

Commission on Community Investment and Infrastructure

RESOLUTION NO. 45-2014

Adopted June 17, 2014

AUTHORIZING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT, THE EXECUTIVE DIRECTOR TO EXECUTE AN EXCLUSIVE NEGOTIATION AGREEMENT WITH RELATED CALIFORNIA URBAN HOUSING, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AND TENDERLOIN NEIGHBORHOOD DEVELOPMENT CORPORATION, A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION, FOR A PROPOSED RESIDENTIAL PROJECT ON BLOCK 8 (BLOCK 3737, LOTS 005, 012, 027), LOCATED ON FOLSOM STREET BETWEEN FIRST AND FREMONT 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") 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"). AB 26 and AB 1484 amended sections 33500 et. seq. of the California Health and Safety Code, which sections, as amended from time to time, 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 and Community Development ("MOHCD"); 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 November 20, 2013, 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 8 in the Transbay Redevelopment Project Area, located on Folsom between Fremont and First Streets. The development program for Block 8 includes a 550-foot residential tower, adjacent 85-foot and 65-foot residential podium buildings, townhouses along the length of Clementina Street and ground-floor retail. Development teams were asked to submit qualifications, a basic development concept, and a financial proposal, including construction of affordable housing equal to 27 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 affordable units equal to 10 percent of the total number of units, with no subsidy from OCII or MOHCD. OCII will subsidize 17 percent of the total number of units to maximum amount of \$200,000 per unit; and,

WHEREAS, Three proposals were received from the following development teams (listed alphabetically by lead developer): (1) Golub Real Estate Corp. (“Golub”) with Mercy Housing California (“Mercy”); (2) Millennium Partners (“Millennium”) with Chinatown Community Development Center (“CCDC”); and (3) Related California Urban Housing (“Related”) with Tenderloin Neighborhood Development Corporation (“TNDC”) (referred to as “the Related/TNDC team” or “Related/TNDC”). The proposals were evaluated by a selection panel comprised of Successor Agency staff, one representative from MOHCD, one representative from the Transbay Citizen’s Advisory Committee (the “Transbay CAC”), and one representative from the San Francisco Planning Department (“SF Planning”) (collectively, the “Selection Panel”), with input from an architect at SF Planning and additional staff from MOHCD, and with assistance from a professional real estate consulting firm, Keyser Marston Associates (“KMA”), under contract with OCII; and,

WHEREAS, The multiple objectives of the RFP were to select a proposal that achieves the highest purchase price, includes at least 27 percent affordable housing, and architecturally adds to the burgeoning neighborhood. 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) Related and TNDC; 2) Millennium and CCDC; and 3) Golub and Mercy.; and,

WHEREAS, The proposal from the Related/TNDC team included a purchase price of \$72,000,000 payable at the transfer of title and 653 residential units (476 market-rate and 177 affordable). The development program proposed by Related/TNDC for Block 8 includes a market-rate condominium residential project (the “Condo Project”), an 80/20 mixed-income residential component (“80/20 Project”), and an affordable residential project (the “Affordable Project”). The Condo Project and 80/20 Project are located within the 550-foot tower and the Affordable

Project is located in the podium buildings and townhomes along Clementina Street. The affordable units in the Affordable Project and the 80/20 Project are rental and affordable to households earning less than 50% of AMI; and,

WHEREAS, Subsequent to the RFP publication and OCII selection process, the TJPA has requested a close of escrow date of October 1, 2015, instead of the March 31, 2016 date in Related/TNDC's original proposal. The ENA includes a reduction in the purchase price of a not-to-exceed amount of \$2,000,000 as a result of this more aggressive schedule. The amount of the reduction in the purchase price will be the actual cost to Related of acquiring the capital to pay the purchase price six months earlier than originally proposed, up to a maximum of \$2,000,000, as documented to the satisfaction of OCII and TJPA staff. The timing of the close of escrow is essential to the TJPA for them to remain on schedule for construction of the TTC. Since all of the proceeds of the sale are pledged to the TJPA, they have agreed to a reduction in the purchase price in exchange for an expedited closing date. OCII, in consultation with TJPA, reserves the right to delay the closing date until March 31, 2016, in which case the Purchase Price shall be \$72,000,000 with no Purchase Price Reduction. Any decision to delay the closing date shall be made no later than the date of execution of the DDA. At the maximum amount, the reduction in purchase price would result in both Related/TNDC and Millennium/CCDC receiving 60 out of 60 points for purchase price, pursuant to the formula outlined above. As discussed in detail below, Related/TNDC scored higher than Millennium/CCDC in a majority of the remaining categories and therefore would still have received the highest average and cumulative score by the Selection Panel.

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 Related/ TNDC summarizing the terms set forth in the proposal and setting a timeline to design and develop the project. The Transbay CAC unanimously endorsed the selection of Related/TNDC as the winning team at its meeting of April 10, 2014. Should the Commission approve the ENA, staff will start negotiations with the development team and return to the Commission at a later date for approval of a schematic design for the project and a disposition and development agreement ("DDA") with Related/ TNDC; 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 Related/TNDC 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 8 (Block 3737, Lots 005,012, and 027), located on Folsom Street between First and Fremont Streets, with Related California Urban Housing, LLC and Tenderloin Neighborhood Development Corporation, 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 June 17, 2014.

Malcolm Jones

Commission Secretary