

# Oakland Oversight Board

## Memorandum

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**TO:** Oakland Oversight Board  
**FROM:** Mark Sawicki  
**SUBJECT:** 2000-2016 Telegraph Avenue  
Lease Disposition and Development  
Agreement Amendment  
**DATE:** October 23, 2017  
**ITEM:** #5

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### **RECOMMENDATION**

Staff is recommending that the Oakland Oversight Board adopt a resolution approving Oakland Redevelopment Successor Agency (ORSA) legislation authorizing an amendment to a Lease Disposition and Development Agreement (“LDDA”) with W/L Broadway Telegraph Owner VII, LLC (“BTO”), for a development of property located 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, possible retail, residential and parking uses) to a mix of 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 30 months or no later than April 2021, but no later than April 2024, if BTO exercises all three 12-month extensions to the initial construction commencement date, as shown in Table 1 below;
- (3) require payments to ORSA as consideration for the deadline extensions, scaled relative to the development deadline extension required, with an initial \$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 construction commencement and completion dates through April 2024, resulting in a maximum possible fee of \$125,000, as detailed in Table 1 below;
- (4) reduce a contingent payment obligation from ORSA to BTO from \$1.575 million to \$1.55 million; and
- (5) conform LDDA terms to reflect a sale of the LDDA Property to BTO rather than a ground lease with a purchase option.

### **EXECUTIVE SUMMARY**

On October 7, 2014, ORSA, pursuant to Resolution No. 14-10 C.M.S., approved an assignment of the LDDA from Sears Development Company (“Sears”) to BTO. ORSA also granted an extension of the Project completion date to October 2018. Both actions were approved by the Oversight Board and the California Department of Finance (DOF).

Instead of building the automotive service facility at the LDDA Property as originally planned by Sears, BTO now proposes to eliminate the auto center and, in its place, develop an 18-story mixed-use residential and retail building, including 230 dwelling units, 4,622 square feet of ground floor retail space, and 78 parking spaces at the site. Because of this significant change in project scope and design, BTO asked to change the project from a primarily automotive use to a mix of residential and retail uses in return for a reduction of a contingent payment obligation from ORSA to BTO from \$1.575 million to \$1.55 million. BTO has also asked for additional time to start and complete construction of the building in return for certain payments to ORSA, and requested that the LDDA terms be changes to reflect a sale of the LDDA Property to BTO rather than a ground lease with a purchase option.

On October 3, 2017, ORSA, pursuant to Resolution No. 2017-007 C.M.S., approved the LDDA amendment.

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.<sup>1</sup>

## **OUTCOME**

California Health and Safety Code Section 34181(e) authorizes a successor agency, with the approval of the oversight board and DOF, 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 million to \$1.55 million, which is a liability now faced by the taxing entities since such payment would be made under the Recognized Obligation Payment Schedule (ROPS) from Real Property Tax Trust Fund (“RPTTF”) otherwise distributed to the taxing entities.

The proposed amendment will increase net revenues to the taxing entities by requiring an initial payment of \$50,000 to ORSA as consideration for the initial 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 BTO Project will result in higher tax revenues for the taxing entities over and above those tax benefits that would have resulted from a new automotive service facility. Specifically, the auto center proposed by Sears would have generated approximately \$36,000 in property taxes per year, while the BTO Project is projected to generate approximately \$938,000 per year.

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<sup>1</sup> 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.

Lastly, the proposed amendment is 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 a project that will have greater fiscal and other benefits to the taxing entities than the original auto center development.

### **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 property located at 1911 Telegraph Avenue from Sears as part of the site assembly for 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 their automotive services facility. Consequently, 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 (the "Sears Project").

On October 18, 2005, the Agency, pursuant to Resolution No. 2005-38 C.M.S., approved execution of a LDDA with Sears for the development of the Sears Project on the LDDA Property.

Sears was to complete the auto center project within 60 months of execution of the LDDA, or in October of 2010. Sears made good faith efforts to complete the project by this deadline, but was unable to do so because of the Great Recession. Therefore, the Agency did not transfer the LDDA Property to Sears. The LDDA currently provides that if Sears (or BTO as Sears' successor in interest) does not develop the project, the agreement can be terminated and BTO would be entitled to a payment of \$1.575 million. This contingent payment, which is listed on the ROPS, is an obligation of ORSA.

In May of 2014, ORSA included the LDDA Property in its Long-Range Property Management Plan as property to be held to satisfy an existing contractual obligation, namely the LDDA with Sears.

Subsequently, in July 2014, BTO purchased Sears' downtown Oakland department store. As part of the transaction, BTO also acquired Sears' rights under the LDDA, and ORSA and the Oversight Board 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. The assignment and amendment were approved by the Oversight Board and DOF.

BTO proposes to develop the LDDA Property as an 18-story mixed-use residential and retail building, 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 will have a maximum height of 200 feet. Because of this significant change in project scope and design, BTO has asked for additional time to complete all predevelopment work and to start and complete construction of the building.

## **ANALYSIS**

### **Change of Project Uses**

The LDDA Property was acquired by the Agency to develop a replacement for the Sears Auto Center that Sears had to close when the Agency acquired the property at 1911 Telegraph Avenue from Sears. However, Sears ended its department store operations in Oakland in late 2014, thus eliminating the need for development of a new Sears Auto Center.

BTO proposes to develop the LDDA Property with an 18-story mixed-use residential and retail building, which represents significant changes to the original project scope, as the BTO Project does not include the automotive service center.

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/parking proposed in the original LDDA, better conforms with the objectives of the Oakland General Plan and presents another opportunity to develop much needed residential units to address the current housing shortage in Oakland.

### **Extension of Development Deadlines**

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

Extending the performance schedule for the 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, 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 have the option to request up to three additional 12-month extensions to the construction commencement and completion deadlines as outlined in the table below.

**Table 1**

<b>Construction Date Changes</b>	<b>Payment</b>
Change current Construction Completion Date of October 18, 2018 to a new Construction Commencement Date of October 18, 2018 with a 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

**ORSA 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), which was reduced 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 use for the Project, BTO has agreed to a reduction of this contingent payment to \$1.55 million.

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

When the Agency executed the LDDA with Sears in 2005, it had secured the right to possess the site via an eminent domain action, 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 ground lease, 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 received full legal title to the LDDA Property, Sears could exercise its option to purchase the site, at

