

Commission on Community Investment and Infrastructure

RESOLUTION NO. 36-2013

**Adopted July 16, 2013**

AUTHORIZING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT, THE EXECUTIVE DIRECTOR TO EXECUTE AN EXCLUSIVE NEGOTIATION AGREEMENT WITH AVANT HOUSING LLC AND BRIDGE HOUSING CORPORATION FOR A PROPOSED RESIDENTIAL PROJECT ON BLOCK 9 (BLOCK 3736, LOT 120), LOCATED ON FOLSOM STREET BETWEEN ESSEX AND FIRST STREETS; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 (“AB 812”) authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center (the “TTC”) (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25% of the residential units developed in the area around the TTC “shall be available to” low income households, and an additional 10% “shall be available to” moderate income households if the City and County of San Francisco (the “City”) adopted a redevelopment plan providing for the financing of the Center; and,

WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority (“TJPA”) and the City, the State agreed to transfer approximately 10 acres of State-owned property (the “State-owned parcels”) in and around the then-existing Transbay Terminal to the City and the TJPA, which would then sell the State-owned parcels and use the revenues from the sales to finance the TTC (the “Cooperative Agreement”). The City agreed, among other things, to commit property tax revenue through its Redevelopment Agency to the Center. Under the Cooperative Agreement, the State relied on tax increment financing under a redevelopment plan to improve and sell the parcels; and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco approved a Redevelopment Plan for the Transbay Redevelopment Project Area (the “Project Area”) by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (the “Redevelopment Plan”). The Redevelopment Plan provided for the financing of the TTC and established a program for the Redevelopment Agency of the City and County of San Francisco (the “Former Agency”) to redevelop and revitalize the blighted Project Area; and,

WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement (“Implementation Agreement”), which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels. Specifically, the Implementation Agreement required the Former Agency to: (1) prepare and sell the State-owned parcels to third parties; (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost of constructing the TTC; (3) implement the Redevelopment Plan to enhance the financial feasibility of the Project; and (4) fund the state-mandated affordable housing program; and,

WHEREAS, In 2008, the City, the Former Agency and the TJPA entered into an agreement that granted options to the Former Agency to acquire the State-owned parcels, arrange for development of the parcels, and distribute the net tax increment to the TJPA to use for the TTC (the “Option Agreement”). The Option Agreement provided the means by which the Former Agency could fulfill its obligations under the Implementation Agreement to prepare and sell the State-owned parcels. The Option Agreement granted to the Former Agency “the exclusive and irrevocable option to purchase” the former State-owned parcels in the Project Area that are programmed for development, which are listed in the Option Agreement, including Blocks 2-12 and Parcel F (Section 2.1 of the Option Agreement at p. 4); and,

WHEREAS, On February 1, 2012, the Former Redevelopment Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”). (Together, AB 26 and AB 1484 are referred to as the “Redevelopment Dissolution Law.”); and,

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency’s assets (other than housing assets) and obligations were transferred to the Office of Community Investment and Infrastructure (“OCII”), as Successor Agency to the Former Agency. Some of the Former Agency’s housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing (“MOH”); and,

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing covenants and obligations, or . . . perform its obligation.”). The Implementation Agreement and several other Transbay obligations are “enforceable obligations” requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1); and,

WHEREAS, On April 15, 2013, the California Department of Finance (“DOF”) determined “finally and conclusively” that the Implementation Agreement, along with other Transbay-related documents, is an enforceable obligation that will not require additional DOF review in the future, although expenditures under the Implementation Agreement are subject to continuing DOF review; and,

WHEREAS, On September 12, 2012, pursuant to the Implementation Agreement, staff issued a Request for Proposals (“RFP”) from development teams to design and develop a high-density, mixed-income residential project on Block 9 in the Transbay Redevelopment Project Area, located on Folsom between Essex and First Streets. The development program for Block 9 includes approximately 580 market-rate and affordable housing units and neighborhood serving retail. Development teams were asked to submit qualifications, a basic development concept, and a financial proposal, including construction of affordable housing equal to 20 percent of the total units to be developed on the site. The RFP requires that the market-rate developer shall be responsible for providing funding to cover the entire cost of gap financing for the affordable units, with no subsidy from OCII or MOH; and,

WHEREAS, Three proposals were received from the following development teams (listed alphabetically by lead developer): (1) Avant Housing LLC with BRIDGE Housing (“Avant” and “BRIDGE”); (2) Related Companies (“Related”); and (3) Westbank Projects Corp. with Chinatown Community Development Center (“Westbank” and “CCDC”). The proposals were evaluated by a selection panel comprised of Agency staff, one representative from MOH, one representative from the Transbay Citizen’s Advisory Committee (the “Transbay CAC”), and one representative from the Planning Department (collectively, the “Selection Panel”), with assistance from a professional real estate consulting firm, Keyser Marston Associates (“KMA”), under contract with OCII; and,

WHEREAS, Based on evaluation of the written proposals, as well as interviews with each team, the Selection Panel scored the proposals in the following order (highest score to lowest score): 1) Avant and BRIDGE; 2) Related; and, 3) Westbank and CCDC. The proposal from the Avant Housing team included a purchase price of \$43,320,000 payable at the transfer of title and 570 residential units (456 market-rate and 114 affordable); and,

WHEREAS, Based on the outcome of the selection process, staff is recommending that the Commission authorize the Executive Director to execute an Exclusive Negotiation Agreement (“ENA”) with Avant and BRIDGE for the negotiation of the terms of a Development and Disposition Agreement (“DDA”) for the development of Block 9, based on the terms set forth in the proposal and setting a timeline to design and develop the project; and,

WHEREAS, A copy of the ENA is on file with the Secretary of this Commission and incorporated herein (the “Agreement”); and,

WHEREAS, Authorizing the Executive Director to execute an ENA is an administrative activity that is not a “project” as defined by California Environmental Quality Act (“CEQA”) Guidelines Section 15378(b)(5). This action allows for negotiations between the Successor Agency and Avant/BRIDGE and will not independently result in a physical change in the environment and is not subject to environmental review under CEQA. Subsequent Agency actions are required to enter into a DDA and to provide approvals for the future development project; now, therefore, be it

RESOLVED, The Commission on Community Investment and Infrastructure hereby authorizes the Executive Director to execute an Exclusive Negotiation Agreement for the negotiation of a Development and Disposition Agreement for Block 9 (Block 3736, Lot 120), located on Folsom Street between Essex and First Streets, with Avant Housing LLC and BRIDGE Housing, substantially in the form of the Agreement on file with the Secretary of this Commission, together with such changes thereto as the Executive Director reasonably determines, in consultation with the City Attorney's Office, are: (i) in OCII's best interest and (ii) do not materially increase OCII's obligations or liabilities; and, be it further

RESOLVED, The Commission on Community Investment and Infrastructure authorizes the Executive Director, in consultation with the City Attorney's Office, to take such other actions as may be necessary or appropriate, to effectuate the purpose of this resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of July 16, 2013.

  
Commission Secretary