to 66 months, as detailed in the table below, will give the developer sufficient time to complete all necessary predevelopment work and commence construction on the LDDA Property. Pursuant to the proposed new project development schedule, initially BTO must start construction by October 18, 2018, with a completion date of no later than April 18, 2021. If BTO requires more

time to complete the design, secure all approvals from the City, hire a contractor and receive binding commitments to finance the BTO Project, or if market conditions change, they can request up to three additional 12-month extensions to the construction commencement and completion deadlines as outlined in the table below.

Construction Commencement Date Change	Payment
Change current Construction Completion Date of October 18, 2018 to a new Construction Commencement Date of October 18, 2018 with new Construction Completion Date of April 18, 2021 (30 months).	\$50,000
Extend the October 18, 2018 Construction Commencement Date by 12 months to a new Construction Commencement Date of October 18, 2019 with a new Construction Completion Date of April 18, 2022 (30 months).	\$25,000
Extend the October 18, 2019 Construction Commencement Date by another 12 months to a new Construction Commencement Date of October 18, 2020 with a new Construction Completion Date of April 18, 2023 (30 months)	\$25,000
Extend the October 18, 2020 Construction Commencement Date by another 12 months to a new Construction Commencement Date of October 18, 2021, with a new Construction Completion Date of April 2024 (30 months)	\$25,000

Agency's Rights and Remedies

The LDDA requires ORSA to pay BTO \$1.575 million if BTO does not develop the LDDA Property, whether or not there is a default. As noted above, the Agency acquired other property at 1911 Telegraph from Sears for the development of the Uptown Apartments. Rather than pay Sears for the 1911 Telegraph property at that time, the parties agreed that Sears, at its option, would receive either: (1) the LDDA Property; or (2) a payment by ORSA of \$1.6 million (representing the proportional value of the 1911 Telegraph property), later amended to \$1.575 million as a condition of the transfer of the LDDA from Sears to BTO.

Since BTO has not commenced construction and would not be able to complete construction of a project by the previously amended LDDA deadline of October 2018, ORSA could declare BTO in default at that time, and pay BTO \$1.575 million pursuant to the terms of the LDDA. Extending development deadlines for completion of the Project will avoid a default, and thus substantially reduce ORSA's contingent liability to pay \$1.575 million to BTO. Additionally, in return for the change in uses for the Project, BTO has agreed to a reduction of this contingent payment to \$1,550,000.

Conform LDDA Provisions to Reflect a Transfer of the Site to BTO by Sale Rather than Lease

As noted above, the parties originally contemplated that Sears would take early delivery of the site by the Agency transferring to Sears the Agency's possessory right under a ground lease because the Agency had not yet acquired full legal title to the site. The lease would contain an option for Sears to later acquire full legal title after the Agency had completed the process of acquiring legal title.

Due to delays in development, the Agency completed the process of acquiring fee title to the site before it was obligated to lease the site to Sears. Accordingly, ORSA, which now owns the LDDA Property, can now transfer fee title to the site rather than leasing the site to BTO with an option to purchase. Therefore, it is requested that the LDDA provisions be amended to reflect a delivery of the site to the developer by transfer of the fee title, rather than lease with an option to purchase.

An amendment allowing conformance to these new circumstances does not change the character of the transaction or its economic terms, only the form of the transfer to the Developer.

Oakland Oversight Board and California Department of Finance Approvals

The proposed amendment to the LDDA must be submitted to the Oakland Oversight Board and DOF for approval. California Health and Safety Code Section 34181(e) authorizes a successor agency, with the approval of the oversight board and the California Department of Finance, to amend agreements if the amendment (1) reduces liabilities to the taxing entities, (2) increases net revenues to the taxing entities, and (3) is in the best interests of the taxing entities.

The proposed amendment to the LDDA will reduce liabilities to the taxing entities by decreasing the amount of the contingent payment obligation to BTO from \$1,575,000 to \$1,550,000, which is a liability now faced by the taxing entities since such payment would be made under the ROPS from Real Property Tax Trust Funds ("RPTTF") otherwise distributed to the taxing entities. The proposed amendment will increase net revenues to the taxing entities by requiring a payment of at least \$50,000 to ORSA as consideration for the change in uses and extension, and as much as \$75,000 for additional extensions, if necessary, which will be applied to cover existing obligations identified on the ROPS and thus result in a reduction of funding in an equal amount that would have been received from the RPTTF to pay for such obligations. The proposed residential and retail uses will also result in increased tax revenues generated by the LDDA Property compared to use as a primarily auto center. Lastly, the proposed amendment will be in the best interests of the taxing entities by reducing the liabilities of and increasing net revenues to the taxing entities, as well as facilitating development of the Project which will have fiscal and other benefits to the taxing entities.

PUBLIC OUTREACH/INTEREST

There is no public outreach required for adoption of the proposed legislation.

COORDINATION

The following City departments were consulted during the preparation of this report:

- Office of the City Attorney
- City Budget Office
- Office of Planning and Building

COST SUMMARY/IMPLICATIONS

The LDDA Extension Fee

BTO will pay ORSA a fee in an amount of \$50,000 to extend the construction start and completion dates. A \$25,000 fee will be paid by BTO to ORSA for each optional administrative 12-month extension of the construction completion date through April 2024, resulting in a maximum possible fee of \$125,000. These funds will be deposited into the Successor Redevelopment Agency (SRA) Central District: Operations Fund (Fund 9710), Organization: Central District Redevelopment (#85245), with a new project to be set up, to cover existing obligations, which will result in a reduction of funding in an equal amount that would have been received from the Redevelopment Property Tax Trust Fund to pay for such obligations.

Loss of Tax Receipts

BTO's request for the extension will delay the City's receipt of property, sales, utility and business taxes generated by the Project. The net loss of property taxes to the City is approximately \$11,400 per year because of not having a stand-alone auto center on the site as of October of 2010.

Parking Lease Revenue

On the other hand, ORSA is still receiving \$42,000 per year from leasing the LDDA Property to Star Park for operation of a surface parking lot. These revenues are used to support property maintenance and other activities related to properties formerly owned by the Redevelopment Agency. Once the Property is transferred to BTO, which is anticipated to occur in 2018, these revenues will no longer be available.

Payment to BTO

As stated above, the LDDA requires ORSA to pay BTO \$1.575 million if BTO does not develop the Property, whether or not BTO is in default. Since BTO will not be able to complete construction of a Project by the previously amended LDDA deadline of October 2018, ORSA could declare BTO in default at that time, and ORSA would have to pay BTO \$1.575 million pursuant to the terms of the LDDA. Extending development deadlines for commencement and completion of the Project will avoid a default by BTO, and thus substantially reduce the possibility that ORSA must pay \$1.575 million to BTO. The potential obligation of \$1.575 million is currently listed on the Recognized Obligation Payment Schedule (ROPS). BTO has agreed to a reduction of this contingent payment by \$25,000 to \$1.55 million.

FISCAL/POLICY ALIGNMENT

The proposed Project is consistent with the following policies in the Oakland General Plan:

- Policy D6.1 - Developing Vacant Lots - Construction on vacant land or to replace surface parking lots should be encouraged throughout the downtown, where possible.
- Policy D10.1 - Encouraging Housing - Housing in the downtown should be encouraged as a vital component of a 24-hour community.
- Policy D10.2 - Locating Housing - Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 12th Street, 19th Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.
- Policy N3.1 - Facilitating Housing Construction - Facilitating the construction of housing units should be considered a high priority for the City of Oakland.
- Policy N3.2 - Encourage In-fill Development - To facilitate the construction of needed housing units, in-fill development that is consistent with the General Plan should take place throughout the City of Oakland.

The proposed BTO Project supports the following goals as identified in the current Central District Project Area Redevelopment Plan:

- Revitalization and strengthening of the Oakland Central District's historical role as the major regional retail center for the Metropolitan Oakland Area.
- Establishment of the Project Area as an important cultural entertainment center.
- Re-establishment of residential areas for all economic levels within specific portions of the Project Area.
- Improved environmental design within the Project Area, including creation of a definite sense of place, clear gateways, emphatic focal points and physical design which expresses and respects the special nature of each sub-area.

The proposed BTO Project supports the following objectives as identified in the Uptown Mixed-Use Project that was approved in 2004:

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- Redevelop a group of blighted, underutilized sites in Oakland to create a vibrant new neighborhood.
- Create a mixed-use development that highlights the neighborhood's traditional role as an entertainment center.
- Provide for a stable "24-hour" population in downtown Oakland.
- Construct both market-rate and below-market rate housing on a site that is well-served by transit and is in proximity to downtown jobs.
- Create a community that enhances the visual and community character of the surrounding neighborhood.
- Improve the existing jobs/housing balance in the greater Central District.

The completed project will generate property, sales, utility and business taxes for the City and other taxing entities.

The property will also be subject to the City's Affordable Housing, Transportation and Capital Improvement Impact Fees. If BTO applies for permits by June 30, 2018, it will pay approximately \$2,645,000 for the Affordable Housing Impact Fee and another \$345,000 in Transportation and Capital Improvement Impact Fees.

SUSTAINABLE OPPORTUNITIES

Economic:

Eventual development of the BTO Project will bring an underutilized site in the heart of the Uptown district back to economically viable use.

Environmental:

BTO would endeavor to include as many "green building" features in a new development on the LDDA Property as possible.

Social Equity:

Many of the construction and permanent jobs to be created by the development of the Project may be available to low and moderate income individuals, including area residents.

As stated above, the Project will generate \$3.0 million in impact fees, including \$2.645 million in affordable housing impact fees, which will fund the development of housing units affordable to low- and moderate-income residents. Capital improvements and transportation impact fees constitute the remaining impact fees to be generated by the Project.

CEQA

On July 20, 2004, the Oakland City Council adopted Resolution No. 78728 C.M.S., which adopted the Uptown Mixed Use Project Environmental Impact Report ("EIR"). The 2004 Uptown EIR directly applies to the BTO Project and provides the basis for use of a EIR addendum to assess the current proposed BTO Project.

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Separate and independently, qualified planning level documents, specifically program level EIRs, that can be used as a basis to provide additional CEQA clearance of the proposed BTO Project (all or in part) under specific CEQA provisions include (1) Oakland's 1998 General Plan Land Use and Transportation Element EIR, (2) the Oakland Housing Element Update EIR and Addendum and (3) the 2011 Central District Urban Renewal Plan Amendments EIR (or "Redevelopment Plan Amendments EIR").

The City conducted a detailed evaluation entitled "2016 Telegraph Avenue Project CEQA Analysis", dated June 2017 ("2016 CEQA Analysis") of the proposed BTO Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.; "CEQA Guidelines"), which concludes that the BTO Project qualifies for an addendum, as well as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, 21090 and 21166; and CEQA Guidelines Sections 15162-15164, 15168, 15180, 15183, and 15183.3.

The 2016 CEQA Analysis constitutes an Addendum to the 2004 Uptown EIR pursuant to Public Resources Code section 21166 (CEQA Guidelines §15162-15164), and the Addendum determined that no changes have occurred in the circumstances under which the proposed Project would be implemented, and that no new information has emerged that would materially change the analyses or conclusions set forth in the 2004 Uptown EIR, and that the proposed BTO Project would not result in any new significant environmental impacts, result in any substantial increases in the significance of previously identified effects, or necessitate implementation of additional or considerably different mitigation measures than those identified in the 2004 Uptown EIR, nor render any mitigation measures or alternatives found not to be feasible, feasible, and therefore that no Subsequent or Supplemental EIR or additional environmental analysis of the BTO Project beyond that contained in the Uptown EIR and the 2016 CEQA Analysis is necessary.

ORSA finds and determines, after separate and independent review and consideration of (1) the 2016 CEQA Analysis to the previously certified 2004 Uptown EIR, (2) the previously certified 1998 General Plan Land Use and Transportation Element EIR, (3) the Oakland Housing Element Update EIR and Addendum, and (4) the previously certified 2011 Redevelopment Plan Amendments EIR, that the proposed BTO Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines §15183) and/or the "Qualified Infill Exemption" under Public Resources section 21094.5 (CEQA Guidelines §15183.3) and/or the "Redevelopment Projects" under Public Resources Code section 21090 (CEQA Guidelines §15180) and affirms and adopts the CEQA findings made by the Zoning Manager.

The CEQA Analysis document is available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA 94612 during normal business hours.

Separately and independently, the City finds and determines that the extension of performance deadlines and the conformation of the LDDA terms to reflect a sale rather than a lease are not projects under CEQA and therefore exempt from further analysis. Each of the foregoing provides a separate and independent basis for finding the project does not require CEQA review.

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

Respectfully submitted,



for

Mark Sawicki, Director
Economic & Workforce Development Department

Prepared by:
Eric Simundza
Economic & Workforce Development
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Reviewed by:
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Economic & Workforce Development
Department, Public Private Partnership Division

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APPROVED AS TO FORM AND LEGALITY:

BY: *Sharon Miller*
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2017-_____

A SUCCESSOR AGENCY RESOLUTION AUTHORIZING AN AMENDMENT TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("LDDA") BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY ("ORSA") AND W/L BROADWAY TELEGRAPH OWNER VII, LLC, OR AN AFFILIATE ("BTO"), FOR PROPERTY LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKELEY WAY TO: (1) CHANGE THE PROJECT FROM PRIMARILY AUTOMOTIVE TO RESIDENTIAL AND RETAIL USES, (2) EXTEND PERFORMANCE DATES FOR THE PROJECT; (3) ESTABLISH AND ACCEPT EXTENSION FEES OF \$50,000 TO \$125,000; (4) REDUCE A CONTINGENT PAYMENT OBLIGATION TO BTO FROM \$1,575,000 TO \$1,550,000; AND (5) CONFORM LDDA TERMS TO REFLECT A SALE TO THE DEVELOPER RATHER THAN A LEASE WITH A PURCHASE OPTION; RELYING ON THE 2004 UPTOWN MIXED USE PROJECT ENVIRONMENTAL IMPACT REPORT (EIR) AND THE "2016 TELEGRAPH AVENUE PROJECT CEQA ANALYSIS" ADDENDUM THERETO, FINDING THAT THE PROJECT IS EXEMPT FROM ADDITIONAL ENVIRONMENTAL REVIEW PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168, 15180, 15183 AND 15183.3, AND ADOPTING RELATED CEQA FINDINGS

WHEREAS, on October 18, 2005, the dissolved Redevelopment Agency ("Agency"), pursuant to Resolution No. 2005-38 C.M.S., entered into a Lease Disposition and Development Agreement ("LDDA") with Sears Development Company ("Sears") for the development of a new primarily automotive service facility on property located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkeley Way (the "LDDA Property"); and

WHEREAS, the Agency acquired property located at 1911 Telegraph from Sears for the Uptown Project, and as part of the purchase price, the parties agreed that Sears, at its option, would receive either: (1) the LDDA Property; or (2) a payment by

the Agency of \$1.6 million (representing the proportional value of the 1911 Telegraph property); and

WHEREAS, the Agency dissolved on February 1, 2012; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, ORSA has listed the LDDA, including the contingent payment, as an enforceable obligation on its Recognized Obligation Payment Schedule ("ROPS") and was, until the subsequent transfer of rights under the LDDA, obligated to pay Sears \$1,600,000 if Sears, or a successor in interest, does not develop the LDDA Property, whether or not Sears is in default; and

WHEREAS, on October 7, 2014, ORSA, pursuant to Resolution No. 14-10 C.M.S., authorized an amendment to the LDDA to (1) assign the LDDA to BTO, (2) extend development completion deadlines for the Project by up to 96 months, changing it from October 2010 to October 2018, (3) reduce a contingent payment obligation from \$1,600,000 to \$1,575,000; and (4) require payment of \$100,000 to ORSA as consideration of the assignment and extension; and

WHEREAS, BTO desires to develop the LDDA Property as an 18-story mixed-use residential and retail building, as well as a parking garage (the "Project"), instead of a new primarily automotive service facility as specified in the LDDA; and

WHEREAS, BTO's mixed-use development proposal better serves the objectives of the City for the Uptown area than a primarily automotive service facility; and

WHEREAS, in return for the change of use from primarily automotive to residential and retail uses, BTO has agreed to a reduction of the \$1,575,000 contingent payment obligation of ORSA to \$1,550,000; and

WHEREAS, BTO has requested that the LDDA be amended to extend development deadlines per the following schedule and upon making certain payments to the City:

- (a) Change the current Construction Completion deadline of October 18, 2018 to the new Construction Commencement deadline with a new Construction Completion Date of April 18, 2021, for payment of an extension fee to ORSA of \$50,000 upon execution of the amendment;
- (b) Extend the new October 18, 2018 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction deadline of October 18, 2019, with a new Completion of Construction deadline of April 18,

2022 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2018.

- (c) Extend the October 18, 2019 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2020, and a new Completion of Construction date of April 18, 2023 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2019.
- (d) Extend the October 18, 2020 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2021, and a new Completion of Construction date of April 18, 2024, for payment of an extension fee to ORSA of \$25,000 prior October 18, 2020; and

WHEREAS, the Agency and Sears originally contemplated that Sears would take early delivery of the LDDA Property by the Agency transferring to Sears the Agency's possessory right under a ground lease because the Agency had not yet acquired full legal title to the LDDA Property; and

WHEREAS, said ground lease would contain an option for Sears to later acquire full legal title for the LDDA Property after the Agency had completed the process of acquiring legal title; and

WHEREAS, due to delays in development of the LDDA Property, the Agency completed the process of acquiring fee title to the LDDA Property before it was obligated to lease the LDDA Property to Sears; and

WHEREAS, ORSA can now transfer fee title to the LDDA Property rather than leasing the site to BTO, Sears' successor in interest, with an option to purchase; and

WHEREAS, the LDDA provisions regarding the ground lease must be amended to reflect a delivery of the LDDA Property to BTO by transfer of the fee title, rather than ground lease with an option to purchase; and

WHEREAS, an amendment allowing conformance to these new circumstances does not change the character of the transaction or its economic terms, only the form of the transfer to BTO; and

WHEREAS, ORSA desires to approve the change of use from primarily automotive to residential and retail uses, to extend the development deadlines set forth in the LDDA, and conform LDDA terms to reflect a sale to BTO rather than a lease with a purchase option; and

WHEREAS, California Health and Safety Code Section 34181(e) authorizes a successor agency, with the approval of the oversight board and the California Department of Finance, to amend agreements if the amendment (1) reduces liabilities to the taxing entities, (2) increases net revenues to the taxing entities, and (3) is in the best interests of the taxing entities; and

WHEREAS, the proposed amendment to the LDDA will reduce liabilities to the taxing entities by reducing the amount of the contingent payment obligation, which is a liability now faced by the taxing entities since such payment would be made under the ROPS from Real Property Tax Trust Funds otherwise distributed to the taxing entities; and

WHEREAS, the proposed amendment will increase net revenues to the taxing entities in the form of the payment to ORSA in consideration for ORSA's approval of extensions of development deadlines; and

WHEREAS, the proposed amendment will be in the best interests of the taxing entities by reducing the liabilities of and increasing net revenues to the taxing entities, as well as facilitating development of the Project, which will have fiscal and other benefits to the taxing entities over and above those benefits that would have resulted from a new automotive service facility; and

WHEREAS, the City, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.; "CEQA") and the CEQA Guidelines (Cal. Code Regs., title 14, section 15000 et seq.; "CEQA Guidelines"), conducted a detailed evaluation entitled "2016 Telegraph Avenue Project CEQA Analysis" dated June 2017 ("2016 CEQA Analysis") of the proposed Project, which concludes that the Project qualifies for an addendum, and, each as a separate and independent basis, as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, 21090 and 21166; and CEQA Guidelines Sections 15162 -15164, 15168, 15180, 15183, and 15183.3; and

WHEREAS, ORSA is a Responsible Agency for the Project for purposes of environmental review under CEQA; and

WHEREAS, ORSA has independently reviewed and considered the environmental effects of the Project as shown in the 2016 CEQA Analysis and other information in the record; now therefore be it

RESOLVED: That ORSA hereby finds and determines, after independent review and consideration of (1) the 2016 CEQA Analysis dated June 2017 to the previously certified 2004 Uptown EIR, (2) the previously certified 1998 General Plan Land Use and Transportation Element EIR, (3) the Oakland Housing Element Update EIR and Addendum, and (4) the previously certified 2011 Redevelopment Plan Amendments EIR, as supported by substantial evidence in the record and for the reasons set forth in the CEQA findings, and, each as a separate and independent basis, that the proposed BTO Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines §15183) and/or the "Qualified Infill Exemption" under Public Resources section 21094.5 (CEQA Guidelines §15183.3) and/or the "Redevelopment Projects" under Public Resources

Code section 21090 (CEQA Guidelines §15180), and that the 2016 CEQA Analysis also constitutes an Addendum to the 2004 Uptown EIR pursuant to Public Resources Code section 21166 (CEQA Guidelines §15162 and §15164), and that such Addendum determines that none that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the BTO Project or the circumstances under which the BTO Project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Successor Agency Administrator or her designee is hereby authorized to amend the LDDA to (1) change the use from primarily automotive to residential and retail uses; (2) extend development deadlines for the project by up to 66 months and require payment of \$50,000 to \$125,000, per the following schedule:

- (a) Change the current Construction Completion deadline of October 18, 2018 to the new Construction Commencement deadline with a new Construction Completion Date of April 18, 2021, for payment of an extension fee to ORSA of \$50,000 upon execution of the amendment;
 - (b) Extend the new October 18, 2018 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction deadline of October 18, 2019, with a new Completion of Construction deadline of April 18, 2022 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2018.
 - (c) Extend the October 18, 2019 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2020, and a new Completion of Construction date of April 18, 2023 for payment of an extension fee to ORSA of \$25,000 prior October 18, 2019.
 - (d) Extend the October 18, 2020 Commencement of Construction deadline by twelve (12) months to a new Commencement of Construction date of October 18, 2021, and a new Completion of Construction date of April 18, 2024, for payment of an extension fee to ORSA of \$25,000 prior October 18, 2020; and
- (3) reduce the contingent payment to BTO from \$1,575,000 to \$1,550,000; and (4) conform LDDA terms to reflect a sale to the developer rather than a lease with a purchase option; and be it further

RESOLVED: That any payments made to ORSA for the assignment and extension of development deadlines in the LDDA shall be deposited into SRA Central District: Operations Fund (Fund 9710); Organization: Central District Redevelopment (#85245), with a new project to be created; and be it further

RESOLVED: That the amendment to the LDDA and all documents necessary to carry out this Resolution as authorized hereunder shall be approved as to form and legality by ORSA Counsel and filed with the ORSA Secretary; and be it further

RESOLVED: That the amendment to the LDDA shall be submitted to the Oakland Oversight Board and the California Department of Finance for approval.

IN SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS

Secretary, Oakland Redevelopment Successor Agency