MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Approving, pursuant to the Transbay Implementation Agreement, the schematic design for a proposed high-density residential project on Transbay Block 9, located on Folsom and First Streets, and making environmental findings pursuant to the California Environmental Quality Act; Transbay Redevelopment Project Area

Authorizing, pursuant to the Transbay Implementation Agreement and the 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 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

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”) in order to generate funding for the Transbay Joint Powers Authority to construct the new Transbay Transit Center (the “TTC”). The Transbay Redevelopment Project Area Implementation Agreement (the “Implementation Agreement”) is an enforceable obligation that requires the Office of Community Investment and Infrastructure (“OCII”), as the Successor Agency (the “Successor Agency”) to the former San Francisco Redevelopment Agency (the “Former Agency”), to “prepare and sell [certain State-owned parcels that OCII is authorized to acquire] to third parties.”. 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.

On September 12, 2012, 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 9 in the Transbay Redevelopment Project Area, located on Folsom between Essex and First Streets. The development program for Block 9 includes a 400-foot residential tower, an adjacent 85-foot residential podium building and ground-floor retail. The RFP required at least 20% of the total residential units be developed
as affordable with no subsidy by OCII. The RFP provided developers with two options for delivering the affordable units: 1) A single developer with 20% of all units inclusionary rental housing ("80/20 Development"); or, 2) Separate affordable and market rate developers ("Joint Development"). On July 16, 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"), an entity comprised of AGI Capital and TMG Partners, along with Essex Property Trust, and BRIDGE Housing California ("BRIDGE"). The development team included Skidmore Owings & Merrill Architecture ("SOM") as the lead architect for the tower component of the development and Fougeron Architects ("Fougeron"), a small business enterprise, as the architect for the low-rise buildings (together referred to as the "Development Team" or Block 9 Transbay LLC). The ENA included a purchase price of $43,320,000, 570 residential units in a joint development (456 market-rate units, and 114 affordable units), with no subsidy from OCII (the "Project"). The ENA contemplated a joint development program whereby the affordable units would be located on the lower 7 floors of the building and occupy a separate air space parcel which would be retained by OCII and ground leased to BRIDGE.

Since execution of the ENA the development program has evolved. AGI Capital is no longer part of the Development Team, however TMG Partners, Essex Property Trust, and BRIDGE remain. TMG Partners and Essex Property Trust together are acting as the lead development entity on the Project ("the "Developer"). The total number of units has decreased from 570 to 545 with 436 market-rate units and 109 affordable units. Furthermore, the Project has changed from the Joint Development concept to an 80/20 Development. The 109 units below market rate units ("BMR Units") will be affordable to households earning up to 50% of Area Median Income ("AMI"), be scattered throughout the lower half of the tower. The unit mix of the BMR Units will be proportional to that of the market-rate units. While this revised scheme is different than that contemplated in the ENA it is consistent with the requirements in the RFP. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the "DDA"), included as Attachment 1, with the Development Team for the sale and development of Block 9 with 436 market-rate units, 109 affordable units, shared open space, and a shared underground parking garage.

Staff recommends: (1) conditional approval of the schematic design; (2) authorization of the exercise of OCII's option and approval of the Disposition and Development Agreement.

DISCUSSION

Project Description

Block 9 is part of the Transbay Redevelopment Project, a 40-acre redevelopment district at the foot of Rincon Hill which includes the Transbay Transit Center (under construction) and approximately 10 acres of vacant public land. Block 9 is a 31,564-square-foot parcel on Folsom Street between First and Essex Streets, two blocks south of the future Transbay Transit Center, as shown on the map included as part of Attachment 1. 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. 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. Pursuant to the Pledge Agreement, all of the land sales proceeds from Block 9 have been pledged to the TJPA to help pay the cost of constructing the new TTC.

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 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. 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, by granting OCII an option to purchase certain State-owned parcels in order to facilitate their development. On April 15, 2103, the California Department of Finance (“DOF”) determined “finally and conclusively” that the Implementation Agreement, the Pledge Agreement, and the statutory housing obligations in Section 5027.1 of the California Public Resources Code are enforceable obligations under the Redevelopment Dissolution Law, Section 34177.5 (i) of the California Health and Safety Code.

The development program for Block 9 conforms to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the “Development Controls”), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the “Streetscape and Open Space Plan”). The development program, as proposed by the Development Team and shown in the site plan and renderings in Attachment 3, includes:

- A mixed-income residential project on Block 9, consisting of (1) a 42-story tower and an attached six-story podium building on either side of the tower and (2) a row of two-story townhouses on the south side of Clementina Street, for a total of 545 residential units;
- A shared underground parking garage with approximately 286 spaces for cars and 206 spaces for bikes;
- A shared open space which will be open to the public during daytime hours; and,
- Streetscape improvements conforming to the Streetscape and Open Space Plan.

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1 Section 5027.1 of the Public Resources Code was added by Assembly Bill No. 812 (2003). It states, in part: “Notwithstanding any other law, any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income.”
Selection Process

Under the Implementation Agreement, the Former Agency was required, among other things, to “prepare and sell the Agency Transfer Parcels to third parties” and to fulfill the “affordable housing requirements of Section 5027.1 of the California Public Resources Code.” Implementation Agreement, (§§ 2.1 (a) & (d) at pp. 4-5). The Former Agency issued the RFP on September 12, 2012. It publicized the RFP to developers, architects, and real estate professionals, including SBEs from the Former Agency’s certified SBE list, through direct mailing, advertisements in newspapers of general circulation and community newspapers, and postings on the Former Agency’s and City of San Francisco’s (the “City”) websites. The RFP asked development teams to submit a land purchase offer and a development concept for Block 9. The scoring criteria in the RFP included a total of 100 points, including points for the financial proposal (75 points), the development concept (15 points), and the development team experience (10 points). The proposals were reviewed and evaluated by a selection panel consisting of OCII staff, a member of the Transbay Citizen’s Advisory Committee (the “CAC”), and a representative of the San Francisco Planning Department. The selection panel received assistance from Keyser Marston Associates, a real estate consulting firm, which produced an analysis of the financial proposals submitted by the teams. Three proposals were submitted to OCII and Development Team received the highest total score. On July 16, 2013, staff recommended and the Commission approved executing an ENA with the Development Team for Block 9.

Changes since ENA Execution

The Project as originally envisioned in the RFP submittal and the ENA has evolved as new information has been discovered. The revisions remain consistent with what was contemplated in the RFP and reflect increased construction costs, previously unknown site constraints, and unforeseen delays in negotiating the DDA. The key changes are as follows:

Developer Team Changes
The lead market-rate developer was comprised of AGI Capital Group, a San Francisco-based residential development company and TMG Partners, one of the San Francisco Bay Area’s largest mixed-use property developers. The original project lead was Eric Tao, Principal of AGI Capital Group. AGI Capital Group is no longer part of the Development Team. TMG Partners, has since taken over as Avant lead and Cathy Greenwold Executive Vice President of TMG Partners is the new primary contact for Avant. The role of BRIDGE has been modified to reflect the new BMR Unit structure, as discussed below.

Unit Count Changes
As the building was refined and the site constraints studied, particularly the slope, the number of stories decreased from 43 to 42. Simultaneously, the units got larger which resulted in a decline in total number of units from 545 to 536. The number of affordable units declined from 114 to 109, but remains at 20% of the total.

Affordable Housing Changes
The proposed project included a Joint Development Structure such that the first 7 floors of the development would be a separate air space parcel and comprise the entirety of the affordable units. The air space parcel would have been owned by OCII or the City and leased to BRIDGE
for long term operation. The Developer would have provided funding to OCII, which would have then been loaned to the separate affordable project. Given that this mixed-income development structure had never been done before, it proved to be problematic for the Development Team. The team has switched to an 80/20 development structure which would provide the same number of affordable and market-rate units as would have otherwise been provided, in the following structure:

- The top 21 floors of the Project will consist of solely of market rate units.
- The bottom 21 floors will consist of a minimum of 109 BMR Units along with market rate units, which is anticipated to be financed separately from the top portion of the project using tax-exempt mortgage revenue bonds and Low Income Housing Tax Credits as some of the funding sources.

The affordable units will be affordable to households earning up to 50% of Area Median Income, and must be distributed throughout the lower 21 floors of the Project in a non-discriminatory fashion. The unit mix (i.e. bedroom size) of the BMR Units will be proportional to the entirety of the project. In no event will the net residential square footage for the BMR Units be less than 20% of the net residential square footage of the entire Project. OCII’s inclusionary housing policies do not require that the interior features of BMR units be equivalent to the market rate units as long as they are of good quality and consistent with current construction standards, however the Developer has committed to providing equal finishes and interior features in the BMR Units and the market rate units in the lower 21 floors. Parking for the BMR Units will provided at parity with the market rate units. The Project will be subject to a declaration of restrictions which will require the BMR Units remain affordable at 50% of AMI for the life of the Project.

Because the BMR Units are now considered inclusionary units mixed throughout the lower 21 floors, rather than “stand-alone” units in its’ own separate air parcel, the role of BRIDGE has changed from the original concept at the ENA approval. BRIDGE will still be involved in the financing of the units as the managing general partner of the tax credit partnership overseeing the BMR Units. The DDA requires that the relationship between TMG Partners, Essex Property Trust, and BRIDGE be defined in a Memorandum of Understanding between the Developer and BRIDGE, (see Attachment 2). BRIDGE will be responsible for the ongoing marketing, leasing and compliance of the BMR Units, participate in the hiring and oversight of the property manager, provide any tenant services if needed, and other duties related to being the managing general partner of a the tax credit financing limited partnership.

**Schedule Changes**

The close of escrow date contemplated in the ENA was August 1, 2014, but the Development Team requested additional time. The Executive Director authorized two ENA extensions, first until November 5, 2014, and then again until December 31, 2014. A revised close of escrow date of December 3, 2014 was proposed by OCII to ensure the project move forward and meet the financial needs of the TJPA. The revised close of escrow date was again missed and the Development Team agreed to the following changes to give assurance that escrow will close on the February 3, 2015 date contemplated in the DDA:
The $2 million good faith deposit contemplated in the RFP and ENA has increased to $2.5 million.

The purchase price has increased from $43,320,000 contemplated in the RFP and ENA to 43,630,000 to account for the two-month delay in the close-of-escrow date.

The developer must pay a daily penalty of $10,000 per day for each calendar day after February 10, 2015 until the date of the closing.

Proposed DDA Terms

Based on the proposal submitted by the Development Team and subsequent modifications to the Project in response to changing economic conditions, OCII staff has negotiated a DDA with Block 9 Transbay LLC for the sale and construction of the mixed income residential project on Block 9. The proposed Block 9 DDA terms include:

- A good faith deposit of $2,500,000, which Block 9 Transbay LLC shall pay to OCII within 30 days of the effective date of the DDA and which shall be applied to the purchase price;
- A purchase price for Block 9 of $43,630,000, which Block 9 Transbay LLC shall deposit into a trust account established by the TJPA at or prior to close of escrow;
- Construction of the Block 9 improvements, the shared open space, the streetscape improvements, and the shared underground parking garage. Block 9 Transbay LLC shall be responsible for hiring the construction contractor, in compliance with OCII’s contracting policies, and for paying the cost of the improvements, including the open space, the streetscape improvements and the underground parking garage;
- Commencement of construction occurring as soon Fall 2015, but no later than 18 months from the approval land disposition by the Board of Supervisors, which is anticipated on February 3, 2015, and completion of construction occurring as soon as Fall 2018, but no later than 36 months from commencement of construction.

Approval of the DDA is critical to the TJPA’s funding plan for the new Transbay Transit Center (“TTC”). The TJPA is relying on the $43.63 million purchase price to help pay the construction costs for the above-ground structure, and any delay in the closing date could delay the construction schedule for the TTC. The DDA includes additional terms related to insurance and liability, as well as a detailed schedule of performance and remedies in the event that the schedule is not met.

The action before the Commission to approve of the DDA includes an authorization for the Executive Director to purchase Block 9 from the City pursuant to the Option Agreement between the TJPA, the City and OCII. 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). The Option Agreement further states
that OCII may exercise its option only after certain conditions have been met, including that the Commission has “adopted a resolution approving and authorizing the transactions contemplated by this Agreement.” (§§ 4.1 (a) – (d) at pp. 5-6) Provided that the Commission authorizes the exercising of the option, OCII will deliver written notice to the TJPA and acquire Block 9 prior to close of escrow with Block 9 Transbay LLC under the DDA.

Design

The development team has worked collaboratively with OCII staff to prepare the Schematic Designs, included as Attachment 3. The designs were reviewed and approved by the CAC at its meeting on November 6, 2014. OCII has reviewed the design and it conforms to all of the requirements of the Redevelopment Plan, the Development Controls and the Streetscape and Open Space Plan.

As shown in the site plan and renderings in Attachment 3, the proposed design for Block 9 includes a sleek, elegant residential tower alongside podium buildings and ground-floor townhouses lining the eastern edge of Clementina Alley. Per the requirements of the Development Controls and the RFP, the different buildings have been designed by different architects in order to provide variety and visual interest in the architecture of the project. SOM is responsible for the tower. Fougeron is responsible for the podium building and townhomes.

In addition to an attractive, modern design, the Block 9 project focuses on two key goals: 1) creating opportunities for social interaction between all of the residents and 2) creating an innovative sustainable design program with contextual relationships to the surrounding uses. As shown in the renderings, the roof of the podium buildings will include shared open space and amenity uses where residents can interact. The shared ground floor open space provides attractive areas for social interaction that will draw people together. In fact, the Block 9 shared open space will be open to the public, and therefore will serve as a neighborhood meeting place, in addition to an amenity for the residents. The Block 9 design will achieve an equivalent of LEED Silver.

As required by the Development Controls, the design for Block 9 includes ground-floor retail on Folsom Street, which will activate this new neighborhood “main street” with pedestrian activity. Also, as required by the Development Controls, the design includes individually-accessible townhouses on Clementina Alley, in order to create a more pedestrian-friendly neighborhood environment.

The Project will be a 42-story residential building (excluding basement levels and mechanical penthouse), with approximately 545 residential units. The building will include up to four hundred and thirty-six (436) market-rate units and a minimum of 109 below market-rate units affordable to households earning up to 50% of Area Median Income (AMI). In no event shall the below market rate units comprise less than 20% of the total number of residential units. The gross building area devoted to residential uses (excluding parking areas below grade and excluding retail) will be approximately 556,000 square feet. The average size of the residential units is anticipated to be approximately 720 net square feet. The Schematic Designs provide for the following unit mix in the Project (See page 60 of the Schematic Designs for the unit mix by floor):
As is typical, there remain a number of detailed issues that must be resolved in subsequent design stages (i.e., design development or construction documents). Staff recommends the conditions of approval listed in Attachment 4, and approval of the schematic design subject to these conditions.

**BMR Unit Location**

Typically the Schematic Designs include the location of any inclusionary BMR Units. Due to the change of the Project from a Joint Development project to an 80/20 Project, there were a number of design changes that needed to be made. The Developer requested that the Schematic Design include layouts for typical floors instead of full layouts for each floor since there was not enough time to provide those details. The DDA thus requires that the final selection and distribution of BMR Unit location be subject to the review and approval of the OCII Executive Director, and that the Developer must provide those locations no later than 60 days after the Effective Date of the DDA (the date of the Commission’s approval of the DDA). The DDA requires that the BMR Units be distributed in a non-discriminatory manner throughout the lower 21 floors of the Project. The mix of unit types of the BMR Units will be proportional to that of the market rate units in the entire Project, and as stated above, the interior features will be equal to those of the market rate units in the lower 21 floors.

**Compliance with OCII’s Contracting Policies**

Block 9 is subject to all of OCII’s contracting policies, including the Small Business Enterprise ("SBE") Program, which provides first consideration in awarding contracts to SBEs and sets a goal of 50 percent SBE participation for professional, personal services, and construction contracts, the Minimum Compensation Policy, the Health Care Accountability Policy, the Construction Workforce Agreement, the Permanent Workforce Agreement and the Prevailing Wage Policy. To date, the project has achieved 50.7% SBE participation. Of the total fees, 49.6% are San Francisco-based SBEs, 23.8% are MBEs and 12.3% are WBEs. During construction, OCII requires that the developer ensure equal opportunities for its construction workforce and sets a 50 percent goal for hiring San Francisco residents.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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-

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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 Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the proposed Transbay Terminal, the TJPA also adopted environmental findings.

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

- Addendum #1 – adopted by the TJPA on June 2, 2006, assessed the additional use of the temporary Transbay Terminal by Greyhound, another transit carrier.
- 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.
- Addendum #3 – adopted by the TJPA on January 17, 2008, evaluated the addition of 546 Howard Street to the Transit Center.
- 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.
- Addendum #5 – adopted by the TJPA on April 9, 2009, evaluated the building design of the new Transit Center.
- Addendum #6 – adopted by the TJPA on December 8, 2011, evaluated minor refinements to the proposed bus ramp component of the Transit Center.

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.

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 Block 9 DDA is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168 (the "Implementing Action").

Staff has reviewed the DDA and related actions for Block 9 and has considered and reviewed the Final EIS/EIR and addenda and finds the proposed action is an Implementing Action 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. The Final EIS/EIR and addenda are available for review at OCII's offices.

**NEXT STEPS**

Upon approval the Commission, staff will next seek the approval of the Board of Supervisors on the disposition of the site as required by the Transbay Redevelopment Plan. The purpose of the Board of Supervisors review is to determine that the sales price is not less than fair market value and make findings consistent with Section 33433 of the California Health and Safety Code. Staff anticipates that the Board will take action on this matter at its meeting on February 3, 2015.
close of escrow for the sale of the property will then take place on February 10, 2015. The DDA’s Schedule of Performance requires that construction commence within 18 months of the Board’s approval of the disposition with a 36 month construction schedule. Upon completion of the Project, the affordability restrictions on the Project will be transferred as housing assets to MOHCD as Housing Successor. The resolution approving the DDA authorizes the Executive Director to take actions necessary to transfer those housing assets to MOHCD, i.e. seeking the approval of the Oversight Board and DOF.

(Originated by Courtney Pash, Acting Project Manager)

Tiffany Bohee
Executive Director

Attachment 1: Transbay Block 9 Disposition and Development Agreement
Attachment 2: Transbay Block 9 Memorandum of Understanding between Developer and BRIDGE
Attachment 3: Block 9 Schematic Designs
Attachment 4: Block 9 Schematic Designs – Conditions of Approval