

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 24-2015

Adopted May 5, 2015

AUTHORIZING A FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT WITH MA WEST LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR A COMMERCIAL PROJECT ON TRANSBAY BLOCK 5 (ASSESSOR'S BLOCK 3718, PORTION OF LOT 025 AND PORTION OF LOT 027), LOCATED ON HOWARD STREET BETWEEN BEALE AND MAIN STREETS; 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); and,

WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority ("TJPA") and the City and County of San Francisco (the "City"), the State of California (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 TTC (the "Cooperative Agreement"). The City agreed, among other things, to commit property tax revenue through its redevelopment agency to the TTC. Under the Cooperative Agreement, the State relied on tax increment financing under a redevelopment plan to improve and sell the State-owned Parcels; and,

WHEREAS, The City's Board of Supervisors 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 which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels (the "Implementation Agreement"). 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 entire redevelopment 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 State-owned Parcels, and distribute the net tax increment to the TJPA to use for the construction of the TTC (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 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”) 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 subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”). AB 26 and AB 1484 are codified in Part 1.8 (commencing with Section 34161) and in Part 1.85 (commencing with Section 34170) 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 Agency’s assets (other than housing assets) and obligations were transferred to the Office of Community Investment and Infrastructure, as successor agency to the Former Agency (“OCII” or the “Successor Agency”); 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 Implementation Agreement, along with other Transbay-related documents, is an enforceable obligation that will not require additional DOF review in the future, although expenditures under the Implementation Agreement are subject to continuing DOF review; and,
- WHEREAS, On April 2, 2014, pursuant to the Implementation Agreement, OCII issued a Request for Proposals (“RFP”) for the sale of one of the State-owned Parcels,

which allows for a 550-foot-tall office tower and public open space on and adjacent to the property in the Project Area commonly known as Transbay Block 5 (also known as Assessors Block 3718, referred to in the Cooperative Agreement as Parcels N and N'). On September 12, 2014, after a competitive selection process, the Commission on Community Investment and Infrastructure ("Commission") unanimously approved by Resolution No. 79-2014 an Exclusive Negotiation Agreement ("ENA") between MA West LLC ("Developer"), a Delaware limited liability company and joint venture between affiliates of Golub Real Estate Corp. ("Golub"), an Illinois corporation, and The John Buck Company ("John Buck"), a limited liability company; and,

WHEREAS, Block 5 is comprised of portions of Assessors Block 3718, Lots 025 and 027, in the area bordered by Natoma, Howard, Beale, and Main Streets. The component of Block 5 that is anticipated as the site of the Block 5 tower, known as "Parcel N1", is an approximately 26,300 square foot parcel on Howard and Beale Streets. The component of Block 5 that is anticipated for construction of the required publicly-accessible open space are the southern portion of Lot 027 ("Parcel M1") and the northern portion of Lot 025 ("Parcel N3") containing a combined area of 15,212 square feet (collectively the "Open Space Parcels"). The TJPA currently owns and will continue to own these two Open Space Parcels. The Developer will build and maintain the required open space on Parcels M1 and N3 under a separate agreement with the TJPA; and,

WHEREAS, The ENA includes a purchase price of \$172,500,000 and the Developer is currently proposing construction of (a) an approximately 800,000 gross square foot office building, including mechanical and parking, or approximately 675,000 rentable square feet; (b) ground floor retail space of approximately 4,650 square feet; (c) streetscape improvements, including a portion of the extension of Natoma Street from Beale Street to Main Street, and Beale and Howard Street improvements; (d) one level of underground parking with up to 117 stalls in mechanical parking lifts and stackers; and (e) approximately 14,892 square feet of open space (collectively the "Project"); and,

WHEREAS, Based on the ENA and the current proposed Project, OCII staff has been negotiating the terms of a disposition and development agreement (the "DDA") with the Developer for the sale of Parcel N1 and the development of Block 5 with the Project. The negotiation of the DDA has extended past the expiration of the term of the ENA, March 31, 2015, and the Developer has requested, in a letter dated April 28, 2015, that the ENA be extended to June 30, 2015; and,

WHEREAS, OCII staff has prepared a First Amendment to the Exclusive Negotiation Agreement, extending the term of the ENA to June 2, 2015, with two (2) additional one (1) month extension periods if approved in writing by OCII's Executive Director. The First Amendment to the Exclusive Negotiation Agreement also includes updated performance benchmarks within Exhibit D of the ENA; and,

WHEREAS, Staff recommends executing the First Amendment to the Exclusive Negotiation Agreement (“ENA”) with the Developer. Assuming the Commission approves the First Amendment to the ENA, staff will continue negotiating a DDA with the Developer, which will be brought before the Commission for its consideration, along with the finalized schematic design and amendment to the Transbay Design Controls and Design Guidelines, at a later date; and,

WHEREAS, A copy of the ENA is on file with the Secretary of this Commission and is available at <http://sfocii.org/modules/showdocument.aspx?documentid=7237>; and,

WHEREAS, Authorizing an extension to the ENA is statutorily exempt from the California Environmental Quality Act (“CEQA”) as a feasibility and planning study, pursuant to CEQA Guidelines Section 15262. The ENA will facilitate completion of the design of the Project and will independently result in significant physical effects on the environment; now, therefore be it

RESOLVED, That the Commission on Community Investment and Infrastructure hereby authorizes the Executive Director to execute a First Amendment to the Exclusive Negotiation Agreement with MA West, a joint venture limited liability company between Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a limited liability company, for a proposed commercial project on Block 5 (Assessor’s Block 3718, portion of Lot 025 and portion of Lot 027), located on Howard Street between Beale and Main Streets in the Transbay Redevelopment Project Area, substantially in the form of the First Amendment to the ENA on file with the Secretary of this Commission, together with such changes thereto as the Executive Director reasonably determines, are: (i) in OCII’s best interest and (ii) do not materially increase OCII’s obligations or liabilities; and, be it further

RESOLVED, That the Commission on Community Investment and Infrastructure authorizes the Executive Director, to take such other actions as may be necessary or appropriate, to effectuate the purpose of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of May 5, 2015.



Commission Secretary