MEMORANDUM

TO: Office of Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Resolution Authorizing and Directing certain actions to be taken with respect to an election for City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center), Transbay Redevelopment Project Area

EXECUTIVE SUMMARY

In June 2005, the City adopted the Transbay Redevelopment Project Area (the “Project Area”), which consists of 40 acres, including the new Transbay Transit Center (“TTC”) and 10 acres of publicly owned property, most of which was formerly owned by the State of California (the “State”). Two of the primary goals of the Redevelopment Plan for the Project Area are (i) funding (from sales proceeds, tax increment, and other sources) for the construction of the new, multi-modal TTC on the site of the former terminal and construct a downtown rail extension from the current Caltrain station at Fourth and King Streets to the new TTC (the “DTX”) and (ii) developing a new, transit-oriented neighborhood on approximately 10 acres of publicly owned property including more than 3,400 new residential units of which 1,200 units will be affordable and 3.0 million square feet of new commercial space as well as new parks, plazas, streetscapes, and related improvements.

In August 2012, the Board of Supervisors adopted the Transit Center District Plan (“TCDP”) and associated Implementation Document. The primary goal of the TCDP is to create a high-density, mixed-use urban neighborhood that capitalizes on and supports the major transportation investment and service represented by the TTC. In order to meet demand attributable to new development, the TCDP establishes mechanisms for development to contribute to the funding of public infrastructure, particularly the new Transit Center, City Park, and the DTX. In particular, the TCDP authorized the formation of a Mello-Roos Community Facilities District (“CFD”) to levy a special tax within the TCDP boundary to provide funding for the new Transbay Project public improvements and other new public infrastructure necessary to support the growth and development of the neighborhood.

OCII is the owner of a parcel of land located at Spear and Folsom Streets (Assessor’s Parcel 3740-027, Transbay Block 1), which is within the boundaries of the CFD and is planned for sale to a private party for development. A map of the CFD boundaries is included as Attachment 1. As the owner of land that that is intended to be transferred to private ownership for development that will be subject to the special tax, OCII is the landowner for purposes of voting on the CFD.

Staff recommends authorizing the Executive Director to take certain actions with respect to an election for City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center), Transbay Redevelopment Project Area
BACKGROUND

In June 2005, the City adopted the Project Area, which consists of 40 acres in the City’s financial district, including the new TTC and 10 acres of publicly owned property, most of which was formerly owned by the State. The Transbay Joint Powers Authority ("TJPA") is responsible for planning, constructing and eventually operating the new TTC. Two of the primary goals of the Redevelopment Plan for the Project Area are (i) funding (from sales proceeds, tax increment, and other sources) the construction of the new, multi-modal TTC on the site of the former terminal and construct the DTX and (ii) developing a new, transit-oriented neighborhood on approximately 10 acres of publicly owned property, most of which was formerly owned by the State, including more than 3,400 new residential units of which 1,200 units will be affordable and 3.0 million square feet of new commercial space as well as new parks, plazas, streetscapes, and related improvements.

Transbay Enforceable Obligation

California State Assembly Bills 26 and 1484, also known as “Redevelopment Dissolution Law,” authorize 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 Project Area was established with the adoption of the Redevelopment Plan for the Transbay Project Area (the “Redevelopment Plan”) by the Board of Supervisors. In addition, the Former Agency entered into several agreements to implement the Redevelopment Plan, including, among others, the Implementation Agreement, the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (the “Pledge Agreement”), and the Option Agreement. The Pledge Agreement required that all land sale proceeds from the sale of the State-owned parcels and all net tax increment generated by their development must be used for the construction of the new Transbay Transit Center, including its access ramps.

On April 15, 2013, the California Department of Finance ("DOF") determined “finally and conclusively” that the Implementation Agreement and Pledge Agreement, along with other Transbay-related documents, are enforceable obligations that will not require additional DOF review in the future, although expenditures under the Implementation Agreement are subject to continuing DOF review. The Implementation Agreement requires OCII to take the lead role in facilitating the development of the State-owned Parcels. Specifically, the Implementation Agreement requires OCII to: (1) prepare and sell the State-owned Parcels to third parties, (2) deposit the sales proceeds into a trust account to help the TJPA pay the cost of constructing the TTC, (3) implement the Transbay Redevelopment Plan to enhance the financial feasibility of the entire redevelopment project, and (4) fund the state-mandated affordable housing program. The Option Agreement for the Purchase and Sale of Real Property (the “Option Agreement”) provides the means by which OCII can fulfill its obligations under the Implementation Agreement to prepare and sell the State-owned parcels. The Option Agreement grants to OCII “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).

**Transit Center District Plan and CFD**

In August 2012, the Board of Supervisors adopted the TCDP and associated Implementation Document. The primary goal of the TCDP is to create a high-density, mixed-use urban neighborhood that capitalizes on and supports the major transportation investment and service represented by the Transbay Transit Center. In order to meet demand attributable to new development, the TCDP establishes mechanisms for development to contribute to the funding of public infrastructure, particularly the new TTC, City Park, and the DTX. In particular, the TCDP authorized the formation of a Mello-Roos CFD to levy a special tax within the TCDP boundary to provide funding for the new Transbay Project public improvements and other new public infrastructure necessary to support the growth and development of the neighborhood.

The special tax is to be paid by entities that have either development entitlements from the City to construct projects that trigger an obligation to participate in the CFD pursuant to Section 424.8 of the San Francisco Planning Code, or a disposition and development agreement with OCII. The special tax is to be paid only by new high-rise office, market-rate residential, retail, and hotel buildings on designated properties in the Plan Area. As express conditions of their development permits or disposition and development agreements, the developers of these high-rises agree to pay the special tax in exchange for permission to build to significantly greater heights than otherwise allowed.

Subsequent to the adoption of the TCDP and associated Implementation Document, City staff together with the City’s outside consultants and bond counsel, worked over several months to develop, among other matters, a proposed rate and method of apportionment of the special tax for the CFD, that was informed by valuation studies performed by The Concord Group, an independent real estate economics consultant. The process involved the evaluation of alternatives for the CFD before determining which ones were most consistent with the Implementation Document and California law and would further the funding goals for the Transbay Project and the TCDP.

In July 2013 the City and OCII distributed an initial draft of the proposed rate and method of apportionment for the CFD (the “2013 RMA”) to the Developers, with the understanding that the Developers would highlight concerns or request certain changes. Throughout the past year, a number of Developers and their representatives, City and OCII Staff, and the City’s consultants have exchanged numerous communications, held meetings, and exchanged multiple proposals and counterproposals. City staff and it consultants gave serious consideration to all of the input they received from the Developers who responded to the invitation to comment on the 2013 RMA. As a result of the City’s ongoing interaction with the Developers, the legislation and rate and method of apportionment approved by the Board of Supervisors on September 23, 2013 included some of the changes the Developers requested.

**OCII Participation in the CFD**

On September 23, 2014 the City and County of San Francisco adopted a resolution calling an election in the CFD for December 29, 2014, on the questions of levying a special tax in the CFD,
the issuance of bonded and other indebtedness for the CFD and an annual appropriations limit for the CFD.

OCII is the owner of a parcel of land, Assessor's Parcel 3740-027 (Block 1), within the boundaries of the CFD, which will be sold and aggregated with adjacent private parcels for a market-rate and affordable residential. As the owner of land that is intended to be transferred to private ownership for development that will be subject to the special tax, OCII is the landowner for purposes of voting on the CFD.

**Recommendation**

Staff recommends that the Commission authorize the Executive Director to execute a ballot on behalf of OCII and to vote in favor of the City incurring an amount not to exceed $1,400,000,000 of bonded indebtedness and other debt for the CFD; levying a special tax in the CFD for the purposes specified in the proceedings for the CFD; and establishing a $300,000,000 annual CFD appropriations limit.

Staff also recommends that the Executive Director to take such further actions as may be necessary or expedient to the formation of the CFD and the authorization for the CFD to levy special taxes and issue bonded and other indebtedness to finance authorized facilities, and which may include, but are not limited to, waiving, on behalf of OCII, all notices of hearings and all notices of election, applicable waiting periods under the Act for the election and all ballot analyses and arguments for the election, as well as any requirement as to the specific form of the ballot to be used for the election, whether under the Act, the California Elections Code or otherwise.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Authorizing the Executive Director to take certain actions with respect to an election for City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) is an administrative activity that is not a “project” as defined by California Environmental Quality Act (“CEQA”) Guidelines Section 15378(b)(5). This action will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

(Originated by Courtney Pash, Acting Project Manager)

Tiffany Bonee
Executive Director

Attachment 1: CFD Boundary Map