MEMORANDUM

TO: Office of Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing the Executive Director to enter into an Exclusive Negotiation Agreement with Block 1 Property Holder, L.P., for a proposed residential project on Block 1 (Block 3740, Lots 027 and 029-031) located on Folsom Street between Main and Spear Streets; Transbay Redevelopment Project Area

EXECUTIVE SUMMARY

The Transbay Redevelopment Project Area (the “Project Area”) was adopted in 2005 with the purpose of redeveloping 10 acres of property owned by the State of California (the “State-Owned Parcels”) to generate funding for the Transbay Joint Powers Authority to construct the new Transbay Transit Center and meet the affordable housing requirements of Assembly Bill 812 (“AB 812”). AB 812 is an enforceable obligation that requires the Office of Community Investment and Infrastructure (“OCII”), as Successor Agency to the former San Francisco Redevelopment Agency (“Former Agency”), to ensure that 35 percent of the new housing units built in the Project Area are affordable to, and occupied by, low- and moderate-income households (the “Transbay Affordable Housing Obligation”).

Block 1, located on Folsom Street between Main and Spear Streets, is comprised of four legal parcels: Assessor’s Block 3740, Lots 027, 029, 030, and 031. Lot 027 is owned by OCII (“OCII Parcel”) and was acquired by the Former Agency in 2003 in furtherance of the Transbay Affordable Housing Obligation. The remaining parcels are privately owned by Block 1 Property Holder, L.P, an affiliate of Tishman Speyer (“the Developer”), as shown in the Site Plan attached as Exhibit A. The Development Controls and Design Guidelines for the Transbay Redevelopment Project require that the OCII Parcel be aggregated with the private parcels for suitable development on Block 1. The development program for Block 1 includes a 300-foot tower on the east side of the parcel, two podium buildings between 65 and 85 feet tall on the south and west sides of the parcel, and townhouses bordering Clementina Street to the north, all surrounding a 3,600 square foot open space parcel, and above a shared underground parking facility.

The Developer approached OCII about a possible purchase of the OCII Parcel, so that it can aggregate the OCII Parcel with its privately-owned parcels for the development of a residential for-sale project. The Developer has proposed two project alternatives: one that complies with the existing height limit of 300 feet for the residential tower, and one that requires an amendment to the Redevelopment Plan for the Project Area to increase the height of the tower to 400 feet. Under the existing zoning, the project would include approximately 318 for-sale residential units, including 112 affordable units or approximately 35 percent of the total. With a 400-foot tower,
the project would include approximately 399 for-sale residential units, including 141 affordable units or approximately 35 percent of the total. Both alternatives include the requisite shared underground parking garage, shared open space parcel, ground floor retail along the Main, Folsom and Spear Street frontages, and streetscape improvements.

Staff is recommending that the Commission authorize the Executive Director to enter into an Exclusive Negotiation Agreement (the “ENA”) with the Developer to set forth the terms and conditions upon which OCII and the Developer will enter into negotiations for the disposition of the OCII Parcel and development of the project. A complete copy of the ENA is attached to this Memorandum as Exhibit B. Key terms include: (1) payment to OCII of the fair market value of the OCII Parcel, which is $14,740,000 with a 300-foot residential tower and $19,180,000 with a 400-foot residential tower; (2) payment of a $500,000 ENA Deposit by the Developer for OCII’s staff and legal costs; (3) a maximum OCII subsidy of $275,000 per unit for the affordable units located in the podium buildings; (4) sale of the affordable units pursuant to OCII’s Limited Equity Program, in order to ensure the units will be permanently affordable; (5) creation of a homeowners association for the affordable units that is separate from the market-rate homeowners association in order to preserve the long-term affordability of the units; and (6) compliance with OCII policies, including the Small Business Enterprise Program, and insurance requirements. Should the Commission approve the ENA, staff will start negotiations with the development team and return to the Commission in early 2015 for approval of a possible amendment to the redevelopment plan to change the height of the residential tower, followed by a schematic design for the project and a disposition and development agreement with the Developer in mid-2015.

Staff recommends authorizing the Executive Director to enter into an Exclusive Negotiation Agreement with Block One Property Holder, L.P. for a proposed residential project on Block 1.

BACKGROUND

Block 1

Block 1 is a 53,622-square-foot site on Folsom Street between Main and Spear Streets, two blocks south and two blocks east of the future Transbay Transit Center. It is comprised of four separate legal parcels: Assessor’s Block 3740, Lots 027, 029, 030, and 031. Lot 027 is the OCII Parcel, while the remaining parcels are privately owned by the Developer (“Private Parcels”), as shown in the Site Plan attached as Exhibit A. Prior to dissolution, the Former Agency acquired the OCII Parcel with Low- and Moderate-Income Housing Funds for the purpose of fulfilling the Transbay Affordable Housing Obligation. After acquiring the Private Parcels, the Developer approached OCII about a possible purchase of the OCII Parcel. The market-rate sale of the OCII Parcel to the Developer will help fund the OCII Affordable Project, as described below.

Block 1 is within Zone One of the Project Area, and therefore must adhere to the Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”). The Development Controls require that the OCII Parcel be aggregated with the adjacent Private Parcels for suitable development on Block 1. Pursuant to the Development Controls, the development potential for Block 1 consists of a 300-foot tower on the east side of
the parcel, two podium buildings between 65 and 85 feet tall on the south and west sides of the
parcel, and townhouses bordering Clementina Street to the north, all surrounding a 3,600 square
foot open space parcel, and above a shared underground parking facility.

Transbay Redevelopment Project Area

The Project Area was established in June 2005 with the adoption of the Redevelopment Plan for
the Transbay Project Area (the “Redevelopment Plan”) by the Board of Supervisors. The
purpose of the Redevelopment Plan was to redevelop the State-Owned Parcels to generate
funding for the Transbay Joint Powers Authority to construct the new Transbay Transit Center
and meet the affordable housing requirements of Assembly Bill 812. Assembly Bill 812, enacted
by the California Legislature in 2003 and codified at California Public Resources Code §5027.1,
mandates that a total of 25% of the residential units in the Project Area be available to low
income households, and an additional 10% be available to moderate income households, for a
total of 35% affordable housing units (the Transbay Affordable Housing Obligation). The
Former Agency also entered into several agreements to implement the Redevelopment Plan,
including, among others, the Implementation Agreement. While the Implementation Agreement
primarily governs the development of the State-Owned Parcels, it also requires OCII to (1)
implement the Redevelopment Plan to enhance the financial feasibility of the Transbay Transit
Center, and (2) fund the affordable housing program mandated by the enactment of Assembly
Bill 812.

Compliance with Redevelopment Dissolution Law

Redevelopment Dissolution 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, such as the ENA, if a pre-existing enforceable obligation requires that action. On
April 15, 2013, the California Department of Finance (“DOF”) determined “finally and
conclusively” that AB812 and the Implementation 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.

Redevelopment Dissolution Law requires successor agencies to prepare a long range property
management plan (“PMP”) to dispose of any of its properties (Cal Health & Safety Code § 34191.5). The PMP must include an inventory of all successor agency properties, with
information about date of acquisition, purpose of acquisition, parcel data, current value, revenue
generation, environmental contamination, potential for transit-oriented development, and
previous development proposals for each property. The PMP must also categorize each property
by one of four permissible uses: (1) retention for governmental use; (2) retention for future
development; (3) disposition; or (4) use of the property to fulfill an enforceable obligation. The
PMP includes disposition plans for certain assets that OCII has retained to fulfill enforceable
obligations, but that are proposed for transfer or sale.

The OCII Parcel was included in OCII’s PMP with the plan to: “Retain until parcel can be
aggregated with adjacent private parcels, sell at market value to adjacent property owner, and use
proceeds for, or require on-site development of, affordable housing.” The PMP was approved by Oversight Board Resolution No. 12-2013 (adopted November 25, 2013) and is currently under review by DOF.

**DISCUSSION**

**Proposed Project**

The proposed project under the existing 300-foot zoning (“Project Alternative 1”) would include the following components: 1) an OCII-subsidized affordable housing development in two podium buildings with approximately 76 for-sale units affordable to households earning no more than an average of ninety percent of area median income (“OCII Affordable Project”); 2) a Developer-subsidized affordable housing development on the lower levels of the tower and in the townhouses with approximately 36 for-sale units affordable to households earning no more than 100 percent of area median income, or 15 percent of the total tower units; 3) a market-rate housing development on the upper floors of the tower with approximately 206 for-sale units; 4) a shared underground parking garage; 5) a shared 3,600-square-foot open space parcel; 6) ground floor retail along the Main, Folsom and Spear Street frontages; and 6) streetscape improvements. Alternative 1 would result in approximately 318 total units, including 112 affordable units, or approximately 35 percent of the total. The ground floor plan and distribution of units for Project Alternative 1 are shown on Pages 11 and 53 respectively of the Conceptual Design attached as Exhibit C.

The Developer has requested an amendment to the Redevelopment Plan that would increase the maximum height limit of the residential tower from 300 feet to 400 feet (“Plan Amendment”). If the Plan Amendment is approved, the proposed project under the amended zoning (“Project Alternative 2”) would include the following components: 1) the OCII Affordable Project; 2) a Developer-subsidized affordable housing development on the lower levels of the tower and in the townhouses with approximately 65 for-sale units affordable to households earning no more than 100 percent area median income, or 20 percent of the total tower units; 3) a market-rate housing development on the upper floors with approximately 258 for-sale units; 4) a shared underground parking garage; 5) a shared 3,600-square-foot open space parcel; 6) ground floor retail along the Main, Folsom and Spear Street frontages; and 6) streetscape improvements. Alternative 2 would result in approximately 399 total units, including 141 affordable units, or approximately 35 percent of the total. The ground floor plan and distribution of units for Project Alternative 2 are shown on Pages 11 and 5 respectively of the Conceptual Design attached as Exhibit C.

**Conceptual Design**

The Developer has hired Studio Gang Architects as its design architect for the project. The Conceptual Design for Project Alternative 2, which is the preferred development alternative, is attached to this Memorandum as Exhibit C. The design features a 40-story tower, and two podium structure and townhome buildings over a three-level subterranean garage with parking for bicycles, cars, car-share programs and EV charging stations. It introduces the “migrating bay,” an evolution of the bay window—a key component of San Francisco’s architectural language. A slight offset on each floor, repeated every ten floors, creates a facade with a unique
spiraled effect. The textured exterior improves views from within the units and allows for the seamless integration of balconies. Each vertical stack is clad according to its function inside, optimizing the building’s energy performance and adding a distinctive form to the streetscape.

The Developer is working with OCII to make further refinements to the design overall, and in particular to the façade of the OCII Affordable Project and access to the underground parking garage, which will be incorporated into the schematic design for the project.

**Structure of the Homeowners Association**

In order to avoid the negative impacts that market rate homeowners association (“HOA”) dues can have on lower income households, both project alternatives would include a separate HOA for the OCII Affordable Project and the Developer-subsidized affordable units (the “Proposed HOA Structure”). The Proposed HOA Structure is dependent on the approval of the California Bureau of Real Estate (“BRE”) and the final HOA budgets. Because BRE’s review and approval of the Proposed HOA Structure and budget won’t take place until the later phases of construction, there is a risk that the Proposed HOA Structure may not be feasible. To address that risk, staff will work with the Developer during the term of the ENA to explore the potential to convert some of the affordable units to rental units. The Developer has held initial positive discussions with BRE regarding the Proposed HOA Structure, and staff and the Developer will seek further clarification from BRE during the term of the ENA.

**Parking for the Developer-Subsidized Affordable Units**

The Developer is proposing to provide parking for the OCII Affordable Project at a ratio of 0.25 parking spaces per unit, which is consistent with other OCII affordable projects in transit-oriented neighborhoods. The City’s Inclusionary Housing Program requires parity in the parking ratio provided to market rate units and developer funded affordable units. The Developer has requested that this requirement be waived so that the Developer-subsidized affordable units can be parked at the same 0.25 ratio as the OCII Affordable Project, while the market rate units may be parked at a higher ratio, up to one parking space per unit. Staff is proposing an alternative approach, which would require the Developer to fund a reserve, to be held by the HOA for the affordable units, to provide transit passes for the Developer-subsidized affordable units that do not have a parking space. Using cost inflation date from the Municipal Transportation Agency, staff estimates that a $1.9 million reserve will fund transit passes for approximately 20 years. The ENA, however, gives the Developer the option to provide parking for its affordable units at parity with the market-rate units should it not wish to fund the transit pass reserve.

**Exclusive Negotiation Agreement**

The ENA sets forth the terms for negotiating the sale of Block 1. It contemplates a sole source sale of the OCII Parcel to the Developer. OCII believes that (1) the proposed project, as an integrated development, will have a greater value than if the individual components were developed separately, (2) the proposed project satisfies the Development Controls, (3) development of the OCII Parcel as a stand-alone project would pose significant design and financial difficulties, and (4) the proposed project allows the Developer, as the owner of the adjacent Private Parcels, to redevelop its property into a substantially better project.
Furthermore, as a sale without a public bid, OCII will follow the procedural requirements for notice and public hearing in Section 33431 of the California Health and Safety Code.

The ENA also includes the terms related to the development program, developer contributions, policies, liabilities, among other items. The term of the ENA is 18 months from the date of Commission approval, with the potential for two 6-month extensions to be approved by the Executive Director.

Following is a summary of the key terms of the ENA:

- Payment to OCII of the fair market value of the OCII Parcel. Based on an August 2014 appraisal of the OCII Parcel commissioned by OCII, the fair market value under Project Alternative 1 is $14,740,000 and the fair market value of Project Alternative 2 is $19,180,000;
- Payment of a $500,000 ENA Deposit by the Developer in addition to the purchase price, which will be used to cover OCII's staff and legal costs up to $60,000 during the negotiations period. If the legal fees exceed $60,000, the Developer shall be responsible for all additional legal fees. The ENA Deposit is non-refundable;
- Delivery of the Project Alternative 1 or Project Alternative 2, as outlined above.
- A maximum OCII subsidy of $275,000 per unit for the OCII Affordable Project, to be funded from the sale of the OCII parcel and other sources, if necessary;
- Sale of the affordable units pursuant to OCII's Limited Equity Program, in order to ensure the units will be permanently affordable;
- Creation of a single homeowners association for the affordable units that is separate from the homeowners association established for the market-rate units, in order to minimize costs and preserve the long-term affordability of the units;
- Conversion of the affordable units from home-ownership to rental if (1) BRE does not approve the Proposed HOA Structure or (2) the homeowners association dues reach a level, to be negotiated during the term of the ENA, that would put the future homebuyers and the units at risk;
- The option to provide a transit subsidy to the buyers of the Developer-subsidized affordable units, in lieu of providing parity in the parking ratio provided to the market-rate units and the Developer-subsidized affordable units, as described above;
- Support of and participation in the Community Facilities District ("CFD") and Community Benefit District ("CBD"), which are both in the formation phase. If either the CFD or the CBD does not go into effect, the Developer has agreed to contribute the amount that would have otherwise been due under each district;
- Compliance with OCII and MOHCD policies with regard to delivering and underwriting the affordable housing units; and
- Compliance with OCII policies, including the Certificate of Preference Program, Small Business Enterprise Program, Nondiscrimination in Contracts and Benefits, Minimum Compensation Policy, Healthcare Accountability Policy, Construction Workforce Agreement, Prevailing Wage Policy, Duty of Loyalty, and all insurance requirements set forth by OCII.

During the ENA period, the Developer will be responsible for the following:
Completing the Plan Amendment process, including all administrative requirements and staff time required to obtain the necessary approvals whether or not the Plan Amendment is approved;

Completing its “due diligence” review of the physical conditions on the site;

Revising the proposed concept design as a result of the review process. OCII will work with the Developer to achieve a final project that is mutually acceptable;

Obtaining preliminary approval from BRE of the Proposed HOA Structure;

Meeting certain milestones specified with dates in a schedule of performance attached to the ENA; and

Procuring professional consultants in compliance with OCII requirements, including but not limited to the goal of awarding at least 50% of all contracts to economically disadvantaged businesses in accordance with the Small Business Enterprise Program (“SBE Program”). The Developer has already hired its primary architect, Studio Gang, but has expressed its commitment to following the SBE Program for the balance of its consultants and has already met with staff about the hiring process.

The ENA period will conclude with the drafting of a Disposition and Development Agreement (“DDA”) with the Developer, which will be presented to the Commission for consideration in 2015, along with a schematic design package. A complete copy of the draft ENA is attached to this Memorandum as Exhibit B.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 OCII and the Developer and will not independently result in a physical change in the environment and is not subject to environmental review under CEQA. Subsequent Commission actions are required to enter into the DDA and to provide approvals for the future development project.

STAFF RECOMMENDATION

Staff is recommending that the Commission authorize the Executive Director to enter into an ENA with the Developer to negotiate the terms of the disposition of the OCII Parcel to the Developer and the development of Block 1. The Transbay Citizen’s Advisory Committee unanimously reviewed and endorsed the transaction at its meeting of July 10, 2014. Should the Commission approve this recommendation, staff will return to the Commission with a possible amendment to the Redevelopment Plan to change the allowed height of the residential tower from 300 to 400 feet in early 2015, followed by a schematic design and DDA in approximately 6 months.
(Originated by Christine Maher, Senior Development Specialist)

Exhibit A: Site Plan
Exhibit B: Draft Exclusive Negotiations Agreement
Exhibit C: Conceptual Design