

**COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE**

RESOLUTION NO. 105-2014

**Adopted December 16, 2014**

**AUTHORIZING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT AND OPTION AGREEMENT, THE EXECUTIVE DIRECTOR TO EXERCISE AN OPTION TO PURCHASE TRANSBAY BLOCK 9 (BLOCK 3736, LOT 120), LOCATED ON FOLSOM AND FIRST STREETS, FROM THE CITY AND COUNTY OF SAN FRANCISCO AND TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH BLOCK 9 TRANSBAY, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR A PROPOSED RESIDENTIAL PROJECT WITH 436 MARKET-RATE AND 109 AFFORDABLE UNITS ON BLOCK 9, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; 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 Center “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 Center (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 Center (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 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 primarily codified in sections 34161 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 Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future Agency expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Agency Executive Director (April 15, 2012[sic]) (the “Transbay Final and Conclusive Enforceable Obligations”); and,

WHEREAS, On September 10, 2013, DOF stated that in light of its determination regarding the Transbay Final and Conclusive Enforceable Obligations, “any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized” and that “no objection to any sale, transfer and/or conveyance of property related to his project will be initiated” so long as the activities comply with the approved final and conclusive enforceable obligations. Email, J. Howard, DOF, to T. Bohee, OCII (Sep. 10, 2013); and

WHEREAS, On September 12, 2012, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the “RFP”) from development teams to design and develop a high-density, mixed-income residential project on Block 9 in the Project Area. On July 17, 2013, after a competitive selection process, the Commission authorized the Executive Director to execute an Exclusive Negotiations Agreement (“ENA”) for the Development of Block 9 with the development team lead by Avant Housing (“Avant”) and BRIDGE Housing California (“BRIDGE”), along with Skidmore Owings & Merrill Architecture (“SOM”) as the lead architect for the tower component of the development and Fougerson Architects (“Fougerson”), a small business enterprise, as the architect for the low-rise buildings (together referred to as the Development Team); and,

WHEREAS, The ENA included a purchase price of \$43,320,000, 570 residential units (456 market-rate units and 114 stand-alone affordable units serving households earning up to 50% of Area Median Income (“AMI”), with funding for the affordable units to be provided by the Development Team to OCII, which would then be loaned to the stand-alone affordable project. The ENA contemplated a close of escrow in August, 2014. The Development Team requested an extension of the ENA. The OCII Executive Director authorized two extensions of the ENA, first to November 5, 2014, and then until December 31, 2014.

WHEREAS, During this extended period of the ENA, the Development Team proposed a revised project concept. Under the revised proposal, consistent with the “80/20” model described in the RFP, Block 9 will include a total of 545 residential units, with 109 inclusionary affordable units serving households earning up to 50% of AMI distributed throughout the lower 21 floors of the building, as well as ground-floor retail, shared open space and underground parking. The Development Team anticipates financing the lower 21 floors of the Project with tax exempt bond funding to be issued by the City and County of San Francisco through the

Mayor's Office of Housing and Community Development and low income housing tax credits. OCII will not provide any loans to the Project. In consideration for the extensions to the ENA, the Development Team agreed to the following: 1) increase the good faith deposit from \$2 million to \$2.5 million, 2) increase the purchase price to \$43,630,000 to account for the delay in closing of escrow, and 3) agree to pay a daily penalty of \$10,000 per day for each calendar day of the new close-of-escrow date, now February 10, 2015. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the "DDA") with Block 9 Transbay LLC for the sale and development of Block 9; and,

WHEREAS, Approval of the DDA requires OCII to acquire Block 9 from the City pursuant to the Option Agreement. If the Successor Agency exercises the option for Block 9, it will deliver written notice to the City and acquire Block 9 prior to close of escrow with Block 9 Transbay LLC under the DDA; and,

WHEREAS, Upon completion of the Project, OCII intends to transfer the affordable housing assets related to this Project to MOHCD as the designated Housing Successor as required by Redevelopment Dissolution Law; and,

WHEREAS, On April 20, 2004, the Former Agency Commission adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the "Final EIS/EIR") for the Transbay Redevelopment Project, and on January 25, 2005 adopted Resolution No. 11-2005, adopting findings under the California Environmental Quality Act ("CEQA"), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the new Transbay Transit Center, the TJPA also adopted environmental findings; and,

WHEREAS, The Final EIS/EIR includes by reference a number of addenda. The addenda include the following:

- a. Addendum #1 – adopted by the TJPA on June 2, 2006, assessed the additional use of the temporary Transbay Terminal by Greyhound, another transit carrier; and,
- b. Addendum #2 – adopted by the TJPA on April 19, 2007, assessed modifications of the rail tracks and underground tunnels leading to the new Transit Center; and,
- c. Addendum #3 – adopted by the TJPA on January 17, 2008, evaluated the addition of 546 Howard Street to the Transit Center; and,
- d. Addendum #4 – adopted by the TJPA on October 17, 2008, evaluated the configuration, boarding platforms and passenger waiting areas, and bus

staging areas of the temporary Terminal, and associated modifications to bus lanes on surrounding streets; and,

- e. Addendum #5 – adopted by the TJPA on April 9, 2009, evaluated the building design of the new Transit Center; and,
- f. Addendum #6 – adopted by the TJPA on December 8, 2011, evaluated minor refinements to the proposed bus ramp component of the Transit Center; and,

WHEREAS, In adopting each Addendum, the TJPA determined that modifications to the Project would not require subsequent environmental review and would not require major revisions to the Final EIS/EIR; and,

WHEREAS, The Final EIS/EIR is a program EIR under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The Final EIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities, including the Temporary Terminal. The development of approximately 545 units of market-rate and affordable housing on Transbay Block 9 is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168; and,

WHEREAS, OCII staff has reviewed the DDA and related actions for Transbay Block 9 and finds the proposed actions to be Implementing Actions to facilitate construction of market-rate and affordable housing on Transbay Block 9 and within the scope of the Project analyzed in the Final EIS/EIR and subsequent addenda and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180 and 15168; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Actions contemplated herein, considered and reviewed the Final EIS/EIR and addenda, has made documents related to the Implementing Actions, the Final EIS/EIR, and addenda available for review by the Commission on Community Investment and Infrastructure (“CCII”) and the public, and these files are part of the record before CCII; and,

WHEREAS, The Final EIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Agency Commission by Resolution No. 11-2005 dated January 25, 2005 were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Actions; now therefore, be it


RESOLVED, The Office of Community Investment and Infrastructure finds and determines that authorizing the Executive Director to exercise an option to purchase Block 9 and approving the DDA are Implementing Actions within the scope of the project analyzed in the Final EIS/EIR and Addenda and require no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

- a. The Implementing Actions are within the scope of the project analyzed in the Final EIS/EIR and Addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the Final EIS/EIR;
- b. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the Final EIS/EIR and Addenda was undertaken that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Final EIS/EIR; and,
- c. No new information of substantial importance to the project analyzed in the Final EIS/EIR and Addenda has become available which would indicate that (a) the Implementing Actions will have significant effects not discussed in the Final EIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the Final EIS/EIR will substantially reduce one or more significant effects on the environment.

RESOLVED, Based on the Department of Finance's Final and Conclusive Determination (April 15, 2013) that the Implementation Agreement is an enforceable obligation, the Office of Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby authorizes the Executive Director to: (1) exercise an option to purchase Block 9 (Block 3736, Lot 120), located on Folsom Street at First Street, from the City and County of San Francisco pursuant to the Option Agreement; and (2) execute a Disposition and Development Agreement with Block 9 Transbay LLC, a Delaware Limited Liability Company, substantially in the form approved by the City Attorney acting as counsel to OCII and attached to the Commission Memorandum accompanying this Resolution, (the "DDA") and to enter into any and all ancillary document or take any additional actions necessary to consummate the transaction with respect to the Project as described in the DDA and this resolution; and be it further

RESOLVED, That the Commission authorizes the Executive Director take such other actions necessary to transfer the affordable housing assets related to this Project to MOHCD as Housing Successor.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of December 16, 2014.

  
Commission Secretary