OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

118-0172021-002

Agenda Item **No. 5(c)**
Meeting of June 15, 2021

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Sally Oerth, Interim Executive Director

SUBJECT: Authorizing a Third Amendment to the Option Agreement with F4 Transbay Partners LLC, a Delaware Limited Liability Company, for the purchase of Transbay Block 4; Transbay Redevelopment Project Area

---

EXECUTIVE SUMMARY

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("Successor Agency" or "OCII") is completing the enforceable obligations of the Redevelopment Agency of the City and County of San Francisco ("Former Agency") in the Transbay Redevelopment Project Area ("Project Area"). These include developing the site of the former Transbay Temporary Terminal site that OCII acquired in January 2021 and constructing at least 35% of all new housing in the Project Area as permanently affordable housing.

In April 2016, the Commission on Community Investment and Infrastructure ("Commission") approved an Agreement for Option to Purchase Block 4 with F4 Transbay Partners LLC, a Delaware limited liability company (the "Developer") (as amended by the First Amendment and Second Amendment thereto, the "Option Agreement"). At the time, the Developer sought to acquire Transbay Parcel F from the Transbay Joint Powers Authority ("TJPA") and required as a condition of that purchase that OCII enter into the Option Agreement so that the Developer could fulfill its affordable housing obligations to Parcel F through the development of Block 4.

In September 2018, the Commission approved a non-binding Terms Sheet outlining the mixed-use mixed-income development program for Block 4 (the "Project") along with the First Amendment to the Option Agreement. OCII and the Developer have since made significant progress in negotiating a Disposition and Development Agreement ("DDA") for

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

the sale and subsequent development of Block 4 pursuant to the Terms Sheet, in accordance with the provisions of the Option Agreement. However, the Developer has now informed OCII staff that key aspects of the Terms Sheet are not financially feasible, specifically, the quantity of affordable units at 49% and the land price of $45 million.

On June 4, 2021, the Developer provided a revised proposal with an alternate housing program with 40% affordable units and a zero dollar land value. While less than the percentage established in the Terms Sheet, a 40% level of affordability at Block 4 would exceed the minimum number of affordable units currently needed to meet the Transbay Affordable Housing Obligation (as defined below) of 35% across the entirety of the Project Area.

The Developer now requests an extension of the Outside Option Exercise Date established in the Option Agreement to finalize the revised housing program and continue progress toward finalizing the DDA. In response, OCII staff proposes a Third Amendment to the Option Agreement providing a short-term extension of the Outside Option Exercise Date to September 30, 2021. This will allow OCII staff in collaboration with our financial consultant to review the Developer's updated proposal and report back to Commission before September 30, 2021 with a recommended program prior to finalizing the DDA and related materials.

Staff recommends approval of the Third Amendment to the Option Agreement for Block 4 with F4 Transbay Partners, LLC in accordance with the following.

BACKGROUND

Transbay Project Area

The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved the Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinances No. 124-05 (June 21, 2005) and No. 99-06 (May 9, 2006), as amended by Ordinances No. 84-15, (June 18, 2015) and No. 62-16 (April 28, 2016) ("Redevelopment Plan"). The Redevelopment Plan establishes the land use controls for the Project Area, and divides the Project Area into two sub-areas:

> Zone One in which the Development Controls and Design Guidelines for the Transbay Redevelopment Project ("Development Controls") define the development standards, and
>
> Zone Two in which the San Francisco Planning Code applies through a delegation agreement between OCII and the Planning Department.

A major focus of the Project Area is to redevelop 10 acres of former highway access ramp properties owned by the State of California (the "State-Owned Parcels") to generate funding for the TJPA to construct the Transbay Transit Center (the "Transit Center"). OCII's role is to complete the enforceable obligations that the Department of Finance has finally and conclusively approved under Redevelopment

Dissolution Law. These enforceable obligations include the Implementation Agreement between TJPA and the Former Agency, which requires OCII to facilitate the sale and development of certain State-Owned Parcels to third parties, to implement the Redevelopment Plan, and to comply with California Assembly Bill 812, codified in Section 5027.1 of the California Public Resources Code ("AB 812"), which requires that 35% of all new residential units in the Project Area be affordable to low- and moderate-income households (the "Transbay Affordable Housing Obligation"). AB 812 further defines that the 35% of the units be allocated as follows: 25% of the units be low-income for households earning up to 60% Area Median Income ("AMI"), and the remaining 10% of the units be moderate-income for households earning up to 120% AMI.

Block 4 is a formerly State-Owned Parcel. It is located within Zone One, specifically on the northern third of the block that was previously the Transbay Temporary Bus Terminal. Now that the Transit Center is operational, bus service at the Temporary Bus Terminal has ceased.

Under the Redevelopment Plan and the Development Controls, Block 4 is planned for residential development with a 450' tower, two mid-rise podium buildings (at 85' and 65'), and low-rise townhouses (up to 50') situated around shared open space and atop a shared underground parking structure.

Block 4 Relationship to Parcel F

Parcel F is another formerly State-Owned Parcel, located in Zone Two (under Planning Department jurisdiction) adjacent to the western end of the Transit Center. In early 2016 the TJPA entered into an agreement with the Developer to purchase Parcel F, contingent on Commission approval of the Option Agreement for the purchase of Block 4. The Commission approved the Option Agreement on April 19, 2016, and in June 2016 the Developer closed on the sale of Parcel F for a price of $160 million.

On January 19, 2021, the Commission conditionally approved a variation to the Transbay Redevelopment Plan's on-site affordable housing requirement to allow the project at Parcel F to pay a fee in-lieu of directly developing required Parcel F affordable units off-site at Block 4 as was initially planned. Based on the approved Development Agreement for Parcel F, the Parcel F project will now pay a $47.6 million in-lieu fee to OCII. OCII in turn intends to provide a loan of $47.6 million to subsidize the Mid-Rise Affordable Project at Block 4.

Option Agreement

The Option Agreement provides the Developer with a right to exclusive negotiations for a DDA with OCII for a project that would include both market rate and a significant amount of affordable units (with no OCII subsidy). The DDA would include a purchase price for Block 4 of either (1) $45 million, or (2) a price determined by negotiation with OCII after the parties have agreed on all terms of the DDA except price, or (3) the fair market value of Block 4 subject to the terms of the DDA as determined by an appraisal process. The proceeds of the sale of Block 4 would be transmitted to the TJPA for the Transit Center construction and operation. The Option Agreement also provides that the Developer would subsidize at least 45% of residential units to be built on Block 4 as affordable units, without any OCII subsidy.

In 2018, the Commission approved a First Amendment to Option Agreement ("First Amendment") that, among other things, proposed a revised Project based on increased height limits for the Block 4 tower (increasing from 450' to 501') and mid-rise (increasing from 65'/85' to 150'), and consolidation of two mid-rise buildings into a single mid-rise building. The additional tower height, which will require a Redevelopment Plan Amendment and amendments to the Development Controls, is meant to provide greater developable area over which to spread the cost of the affordable housing obligation required of the Project. The First Amendment approval also included a non-binding Terms Sheet to define elements of the Block 4 program and provide base terms from which to continue to negotiate the DDA and develop the Schematic Design.

The Terms Sheet provided that Below Market Rate ("BMR") units would all be rental, located in both the lower portion of the tower and in a 100% affordable mid-rise building (the "Mid-Rise Affordable Project"), and provided a range of unit sizes and affordability levels including a significant amount of housing for moderate income levels, which has long been challenging to achieve in affordable housing rental projects. The Block 4 affordability percentage (49%) was established to meet the Transbay Affordable Housing Obligation based on the then-current Project Area development pipeline. The Developer also proposed to provide $175,000 for an SBE capacity study and local worker training; a detailed strategy to maximize the number and success of Certificate of Preference ("COP") holders securing housing at Block 4; a Transfer Fee on resales of all market rate homeownership units to fund future maintenance of Transbay Park; and community-serving ground floor commercial space at 50% discounted rent.

The Project as contemplated by the Terms Sheet included:

- 713 mixed-income residential units, of which 347 would be below market rate (49%);
- 12,900 SF of retail;
- 388 parking spaces in two levels of below-grade parking; and
- 11,600 SF of open space.

Lastly, the First Amendment extended the time period for DDA negotiations by one year, with an additional twelve-month extension available at the Executive Director's discretion. Concurrent with the First Amendment, the Commission also approved Mercy Housing as the Developer's affordable housing developer partner for the Project.

On June 27, 2019, the Executive Director granted the discretionary twelve-month extension of the Outside Option Exercise Date allowed under the First Amendment.

Thereafter, on June 24, 2020, the Executive Director determined that the effects of the COVID-19 pandemic constituted a Force Majeure event for the purposes of the Option Agreement and agreed to postpone the Outside Option Exercise Date for approximately six months to January 1, 2021.

On December 15, 2020, the Commission authorized a Second Amendment to the Option Agreement to facilitate the anticipated completion of DDA negotiations. The Second Amendment extended the Outside Option Exercise Date to March 31, 2021 and authorized the Executive Director to extend an additional three months at her sole discretion. The Executive Director granted this extension and the Option Agreement Outside Exercise Date is now June 30, 2021.

DISCUSSION

In March 2021, the Developer provided OCII staff with a financial model for Block 4 and asserted that the Project is not financially feasible at an affordability level of 49% and a land price of $45 million. The Developer stated that Block 4 could support a maximum affordability level of approximately 39%, assuming unit types, sizes, and income levels consistent with the Terms Sheet, and could not support any payment for the land. At approximately 39% affordable, Block 4 would provide the minimum number of affordable units needed for OCII to meet the Transbay Affordable Housing Obligation based on current development pipeline projections.

Pursuant to direction from the Commission and feedback from OCII's consultant, OCII staff sought a revised proposal from the Developer that achieved affordability at 49%, consistent with the Terms Sheet. While the Developer maintains that 49% affordability is not financially viable, it has provided a revised proposal of 40% affordability with modifications to unit counts and affordability levels. A comparison of the housing program from the 2018 Terms Sheet, March 2021 proposal, and current June 4, 2021 proposal is provided in the table below.

Housing Program Summary			
Project Element	**2018 Terms Sheet**	**March Proposal**	**Current Proposal**
Tower rental units	376	340	346
Market rate units	220	273	273
BMR units	156 (41% of Tower rental)	67 (20% of Tower rental)	73 (21% of Tower rental)
Mid-Rise Affordable Project (100% affordable)	191	192*	202*
Tower/townhome condo units (all market rate)	146	137	137
Total housing units	**713**	**669**	**685**
Total affordable units	**347 (49%)**	**258 (39%)**	**274 (40%)**

** Includes one unrestricted on-site manager's unit.*

Housing Program Analysis
While the Developer asserts that 49% affordability is not feasible, OCII staff, in consultation with our financial consultant, will use the extension period to review the Developer's updated financial model and evaluate the underwriting assumptions. Additionally, OCII staff may seek analysis of further program alterations from the Developer, potentially including the conversion of one or two floors of Tower rental units to condominiums or the addition of market rate studio units.

Tower Rental Units
The Tower rental units are located on floors 2-29 of the 47-story Tower. Market rate condominiums are on floors 30-47. Tower rental units are mixed-income and the BMR units will be dispersed evenly throughout the lower two-thirds (floors 2 through 20) of the Tower rental project. Tower BMRs are moderate income, serving households at 100-120% AMI. The Developer's proposed modifications to the overall Project affordability percentage primarily impact the Tower BMR units. In addition to revising the number of BMR units, the Developer has proposed the addition of studio units. The Developer also reallocated the various income levels of BMR units by increasing the number of 120% AMI units. A summary of Tower rental BMR units is provided in the table below.

Tower Rental BMR Summary			
	2018 Terms Sheet	**March Proposal**	**Current Proposal**
BMR units	156 (41% of Tower rental)	67 (20% of Tower rental)	73 (21% of Tower rental)
Unit Types	Studio: 0 (0%) 1-bed: 78 (50%) 2-bed: 47 (30%) 3-bed: 31 (20%)	Studio: 0 (0%) 1-bed: 34 (50%) 2-bed: 20 (30%) 3-bed: 13 (20%)	Studio: 6 (8%) 1-bed: 36 (50%) 2-bed: 22 (30%) 3-bed: 9 (12%)
Income Levels (% of AMI)	100%: 52 (33%) 110%: 52 (33%) 120%: 52 (33%)	100%: 22 (33%) 110%: 23 (34%) 120%: 22 (33%)	100%: 20 (27%) 110%: 19 (26%) 120%: 34 (47%)

Mid-Rise Affordable Project
The Mid-Rise Affordable Project, which will be developed, owned, and operated in collaboration with Mercy Housing, is 100% affordable with the exception of one unrestricted manager's unit. The project will seek capital funding typical of other OCII affordable projects, including 4% federal low-income housing tax credits, and construction and permanent loans backed by tax exempt bonds. As previously noted, OCII will contribute a low-interest residual receipts loan of approximately $47.6 million from the proceeds of the Parcel F in-lieu fee payment, subject to typical OCII affordable housing lending terms. In addition, Mercy and the Developer may seek funding from state programs. The Developer will be responsible for funding any remaining financing gap.

The program for the Mid-Rise Affordable Project in the Developer's March proposal was consistent with the 2018 Terms Sheet with regard to the Mid-Rise Affordable Project, however in the current proposal the Developer has increased the total unit count by 10 units from 192 to 202. This was accomplished by reducing the number of one-bedroom and three-bedroom units and adding 20 studio units. In addition, due to scoring criteria adopted in 2020 by the California Debt Limit Allocation Committee for the award of tax-exempt bond allocations, the current proposal includes 20 units at 40% AMI. A summary comparison of the Mid-Rise Affordable Project units as set forth in the Terms Sheet and as subsequently proposed by the Developer is provided in the table below.

Mid-Rise Affordable Project Summary			
	2018 Terms Sheet	**March Proposal**	**Current Proposal**
Units	191	192*	202*
Unit Types	Studio: 0 (0%) 1-bed: 96 (50%) 2-bed: 57 (30%) 3-bed: 38 (20%)	Studio: 0 (0%) 1-bed: 97 (50%) 2-bed: 57 (30%) 3-bed: 38 (20%)	Studio: 20 (10%) 1-bed: 73 (36%) 2-bed: 87 (44%) 3-bed: 21 (10%)
Income Levels (% of AMI)	40%: 0 (0%) 45%: 10 (5%) 50%: 10 (5%) 60%: 50 (26%) 75%: 70 (36%) 90%: 26 (14%) 100%: 25 (13%)	40%: 0 (0%) 45%: 10 (5%) 50%: 10 (5%) 60%: 50 (26%) 75%: 70 (36%) 90%: 26 (14%) 100%: 25 (13%)	40%: 20 (10%) 45%: 10 (5%) 50%: 10 (5%) 60%: 50 (25%) 75%: 60 (30%) 90%: 26 (13%) 100%: 25 (12%)
Average AMI	73%	73%	70%

** Includes one unrestricted on-site manager's unit.*

While the inclusion of 40% AMI units was essential to ensure that the Project would achieve the maximum possible base points when applying for a tax-exempt bond allocation, the Block 4 Mid-Rise Affordable Project would not receive an allocation based on the current program and thus could not be financed. Since early last year, tax exempt bonds have become highly competitive in California, with only about one-third of applicants receiving an award. Tie-breaker scoring is based on cost per unit, creating a major disadvantage for high-cost urban projects. In addition, the scale of Block 4 is such that the necessary bond request will exceed the $75 million per project bond allocation cap and would consume the entirety or majority of the regional funding allocation in any given application round, further reducing the possibility of an award.

To proceed and secure financing, the project is reliant on changes at the state and/or federal level. While San Francisco and other Bay Area cities have been vocal in advocating for change and routinely engage officials regarding this issue, it is unclear if/when this project as currently planned will be able to proceed.

Transbay Affordable Housing Obligation

As noted above, the Terms Sheet affordable percentage was established based on the affordable units to meet the Transbay Affordable Housing Obligation based on the development pipeline at the time. The number/percentage of affordable units needed to meet this requirement fluctuates over time as projects are proposed, modified, or abandoned. Based on the current pipeline, a Block 4 Project at 49% affordability (assuming 669 total units) would result in overall Project Area affordability at approximately 37%. Based on the Developer's current proposal (685 total units, approximately 40% affordable), Project Area affordability would be at approximately 35% (the number of affordable units exceeds the minimum required by 12 units).

	Block 4 at 49% Affordable*			**Block 4 at 40% Affordable (Current Proposal)**		
	Total Units	**Affordable Units**	**% affordable**	**Total Units**	**Affordable Units**	**% affordable**
Completed						
Zone 1 (OCII)	2,196	693	32%	2,196	693	32%
Zone 2	470	60	13%	470	60	13%
	2,666	753	28%	2,666	753	28%
Pipeline Estimates						
Zone 1	1,003	660	66%	1,019	608	60%
Zone 2	165	-	-	165	-	-
	1,168	660	56%	1,184	608	51%
Estimated Total	**3,834**	**1,413**	**37%**	**3,850**	**1,361**	**35%**

** Assumes 669 total units*

COP Outreach Strategy

The Developer committed to providing COP holder outreach beyond the typical OCII early outreach and marketing programs. Pursuant to the Terms Sheet, the Developer will provide a written plan detailing unique strategies to maximize the number and success of COP holders in securing housing at Block 4. The plan will include partnerships with organizations who have a proven track record of working with COP holders, mailings and workshops, site tours, and follow up counseling and case management from early outreach through occupancy.

This enhanced COP outreach plan will be included as an attachment to the DDA and presented for Commission review. Mercy Housing will lead COP outreach and engagement for the Mid-Rise Affordable Housing Project and the Developer will lead COP outreach for the Tower BMR units. Both Mercy and the Developer will partner in these efforts with community-based organizations. Preliminary strategies include in-person and virtual tours of mock-up units, neighborhood tours, and dedicated websites. OCII staff is continuing to work with the Developer on their draft plan, and a plan acceptable to OCII will be required prior to consideration of the DDA approval.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

OCII authorization of the Third Amendment to the Option Agreement for Block 4 is statutorily exempt from the California Environmental Quality Act ("CEQA") as a feasibility and planning study for possible future actions, pursuant to CEQA Guidelines Section 15262. The Third Amendment to the Option Agreement will authorize OCII and the Developer to continue negotiations for the design of a project that will be subsequently reviewed and considered for approval by the Commission. The Third Amendment to the Option Agreement will not independently result in significant physical effects on the environment.

NEXT STEPS

OCII staff in collaboration with OCII's financial consultant, will review the Developer's financial model based on the current development proposal to verify feasibility and to identify opportunities to further improve the Project's overall affordability level and housing program. The Developer will prepare a final housing proposal for Commission consideration prior to the Outside Option Exercise Date of September 30, 2021. If the proposal is acceptable to the Commission, the Developer will seek a final amendment to the Option Agreement to again extend the Outside Option Exercise Date to allow time to finalize the DDA and Schematic Design, and engage in the appraisal process set forth in the Option Agreement to determine the land price.

(Originated by Jeff White, Housing Program Manager and Kim Obstfeld, Development Specialist)

DocuSigned by:

Sally Oerth

336F9B4FE72748A...

Sally Oerth
Interim Executive Director