



CITY OF OAKLAND 2016 MAY 12 PM 7:34

FILED
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: 1100 Broadway Project Agreements

DATE: May 2, 2016

City Administrator Approval

Date:

RECOMMENDATION

Staff recommends that the City Council/Successor Agency adopt:

- 1) An Oakland Redevelopment Successor Agency (ORSA) Resolution Authorizing the Assignment of an Amended and Restated Owner Participation Agreement (OPA) between ORSA and SKS Broadway, LLC (SKS) to the City of Oakland ("City") for development of an office tower on a vacant parcel at 1100 Broadway (the "Property"), which will include the adaptive reuse of the adjacent historic Key System Building (the "1100 Broadway Project");
- 2) A City Council Resolution Authorizing the Assumption by the City of Oakland of the ORSA's Rights and Obligations under the OPA and amending the terms of the OPA; and
- 3) A City Council Ordinance authorizing an amendment to the Purchase and Sale Agreement (PSA) between the City and SKS for a City-owned garage located at 409 – 12th Street (UCOP Garage) to extend performance dates consistent with the amended OPA, and modify fee and deposit requirements.

EXECUTIVE SUMMARY

SKS Broadway, LLC is the owner of the property located at 1100 Broadway, which includes the site of the vacant Key System Building. ORSA has an Owner Participation Agreement (OPA) with SKS for development of the property that lays out a timeframe to reach certain construction milestones in the development of the property. A basic OPA for the property was originally executed in November 2004 between the Oakland Redevelopment Agency ("Agency") and East End Oakland, LLC ("East End") (Agency Resolution No. 2004-30 C.M.S) The basic OPA provided minimal Agency approval of the scope or pace of development of the Property. The OPA includes a provision for payment of \$400,000 of liquidated damages to the Agency if East End failed to commence construction on a project by November 8, 2007

In February 2007, the property was acquired by SKS, subject to the terms of the OPA. The Agency and SKS entered into a Revised and Restated OPA in September 2007, pursuant to Agency Resolution 2006-0088. The OPA was amended again in June 2010, pursuant to Resolution No. 2010-0054 C.M.S. to further extend the start of construction to June 2013.

Item: _____
CED Committee
May 24, 2014

The City of Oakland ("City") owns a condominium share of the UCOP Garage located at 409 – 12th Street, adjacent to the development site. The City has a Purchase and Sale Agreement (PSA) with SKS for the purchase of the garage to support its development program. The closing date for the purchase of the garage coincides with the start of construction date agreed to in the OPA with ORSA.

Office market conditions in downtown Oakland have made financing and construction of the project infeasible within the agreed upon time-frames, and SKS has requested extensions of the terms of the OPA, with associated extensions to the terms of the PSA. In addition to the time extensions, the proposed amendments to the OPA will add extension fees, site activation requirements, and staffing fees for the administration of the OPA. The PSA amendment will include additional deposits toward the purchase price of the garage, in addition to time extensions consistent with the OPA.

In May 2013 the State Department of Finance (DOF) denied a similar action to amend the OPA, so staff recommends that ORSA assign the OPA to the City, and the City accept the agreement.

BACKGROUND / LEGISLATIVE HISTORY

2007 Approval and Agreement

The development of the 1100 Broadway Project and rehabilitation of the adjacent Key System Building has been an objective of the 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. A detailed history of development efforts at this site is attached to this report as "Exhibit B – Project Background".

In 2007, SKS entered into an OPA with the Agency to develop the 1100 Broadway Project, which includes renovating and incorporating the adjacent historic Key System Building into the Project. SKS is a San Francisco based commercial development and investment firm. After dissolution of the Agency in February of 2012, 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.

2010 Extension

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. In 2010, the Agency authorized a second 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.

2012 Actions

In consideration of the PSA's time extension, SKS paid the Agency an escrow deposit of an additional \$100,000 in June 2012. Had the sale occurred according to the terms of the PSA (June 15, 2015), the deposit would have been credited toward the purchase price of the garage. If not, the \$100,000 deposit could be retained by the Agency. The amendment also allowed for a 24-month extension of all the terms, bringing the purchase date to June 25, 2017, in exchange for an additional \$200,000 deposit to be credited toward the purchase price of the garage at closing. In a letter dated December 7, 2012, 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. Since the PSA is tied to the OPA, PSA term amendments were postponed as well.

Conditions in Oakland's office market are gradually improving. Colliers International reports that office vacancy rates in the Oakland metropolitan area are diminishing, while rental rates are markedly on the rise. In spite of the positive trends, economic conditions do not yet support the financing and construction of new Class A office space in downtown Oakland, and the need for third amendments to extend the performance dates of the OPA and PSA are still necessary to keep the agreements active.

DOF Denial of Amendment

On December 18, 2012, a third OPA amendment was approved by ORSA, followed by Oversight Board approval in March 2013, but DOF denied approval of the amendment on the basis of Health and Safety Code 34163 (c), which states that an agency shall not have authority to amend or modify existing agreement with any entity, for any purpose, including extending terms of agreement. Therefore, the third 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 or the UCOP Garage closing date to June 25, 2017.

The Project is fully entitled, including California Environmental Quality Act (CEQA) approvals.

ANALYSIS AND POLICY ALTERNATIVES

Owner Participation Agreement (OPA)

SKS contends that despite great momentum, Oakland's office lease rates are still not high enough to justify new construction at 1100 Broadway. Average Class A full service gross rents in Oakland are about \$45/SF/Year, about 66 percent of the average Class A \$68/SF/Year rents in San Francisco (all rents on a gross basis). According to SKS, the Project will cost about \$550/SF to build and they would have to generate an eight percent return on cost to move forward with construction (an eight percent yield is the return requirement that SKS' capital partner requires). To generate this eight percent return, SKS would need net rental revenues of at least \$44/SF/year. With estimates of approximately \$17/SF in operating expenses this means that SKS would need to be able to lease space at 1100 Broadway for \$61/SF/year on a gross basis to reach the feasibility threshold. This is a 26 percent increase in rents over the current market rate needed to make the project feasible. This increase is unlikely in the short term unless a large company wants a building to suit its needs, such as the Uptown Station Project being built for Uber, Inc. Trends are positive for future development though. According to Colliers International's most recent market report, Oakland office vacancy rates are shrinking, and average asking rental rates in the first quarter of 2016 are up 10.3 percent over the previous quarter.

The OPA with SKS is listed on the Recognized Obligation Payment Schedule ("ROPS") as a legally binding and enforceable obligation regarding the development of 1100 Broadway, but does not involve any expenditure of funds by ORSA, except for staff costs related to the ongoing administration of the agreement. By adopting the proposed legislation and assigning the OPA to the City, the agreement and any related staff time would be removed from the ROPS, and all future administrative responsibilities related to the OPA would be transferred to the City. ORSA would continue receiving OPA extension fees, as well as any liquidated damages that might be imposed on SKS for a default under the OPA. After assumption of the OPA by the City, the agreement could be amended by the City to extend development deadlines for the Project and without having to seek any further approvals from the Oakland Oversight Board (OOB) and the State Department of Finance (DOF).

New Proposed Extensions and Performance Plan

The recommended terms of the OPA amendment extend the construction completion date to June 25, 2019 with a two-year extension option to June 25, 2021. In addition to extension fees payable to ORSA, SKS would be levied an annual fee of \$25,000 to reimburse the City for project staffing costs, which will be paid to the City. SKS would also be required to activate the site, perhaps with public art or pop-up business activity, to minimize the negative effects of a fenced vacant property on such a visible downtown corner. SKS would have to submit a proposal for site activation no later than six months after execution of the OPA amendment to extend performance deadlines.

In March of 2015, SKS and staff discussed the transfer of the OPA from ORSA to the City with Justyn Howard, Assistant Program Budget Manager at DOF. He was favorably inclined to approve the proposal because it will remove another enforceable obligation from ORSA's ROPS and thus eliminate personnel costs related to ORSA's work on the project that are funded from

the Redevelopment Property Tax Trust Fund ("RPTTF"). The City would then be responsible for funding staff costs associated with this Project, and therefore the City would impose a \$25,000 annual fee on SKS in the OPA amendment to cover those staff costs.

SKS has worked with the Planning and Building Department to obtain all necessary planning and CEQA entitlements for the project. Staff has confirmed with Planning staff that those entitlements are valid as long as the project description and design remains unchanged from that approved.

Purchase and Sale Agreement (PSA)

Adjacent to the Project site at 409 – 12th Street, is a City-owned public garage nested in the University of California Office of the President (UCOP) building. The City and SKS have a PSA for the sale of the UCOP Garage to SKS to meet parking needs for office tenants and retail patrons.

The PSA's closing date is tied to the construction start date set forth in the OPA. The proposed amendment to the PSA would extend the date for closing the sale of the UCOP garage to June 25, 2017, with a two-year second extension option at the discretion of SKS with approval of the City. These terms correspond with the construction commencement date to be specified in the OPA amendment. The deposits required for each extension will be credited toward the purchase price of the garage, unless SKS defaults on the terms of the PSA. In that case, the deposit(s) will be retained by the City.

The PSA calculates the final purchase price of the UCOP garage based on a formula favorable to the City using replacement cost and an inflator. The base price for the garage of \$4,350,000 is increased by an amount equal to the greater of five percent or the Bay Area increase in McGraw-Hill Construction Cost Index. Using the Turner Building Cost Index (similar to the McGraw-Hill Construction Cost Index), the purchase price as of January 1, 2016 is calculated at approximately \$6,946,104, or nearly \$48,000 per space, which is likely substantially higher than a purchase price derived on the basis of the income approach to value.

The proposed legislation will support the development of a mixed-use office development near a major transportation node in downtown Oakland. The proposed Project aligns with several specific goals and objectives that are included in the Central District Project Area Redevelopment Plan:

- Strengthening of the Project Area's existing role as an important office center for administrative, financial, business service, and governmental activities.
- Revitalization and strengthening of the Oakland Central District's historical role as the major regional retail center for the Metropolitan Oakland Area.
- Restoration of historically significant structures within the Project Area.
- Utilization of key transit nodes to support transit-oriented development.

The completed project will generate substantial property, sales, utility, and business taxes for the City and other taxing entities. The proposed amendments to the terms of the OPA and the PSA are summarized in "Exhibit A – Amendments to Business Terms".

Policy Alternative #1

Transfer the OPA between ORSA and SKS to the City and, upon assignment of the agreement to the City, extend certain performance deadlines based on previously agreed-upon terms outlined above. At the same time, the City will amend the existing PSA for the sale of the UCOP garage to link its performance deadlines to those of the OPA and to increase deposit payments.

Pros

- Assignment of the OPA to the City will take the Project off the ROPS list of enforceable obligations, and eliminate ORSA's cost of staffing the project.
- OPA term extensions will carry fees of \$75,000 for the first and \$50,000 for the second, payable to ORSA. Any liquidated damages collected pursuant to the terms of the OPA will also be payable to ORSA. The City will receive about 29 percent of these payments through Redevelopment Property Tax Trust Fund payments to taxing entities.
- The amended OPA will include terms for annual payments to the City of \$25,000 to cover the costs of staffing the Project.
- The amended OPA will also include a requirement that the site be activated with temporary uses that are subject to staff approval.
- Avoids termination of the OPA, which would result in an uncertain development schedule and scope for the project.
- The OPA performance date extensions allow more time for the Class A office rents in Oakland to rise enough to justify development and attract equity partners.
- The amended PSA will link the sale of the garage to Project construction start dates, and will increase deposit payments to the City.
- Amending the PSA will keep the sale terms of the agreement in force. The price formula negotiated in the PSA is based on new construction costs to replace the garage, and is favorable to the City.
- Having the UCOP Garage serving the Project, rather than building new parking on site, will allow for a bigger retail footprint, eliminate the need for driveways on or near Broadway and make it more cost-effective to incorporate the rehabilitated Key Systems Building into the overall project design.

Cons

- The current OPA expired without SKS meeting the performance terms. Amending the OPA will postpone ORSA's ability to seek default findings to collect up to \$440,000 in liquidated damages.

Policy Alternative #2

Do not assign the OPA to the City, and do not amend the OPA.

Pros

- ORSA could begin default proceedings against SKS. If SKS is found to be in default of the OPA, ORSA could collect up to \$440,000 in liquidated damages, which would be used to satisfy ROPS obligations, thus increasing residual RPTTF payments to the taxing entities. The City would receive 29 percent, or approximately \$127,600, as one of those taxing entities.
- If SKS does not want to extend the terms of the PSA without the related OPA terms extensions, the City will keep the income-producing UCOP garage as an asset.

Cons

- ORSA will continue to pay staff costs, and the Project will remain a financial liability to the affected taxing entities.
- ORSA will forego collection of a \$75,000 OPA extension fee, and the possibility of an additional \$50,000 if a second extension option is exercised.
- ORSA will not have the authority to require activation of the site.
- Without the OPA extensions, SKS may not be interested in extending the terms of the PSA, and the City may not be able to negotiate as favorable a sale formula as currently exists.

FISCAL IMPACT

The terms of the OPA amendment require an extension fee of \$75,000, with an additional \$50,000 due if a second extension is requested. Though the proposed legislation would assign the OPA to the City, all extension fees will continue to be payable to ORSA and deposited into SRA Central District: Operations Fund (9710).

Staff costs associated with the Project (a current liability paid by ORSA) would become the responsibility of the City. The proposed OPA amendment requires SKS to pay the City \$25,000 per year to reimburse staff costs. These funds will be deposited in the Miscellaneous Grant Fund (2999) for allocation to staff costs that will no longer be funded from the ROPS.

Failure to perform according to the proposed schedule of performance in the OPA will trigger payment of liquidated damages of \$440,000 to ORSA. Any payments of liquidated damages would become part of ORSA's cash assets and would be used to satisfy ROPS obligations, thus increasing residual RPTTF payments to the other taxing entities, per the redevelopment dissolution statute. However, the City as a taxing entity would receive 29 percent or approximately \$127,600 of this redistribution to its general fund. Any liquidated damages that ORSA receives as a result of SKS's default under the provisions of the OPA will be deposited into the SRA Central District: Operations Fund (9710).

Extending the PSA closing date for the sale of the UCOP Garage will push back the potential release to the City of a \$100,000 deposit now in escrow. SKS will make an additional \$200,000 extension payment upon execution of the OPA amendment. Any deposit funds released to the City under the provisions of the PSA will be deposited into the Central District Projects Fund (5610). By prior City resolution these funds will be allocated to future parking development and are also restricted to redevelopment activities in the Central District by bond covenants.

PUBLIC OUTREACH / INTEREST

No public outreach or coordination is required for this legislation further than the posting on the City's website.

COORDINATION

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

- Office of the City Attorney
- Controller's Bureau
- Planning and Building Department (CEQA compliance)

PAST PERFORMANCE

SKS has diligently marketed the property to potential tenants and has become a key member in the Downtown Oakland Association. For example, in 2011, SKS worked closely with City staff and invested significant resources participating in a competition to develop a new multi-agency Regional Agency Headquarters housing the Metropolitan Transit Commission (MTC), the Association of Bay Area Governments (ABAG), the Bay Area Air Quality Management District (BAAQMD), and the Bay Conservation and Development Commission (BCDC) at the 1100 Broadway Project.

SKS has also been involved in a number of efforts to improve the marketability of downtown Oakland as a business destination including the firm's key role in the creation of the Downtown Oakland and Lake Merritt/Upton business improvement districts.

SUSTAINABLE OPPORTUNITIES

Economic: Eventual development of the 1100 Broadway Project with the assistance of SKS's purchase of the UCOP Garage will add approximately 310,000 square feet of office space and almost 10,000 square feet of retail space to a longstanding vacant and blighted downtown property. Based upon the Small Business Administration's guidelines assuming one office worker per 250 square foot of space, the 1100 Broadway Project might support up to 1,200 office workers. Another 22 or more retail workers might be supported based upon a 450 square-foot-per-employee rule of thumb.

Environmental: SKS has designed a particularly green project that has been pre-certified as Leadership in Energy and Environmental Design (LEED) platinum. Green building features include solar panels, a high efficiency heating-ventilation-air conditioning (HVAC) system with raised floor air distribution, a green roof with rainwater collection, filtration and reuse system.

Social Equity: A number of the potential jobs created may be available to low and moderate income individuals. SKS and its contractors will be encouraged to use the services of the West Oakland Jobs Resource Center, which links employers – particularly in the construction trades – with qualified Oakland residents.

CALIFORNIA AIR QUALITY ACT (CEQA)

On May 6, 1998, the Oakland Planning Commission certified an Environmental Impact Report (EIR) for a project on the site which consisted of a 150-room hotel with ground floor retail and restaurant use. (The EIR also analyzed an office building alternative). In 2006, the Planning Commission adopted an EIR addendum for a project consisting of the rehabilitation of the existing Key Systems building and construction of a 12-story commercial office building at the Property. In 2008, the Planning Commission adopted an addendum for a project consisting of a 20-story office building at the Property.

There are no changes to the Project, new information, or changes in circumstances that would result in new significant environmental impacts or substantially more severe impacts from those previously identified in the EIR and later addenda. Therefore, no further environmental evaluation is required, and no Supplemental/ Subsequent EIR is needed pursuant to State CEQA Guidelines Section 15162. Moreover, the Mitigation Monitoring and Reporting Program approved in 1998, as amended, is still applicable.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the following action be taken by the City Council acting as the ORSA Board :

Assign the Amended and Restated Owner Participation Agreement (OPA) between ORSA and SKS Broadway, LLC (SKS) to the City of Oakland for development of an office tower on a vacant parcel at 1100 Broadway (the "Property"), which will include the adaptive reuse of the adjacent historic Key System Building (the "1100 Broadway Project").

Staff also requests that the following actions be taken by the City Council:

- 1) Accept the OPA and amend its terms to extend performance timelines and associated fees, and
- 2) Amend the Purchase and Sale Agreement (PSA) between the City and SKS for a City-owned garage located at 409 – 12th Street (UCOP Garage) to extend performance dates and modify fee and deposit requirements.

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:

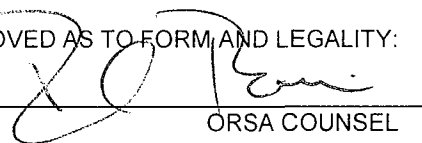
Janice Lang
Project Implementation Department

Attachment (2):
Exhibit A: Amendments to Business Terms
Exhibit B: Project History

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APPROVED AS TO FORM AND LEGALITY:

BY:


ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION No. 2016-_____

RESOLUTION AUTHORIZING ASSIGNMENT OF AN AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT WITH SKS BROADWAY, LLC, FOR DEVELOPMENT AT 1100 BROADWAY FROM ORSA TO THE CITY

WHEREAS, on September 6, 2007, the Redevelopment Agency of the City of Oakland ("Agency") entered into an amended and restated owner participation agreement (the "OPA") with SKS Broadway, LLC ("SKS"), pursuant to Agency Resolution No. 2006-0088 C.M.S., with regard to the development of a mixed-use office project (the "Project") located at 1100 Broadway (the "Property") in the Central District Redevelopment Project Area; and

WHEREAS, the OPA, as amended, established various parameters for the Project, provided the Agency certain approval rights regarding the Project, and required SKS to accomplish a number of specific development milestones by specific deadline dates; and

WHEREAS, on June 1, 2010, pursuant to Resolution No. 2010-54 C.M.S., the OPA was amended to extend performance deadlines to their current dates; 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 all of the Agency's authority, rights, powers, duties and obligations were transferred by operation of law to ORSA, including the Agency's rights and interests in the OPA; and

WHEREAS, ORSA has listed the OPA as an enforceable obligation on its Recognized Obligation Payment Schedule ("ROPS"); and

WHEREAS, SKS has made good faith efforts to reach the OPA's development milestones by the specified dates, but has been unable to do so because of the continuation of adverse economic conditions in Oakland's downtown office markets

that hinder SKS's efforts to obtain the required anchor tenants and debt financing for the Project; and

WHEREAS, ORSA desires to assign the OPA and all of its rights and obligations under the OPA to the City of Oakland ("City"), other than ORSA's right to collect extension fees under the OPA and possible liquidated damages in the event of a default under the OPA, which will (1) remove an enforceable obligation from the ROPS, (2) relieve ORSA of the financial liability associated with staffing the Project, (3) facilitate the wind-down of ORSA's involvement in continuing redevelopment activities, and (4) provide funding to ORSA through payment of extension fees and possible liquidated damages collected pursuant to the terms of an amended OPA; and

WHEREAS, the City desires to accept assignation of the OPA; now therefore be it

RESOLVED: That the ORSA Board hereby authorizes the assignment of the OPA with SKS Broadway, LLC, to the City, except that ORSA shall retain the right to collect extension fees under the OPA and possible liquidated damages in the event of a default under the OPA; and be it further

RESOLVED: That any liquidated damages or extension fees that ORSA may receive pursuant to the OPA shall be deposited into the SRA Central District: Operations Fund (9710); and be it further

RESOLVED: That the ORSA Administrator is authorized to negotiate and execute documents and take other action with respect to the assignment of the OPA consistent with this Resolution and its basic purposes.

IN SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____, 2016

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

EXHIBIT B

**1100 Broadway Project
Project History**

April, 2000 - the Redevelopment Agency (Agency) sells the Property to Amin-Broadway LLC pursuant to a Disposition and Development Agreement ("Amin-Broadway DDA") for the construction of a 214-room Hilton Garden Inn hotel.

July 2002 - Agency placed Amin-Broadway in default for failure to complete the project according to schedule.

November 2004 - Agency, pursuant to Resolution No. 2004-30 C.M.S, entered into a basic OPA with East End Oakland I, LLC ("East End") as a condition of East End's acquisition of the Property from Amin-Broadway LLC. The basic OPA provided minimal Agency approval of the scope or pace of development of the Property. The OPA includes a provision for payment of \$400,000 of liquidated damages to the Agency if East End failed to commence construction on a project by November 8, 2007.

October 2006 - East End agreed to release all of the \$400,000 in liquidated damages to the Agency in exchange for the Agency agreeing to consider extending Project development deadlines in an amended OPA and selling the UCOP Parking to East End to support the development plans.

December 2006 - the Agency, pursuant to Resolution No. 2006-0088 C.M.S., authorized an amendment expanding the terms of the basic OPA with East End for development of the Property. The expanded OPA 1) imposed more specific development parameters for the Property; 2) provided for the Agency's review and approval of Project plans and specifications; 3) required regular maintenance of the Property prior to development; 4) provided for \$440,000 in liquidated damages to the Agency, secured by an irrevocable letter of credit, if East End or its approved assignee failed to complete development of the Project; 5) created an enhanced definition of commencement of Project construction that insured a substantial investment in the Project; 6) authorized the Agency Administrator to negotiate and then extend for up to one year the construction commencement and other Project development deadlines to be negotiated in the amended OPA; and 7) authorized East End's assignment of its rights under the amended OPA to SKS upon sale of the Property to SKS.

February 2007 - East End sold the Property to SKS.

September 2007 - Agency negotiated and executed Amended and Restated OPA with SKS and authorized execution of a PSA for the sale of the adjacent UCOP Garage that is part of the parking structure in the University of California, Office of the President (UCOP) office building to SKS for an initial price of \$4,350,000, which would be increased on an annual basis by at least 5 percent until the date of closing escrow.

June 2010 – Agency and SKS, pursuant to Resolution No. 2010-0054 C.M.S., amend the PSA, to extend the closing date and the dates for certain "option" extensions payments to be made by SKS. At the time, SKS forfeited \$100,000 that had previously been deposited in escrow. At the

EXHIBIT B (cont'd)

same time, the OPA was amended to extend development deadlines included in the schedule of performance by one year.

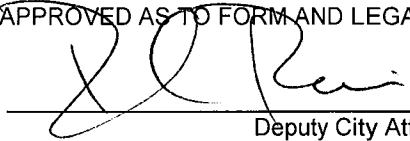
January 2012 - the Agency transferred the UCOP garage to the City of Oakland, subject to the PSA with SKS. As a result, the PSA becomes an obligation of the City of Oakland, while the OPA becomes an obligation of ORSA.

December 2012 - ORSA approved a second amendment to the OPA to extend the Construction Commencement and Garage Closing Dates by two years to June 25, 2017 and April 27, 2019, respectively (ORSA Reso. 2012-015). The terms include an option for a second two-year extension, allowing start of construction to begin by June 25, 2019 if necessary.

March 2013 – OB approved the second amendment to the OPA on March 8, 2013 (OB Reso. 2013-5)

May 2013 – In a letter to the OB dated May 3, 2013, DOF denied final approval of the second amendment to the OPA citing Health and Safety Code 34163 (a), which addresses former redevelopment agreements, and prohibits agencies from modifying existing agreements, including extending their terms.

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION (1) ACCEPTING ASSIGNMENT OF AN AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT (“OPA”) BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND SKS BROADWAY, LLC, FOR DEVELOPMENT AT 1100 BROADWAY; AND (2) AMENDING THE OPA TO EXTEND DEVELOPMENT DEADLINES, ADD STAFFING CHARGES. AND INCREASE EXTENSION PAYMENTS

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

WHEREAS, the Oakland Redevelopment Successor Agency (ORSA), 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”) located at 1100 Broadway (the “Property”); and

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

WHEREAS, on June 1, 2010, pursuant to Resolution No. 2010-54 C.M.S., the OPA was amended to extend performance deadlines to their current dates; and

WHEREAS, SKS has made good faith efforts to reach the OPA’s development milestones by the specified dates, but has been unable to do so because of the continued adverse economic conditions in Oakland’s downtown office markets that hinder SKS’s efforts to obtain the required anchor tenants and debt financing for the Project; and

WHEREAS, SKS has requested an amendment to the OPA to extend construction start and completion dates; and

WHEREAS, the City desires to amend the OPA per the request of SKS to facilitate development of the Project; and

WHEREAS, ORSA desires to assign its rights, other than its right to collect extension fees under the OPA and possible liquidated damages in the event of a default under the OPA, and obligations under the OPA to the City; and

WHEREAS, the amendment of the OPA will include an obligation by SKS to fund City staff costs until the Project commences construction; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City to accept an assignment of and assume ORSA's rights and obligations under the OPA, other than ORSA's right to collect extension fees under the OPA and possible liquidated damages in the event of a default under the OPA; and be it further

RESOLVED: That the City Council hereby authorizes an amendment to the OPA consistent with the terms described in "Exhibit A – Summary of Terms" attached to this Resolution; and be it further

RESOLVED: That any extension fees or liquidated damages collected pursuant to the terms of the amended OPA shall be payable to ORSA; and be it further

RESOLVED: That a non-refundable \$25,000 annual staffing fee payable to the City pursuant to the amended terms of the OPA shall be deposited and appropriated into Central District Projects Fund (5999), Downtown Organization (85245), Project to be determined; and be it further

RESOLVED: That non-refundable extension fees of \$75,000 and \$50,000 payable to the City pursuant to the amended terms of the OPA shall be deposited and appropriated into Central District Projects Fund (5999), Downtown Organization (85245), Project to be determined; 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 and transfer of ORSA's rights and responsibilities under the OPA to the City, and to amend the OPA, executed pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies 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 and amendment agreements and associated documents and take whatever other action is necessary with respect to the Project, the Property, and the assignment and amendment of the OPA consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

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

RESOLUTION (1) ACCEPTING ASSIGNMENT OF AN AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT (“OPA”) BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND SKS BROADWAY, LLC, FOR DEVELOPMENT AT 1100 BROADWAY; AND (2) AMENDING THE OPA TO EXTEND DEVELOPMENT DEADLINES, ADD STAFFING CHARGES. AND INCREASE EXTENSION PAYMENTS

EXHIBIT A

Summary of Terms

OPA Terms	Proposed OPA Amendment
Deadline to Start Construction: June 25, 2015	<i>Initial Extension:</i> June 25, 2017 <i>Extension Option:</i> June 25, 2019
Deadline to Substantially Complete Construction: April 27, 2017	<i>Initial Extension:</i> April 27, 2019 <i>Extension Option:</i> April 27, 2021
Payments for Extensions	<i>Initial Extension:</i> \$75,000 <i>Extension Option:</i> \$50,000
Payment for City Staff Time	\$25,000 per year until Project commencement of construction
Site Activation	Installation of public art, probably a large sculpture and touch-up of mural on Key System Building

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAY 12 PM 7:34

APPROVED AS TO FORM AND LEGALITY:

BY: 
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AUTHORIZING AN AMENDMENT TO A PURCHASE AND SALE AGREEMENT WITH SKS BROADWAY, LLC FOR SALE OF THE PUBLIC PARKING GARAGE AT 409 – 12TH STREET TO EXTEND PURCHASE DEADLINES

WHEREAS, on October 1, 2008, the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency"), pursuant to Agency Resolution No. 2006-0088 C.M.S., entered into a purchase and sale agreement ("PSA") with SKS Broadway, LLC, ("SKS") for the sale of the Redevelopment Agency's 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 ("UCOP Garage"); and

WHEREAS, on September 6, 2007, the Redevelopment Agency, pursuant to Agency Resolution No. 2006-0088 C.M.S., entered into an amended and restated owner participation agreement ("OPA") with SKS, with regard to the development of a mixed-use office project ("Project") located at 1100 Broadway ("Property"), adjacent to the UCOP Garage, in the Central District Redevelopment Project Area; and

WHEREAS, the Redevelopment 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 all of the Agency's authority, rights, powers, duties and obligations were transferred by operation of law to ORSA, including the Agency's rights and interests in the UCOP Garage, the PSA, and the OPA; and

WHEREAS, on October 15, 2014, pursuant to the Long Range Property Management Plan and Health and Safety Code Section 34191.5, the Redevelopment Agency transferred the UCOP Garage to the City, subject to the PSA with SKS; and

WHEREAS, SKS's purchase of the UCOP Garage is a critical element of the Project and is dependent on SKS starting construction on the Project, since the UCOP Garage is being sold to SKS in order to satisfy the parking needs of the Project; and

WHEREAS, SKS has not be able to reach specific development milestones by the specified dates established in the OPA because of the continuation of adverse economic conditions in downtown Oakland's office market that hinder SKS's efforts to obtain the required anchor tenants and debt financing for the Project; and

WHEREAS, SKS has requested to extend the current purchase closing deadline set forth in the PSA to be consistent with the OPA deadlines, which are being extended; and

WHEREAS, the City, in light of the adverse economic conditions in the Central District Redevelopment Project Area that have hindered SKS' efforts to market and construct the Project, desires to extend the purchase deadline set forth in the PSA; now, therefore,

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

SECTION 1. The City Council hereby authorizes an amendment to the PSA to (1) extend the date for closing the sale of the UCOP Garage by two years, from June 25, 2015, to June 25, 2017, conditioned on SKS making a deposit of \$200,000 into an escrow account, and (2) grant an option to SKS to extend the new closing date by an additional 24 months to June 25, 2019, by making an additional deposit of \$100,000 into escrow by June 25, 2017. The amendment of the PSA is contingent on a corresponding extension of the development deadlines in the OPA.

SECTION 2. \$100,000 made pursuant to the terms of the amended PSA, currently held in escrow, \$200,000 due upon execution of this amendment and \$100,000 due if SKS elects to exercise a second extension option, may be released to the City immediately upon payment and deposited to the Central District Projects Fund (5610), Downtown Organization (85425) for allocation and appropriation to future parking development within the Central District. The value of all deposits shall be credited toward the purchase price of the UCOP Garage unless SKS is found to be in default of the Agreement.

SECTION 3. The City Administrator or her designee is authorized to negotiate and execute a PSA amendment and take whatever action is necessary with respect to the UCOP Garage and the amendment to the PSA consistent with this Ordinance and its basic purposes.

SECTION 4. The amendment to the PSA authorized hereunder shall be approved as to form and legality by the City Attorney and filed with the City Clerk.

SECTION 5. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

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,
City of Oakland

**AN ORDINANCE AUTHORIZING AN AMENDMENT TO A PURCHASE
AND SALE AGREEMENT WITH SKS BROADWAY, LLC, FOR SALE OF
THE PUBLIC PARKING GARAGE AT 409 – 12TH STREET TO EXTEND
PURCHASE DEADLINES**

NOTICE AND DIGEST

This Ordinance authorizes an amendment to a Purchase and Sale Agreement with SKS Broadway, LLC, for the sale of the UCOP Garage at 409 12th Street to extend purchase deadlines.