

# Oakland Oversight Board

## Memorandum

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**TO:** Oakland Oversight Board  
**FROM:** Mark Sawicki  
**SUBJECT:** 1100 Broadway OPA Assignment  
**DATE:** June 27, 2016  
**ITEM:** #3

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### RECOMMENDATION

Staff recommends that the Oakland Oversight Board adopt a resolution approving the assignment, to the City of Oakland (the "City"), of the Oakland Redevelopment Successor Agency's (ORSA) rights and obligations under the Amended and Restated Owner Participation Agreement (the "OPA") with SKS Broadway, LLC for development of property located at 1100 Broadway Street.

### EXECUTIVE SUMMARY

ORSA has had an Owner Participation Agreement with SKS since 2007, in which SKS agreed to construct an office tower at 1100 Broadway. The Project will also include ground floor retail space, and will rehabilitate and integrate the historic Key Systems Building into the office tower design.

The poor economic climate and high office vacancy rates in Oakland did not support new office construction within the OPA's negotiated schedule, so in 2012 SKS requested an amendment to the agreement to extend the performance dates by two years, with an additional two year extension. ORSA staff informed SKS that the performance terms of the OPA would be suspended as staff went through the legislative processes for securing approvals to amend the agreement.

On March 18, 2013 the Oversight Board approved the amendment to the OPA (OB Resolution 2013-5) to extend the terms of the agreement so that the construction start date was set for June 2015, with an option to extend by two years to June 2017. The amended terms included up to \$50,000 in extension fees. The California Department of Finance (the "DOF") however, denied the amendment, and the terms of the OPA remain suspended.

If approved by the Oversight Board and the DOF, the City will accept assignment of the OPA from ORSA, make amendments to extend to the construction start and completion dates, and impose associated fees. A non-refundable fee of \$75,000, payable to ORSA will be due upon execution of the OPA amendment. The extension option will carry a fee of \$50,000, also payable to ORSA. The terms of the amended OPA will also stipulate that in the event of a default, SKS will pay ORSA up to \$440,000 in liquidated damages.

## **OUTCOME**

By removing ORSA as a party to the OPA, the City will be able to amend the agreement – an option that is not available to ORSA, based on the DOF’s finding. If assignment of the OPA is approved, the agreement will no longer be listed on ORSA’s Recognized Payment Obligation Schedule (“ROPS”). This will effectively increase net revenues to the taxing entities by eliminating any staff charges related to the administration of the OPA that are currently listed on the ROPS. According to the terms of the proposed City amendments, the assignment will increase revenues to the taxing entities by collecting up to \$125,000 in extension fees ORSA will also collect up to \$440,000 in liquidated damages in the event SKS defaults on the agreement. The proposed assignment will also reduce ORSA’s liabilities since it will no longer have any rights or responsibilities under the DDA.

The assignment and subsequent amendment of the OPA would be in the best interests of the taxing entities because of the revenues generated and distributed to the taxing entities, but more importantly, because of the general fiscal benefits to the taxing entities of keeping the developer in the deal and improving the chances that a tax-generating project will actually get built.

## **BACKGROUND/LEGISLATIVE HISTORY**

On September 6, 2007, the former Redevelopment Agency, pursuant to Resolution No. 2006-88 C.M.S., executed an Amended and Restated OPA with SKS. In June of 2010, pursuant to Resolution No. 2010-54 C.M.S., the OPA was amended to extend performance deadlines to their current dates. Under the OPA, the deadline to submit project construction drawings is December 10, 2012, the deadline to start project construction is June 25, 2013, and the deadline to complete project construction is April 27, 2015. Due to extended unfavorable economic conditions, none of those target dates have been met. SKS agreed to pay liquidated damages of \$440,000 to ORSA if SKS is found to be in default of the terms of the agreement, though that finding has not been made. SKS’ payment obligation is secured by a letter of credit.

When the Redevelopment Agency dissolved on February 1, 2012 the OPA was assumed by ORSA. Thus, ORSA has the authority to approve the OPA assignment, contingent upon the DOF’s final approval. On December 18, 2012, the City Council sitting as the ORSA board, pursuant to Resolution No. 2012-13 C.M.S. authorized an amendment to the OPA to extend development deadlines. The amendment was approved by the Oversight Board on March 18, 2013 (OB Resolution 2013-5), upon finding that amending the OPA would be in the best interest of the taxing entities because it would:

1. Increase revenues to the affected taxing entities through increased property taxes and sales taxes;
2. Impose fees to extend the start of construction that would be distributed among the affected taxing entities;
3. encourage the developer to stay with the Project resulting in the long-term fiscal benefits to the taxing entities from completion of Project development noted above

Furthermore, termination of the OPA would leave the future of the Property and the Project uncertain.

In a letter dated March 19, 2013 the DOF denied the Oversight Board's action to amend the terms of the OPA pursuant to California Health and Safety code 34163(c), which prohibits an Agency from modifying or extending the terms of agreements. Therefore the amendment was never executed.

Economic conditions in downtown Oakland are improving steadily. According to Colliers International's most recent market report, Oakland's office vacancy rates are on the decline, and average asking rental rates in the first quarter of 2016 are up 10.3 percent over the previous quarter. SKS continues to market the property to secure an anchor tenant, and has requested renewed efforts to amend the OPA.

On June 7, 2016 the ORSA board approved a resolution authorizing assignment of the OPA between ORSA and SKS Broadway LLC to the City. The City Council concurrently adopted a resolution accepting the assignment and approving amendments that update those contemplated in 2013. The amendments the City would make to the OPA include:

1. Extend the construction commencement date to June 24, 2017 for a non-refundable fee of \$75,000 *payable to ORSA*. (This fee was \$25,000 in the proposed 2013 amendment.)
2. Offer an option to extend construction commencement to June 24, 2019 for an additional fee of \$50,000, also *payable to ORSA*. (The extension option fee was \$25,000 in the 2013 amendment.)
3. \$440,000 in liquidated damages, *payable to ORSA*, in the event of SKS defaults on the amended OPA.
4. Require SKS to submit a plan to activate the site until construction begins.

## **ANALYSIS**

### *The Assignment*

Generally, a successor agency is required to wind down all affairs of the former redevelopment agency. Toward this goal, the proposed assignment of ORSA's rights and obligations under the OPA to the City would remove ORSA as a party to the 1100 Broadway OPA, and the agreement would no longer be listed on ORSA's ROPS. This will effectively increase net revenues to the taxing entities by eliminating the employee costs related to the administration of the 1100 Broadway OPA which are listed on the ROPS. The taxing entities would also increase revenues by collecting a \$75,000 fee upon execution of the OPA amendment with the City, with an additional \$50,000 collected if SKS exercises an option to extend performance dates by an additional 24 months. The proposed assignment will also reduce ORSA's liabilities since it will no longer have any rights or responsibilities under the DDA.

*California Department of Finance (DOF) Approval*

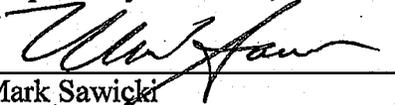
If approved by the Oversight Board, the proposed assignment of ORSA's rights and responsibilities to the City will be submitted to DOF for approval. Representatives of SKS Broadway reviewed the proposed action with DOF, and DOF staff appeared willing to approve the proposed assignment to the City once it has been authorized by ORSA, the City, and the Oversight Board.

**COST SUMMARY/IMPLICATIONS**

The proposed assignment of the 1100 Broadway OPA would remove the agreement from ORSA's Recognized Payment Obligation Schedule ("ROPS"). This will effectively increase net revenues to the taxing entities by eliminating the staff charges related to the administration of the OPA, which are currently listed on the ROPS. These on-going staff charges amount to approximately \$25,000 per year. The affected taxing entities will also increase revenues by collecting a fee of \$75,000 upon execution of the OPA amendment between the City and SKS, with an additional fee of \$50,000 if SKS chooses to exercise its option to extend performance deadlines.

For questions regarding this report, please contact Janice Lang in the Project Implementation Division at 238-6430.

Respectfully submitted,



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# OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2016-\_\_\_\_\_

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## RESOLUTION APPROVING 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 ("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 and to make certain amendments to the OPA, and has agreed that ORSA shall retain the right to extension fees under the OPA and possible liquidated damages in the event of a default; now therefore:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

**SECTION 1.** The Oakland Oversight Board finds and determines that the proposed assignment of ORSA's rights and obligations under the OPA to the City, as approved by ORSA, will benefit the taxing entities because the assignment will

- (1) reduce the financial liability of the taxing entities by removing the OPA from ORSA's Recognized Obligation Payment Schedule ("ROPS"), and therefore eliminate any project staffing costs related to the administration of the 1100 Broadway Project OPA ; and
- (2) increase net revenues to the taxing entities by collecting extension fees and possible liquidated damages, and increasing the amount of residual Redevelopment Property Tax Trust Fund ("RPTTF") funds that will flow to the taxing entities due to the elimination of the project staffing line item on the ROPS; and
- (3) reduce the burden of the taxing entities to fund continued project staffing which is in the best interest of the taxing entities.

**SECTION 2.** The Oakland Oversight Board hereby approves the action of the ORSA Board authorizing the ORSA Administrator to assign ORSA's rights and obligations under the OPA to the City, on the condition that ORSA shall retain the right to extension fees under the OPA and possible liquidated damages in the event of a default under the OPA.

ADOPTED, OAKLAND, CALIFORNIA \_\_\_\_\_, 2016

**PASSED BY THE FOLLOWING VOTE:**

AYES-- BYRD, CHAIR CARSON, MULVEY, ORTIZ, RINNE, TUCKER

NOES--

ABSENT--

ABSTENTATIONS-

ATTEST: \_\_\_\_\_  
SECRETARY OAKLAND  
OVERSIGHT BOARD