COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 51-2015
Adopted August, 18, 2015

AUTHORIZING A PERMANENT LOAN AGREEMENT WITH MERCY HOUSING CALIFORNIA 64, L.P., A CALIFORNIA LIMITED PARTNERSHIP, IN THE AMOUNT OF $25,560,000, WHICH INCLUDES A PREVIOUSLY APPROVED PREDEVELOPMENT LOAN AMOUNT OF $3,382,523, FOR THE CONSTRUCTION OF 119 AFFORDABLE HOUSING UNITS PLUS ONE MANAGER'S UNIT AT 222 BEALE STREET AT TRANSBAY BLOCK 7, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; 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). AB 812 also mandated that 25% of the residential units developed in the area around the TTC "shall be available to" low income households, and an additional 10% "shall be available to" moderate income households if the City and County of San Francisco (the "City") adopted a redevelopment plan providing for the financing of the TTC; and,

WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority ("TJPA") and the City, 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 parcels; and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco 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 ("Implementation Agreement"), which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels. 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 \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 parcels, and distribute the net tax increment to the TJPA to use for 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 July 6, 2011, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the "RFP") from development teams to design and develop a high-density, mixed-income residential project on Blocks 6/7 in the Project Area. On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub Real Estate Corp. ("Golub") and Mercy Housing California ("Mercy"), along with Solomon Cordwell and Buenz ("SCB") as the lead architect for the market-rate component of the development and Santos Prescott and Associates ("Santos Prescott"), a small business enterprise, as the architect for the affordable component; and,

WHEREAS, On February 1, 2012, the Former Redevelopment 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"), codified in relevant part in California's Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in <u>California Redevelopment Assoc. v. Matosantos</u>, 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"). (Together, AB 26 and AB 1484 are referred to as the "Redevelopment Dissolution Law."); and,

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency's assets (other than housing assets) and obligations were transferred to the Office of Community Investment and Infrastructure ("OCII"), as Successor Agency to the Former Agency. Some of the Former Agency's housing assets were transferred to the City, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"); 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. <u>See also</u> 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") approved the OCII's request that DOF determine "finally and conclusively" that the Implementation Agreement, AB 812 and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. On September 10, 2013, through an email from DOF's Assistant Program Budget Manager to OCII's Executive Director, DOF interpreted this Final and Conclusive Determination as meaning that "any sale, transfer, or conveyance of property related to Transbay Blocks 6/7, and as outlined in the project documents, is authorized" and further verified that it would not initiate an "objection to any sale, transfer and/or conveyance of property related to this project."; and,

WHEREAS, The original proposal from Golub/Mercy included a purchase price of $30,000,000, 545 residential units (409 market-rate units, including 61 inclusionary units and 136 stand-alone affordable units on Blocks 6 and 7), and a requested subsidy from the Former Agency for the stand-alone affordable units of approximately $200,000 per unit. However, due to the dissolution of the Former Agency on February 1, 2012, and the challenges that created for funding the affordable component of the development, the original proposal from Golub/Mercy was revised; and,

WHEREAS, Under the revised proposal, Blocks 6/7 was to include a total of 556 residential units, as well as ground-floor retail, shared open space and underground parking. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the "DDA") with Golub/Mercy for the sale of Blocks 6/7 and the development of Block 6 with 409 market-rate units, 70 affordable units (the "Block 6 Affordable Project"), shared open space, and a shared underground parking garage. Instead of providing inclusionary units in the market-rate component of the project, Golub will pay an affordable housing fee ("Affordable Housing Fee") of $24,300,000 to OCII to provide funding for all of the anticipated Former Agency subsidy for the Block 6 Affordable Project and a portion of the Former Agency subsidy for Block 7. The DDA, however, does not cover the development of Block 7, which, at that time, included 77 affordable units, a child care facility and shared open space; and,

WHEREAS, On April 16, 2013, the Commission approved the DDA. Mercy is obligated under the terms of the DDA to develop the Block 6 Affordable Project. As part of the negotiated terms of the DDA, Golub was allowed to pay directly for any predevelopment costs for the affordable components, including up to $2,000,000 for the Block 6 Affordable Project plus up to $1,000,000 for the Block 7 Affordable Project, plus the shared costs for the underground parking structure as part of the Affordable Housing Fee once approved by MOHCD/OCII staff. These costs were all incurred after the selection of Golub and Mercy by the Former Agency Commission in December 2011; and,

WHEREAS, In October, 2013 Golub completed the purchase of Block 6 and paid the Affordable Housing Fee. In accordance with the terms of the DDA, Golub will transfer the air rights parcel ("Air Rights Parcel") for the Block 6 Affordable Project back to OCII once it was created in order for OCII to transfer that parcel to the Borrower through a long term Air Rights Lease; and,

WHEREAS, In March 2014, Mercy Housing California 64, L.P. (the "Developer"), Mercy's development entity for Block 7, proposed a new revised plan for Transbay Block 7 that added 8 units and maintained the OCII subsidy at $200,000 per unit, consistent with the RFP and the terms of the DDA. The revised design included an 85-unit family project (84 units plus one managers' unit), comprised of 34 one-bedroom units, 32 two-bedroom units, 18 three-bedroom units and 1 manager's unit, a child care facility, along with an associated open space (the "Project"). The revised development plan for Block 7 increased the below market rate percentage for Transbay Blocks 6 and 7 from 26% to 28%; and,

WHEREAS, On April 15, 2014, the Commission approved the Transbay Block 6 Loan and a seventy-five (75) year air rights lease (with one twenty-four (24) year option) with Mercy in connection with the development and operation of the Block 6 Affordable Project; and,

WHEREAS, On August 19, 2014, the Commission approved the Developer's revised Schematic Design proposal to add 8 units increasing the total unit count for Block 7 from 77 to 85 units; and,

WHEREAS, Also on August 19, 2014, the Commission approved a predevelopment loan agreement (the "Predevelopment Loan Agreement") in the amount of $3,382,523 (the "Predevelopment Loan") for activities related to the development and construction of Transbay Block 7; and,

WHEREAS, In May, 2014 Mercy began construction on the Block 6 Affordable Project and completed the development 13 months later in June 2015; and,

WHEREAS, In April 2015, the Developer again proposed to add even more units to the Block 7 development. Early pricing estimates for the Project from the construction contractor showed increased hard costs of construction such that Mercy would not be able to complete the development within OCII's maximum subsidy total of $200,000 per unit. To make the Project financially viable, Mercy and its general contractor explored alternate design concepts that could reduce construction costs. By changing the building's structural system the Project achieves greater economies of scale and subsequently the Developer was able to add 35 additional units. Even with the increased economies of scale, the design change necessitates that OCII increase its subsidy from $200,000 to $213,000 per unit due to extreme current construction cost escalation; and,

WHEREAS, OCII staff determined that increasing the per unit subsidy from 200,000 per unit to $213,000 per unit was warranted given that Block 7 will deliver 35 more affordable units, increase the overall affordability at Blocks 6/7 from 28% to 32%, and contribute to meeting the overall 35% mandate in the Project Area. The Department of Finance approved the Recognized Obligation Payment Schedule ("ROPS") for the 15-16A period which included an amount to cover OCII subsidy for the additional units; and,

WHEREAS, On July 31, 2015, the Citywide Affordable Housing Loan Committee approved a loan in the amount of $25,560,000, which amount includes the previously approved Predevelopment Loan amount of $3,382,523, for construction activities related to the Project (the "Permanent Loan"); and,

WHEREAS, A portion of the $25,560,000 gap funding amount, in an amount up to $1,600,000 will be available for additional predevelopment activities (the "Additional Predevelopment Amount"). The Permanent Loan, less the sum of the disbursed portion of the Predevelopment Loan and the Additional Predevelopment Amount, will be disbursed according to the terms and subject to the conditions set forth in the Predevelopment Loan Agreement; and,

WHEREAS, At the time OCII transfers OCII's interests to MOHCD, as contemplated in the air rights lease and the Permanent Loan Agreement, the Executive Director of OCII has authority to seek approval of the OCII Oversight Board; and,

WHEREAS, 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. 11-2005, 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 City Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the new Transbay Transit Center, the TJPA also adopted environmental findings; and,

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

a. Addendum #1 – adopted by the TJPA on June 2, 2006, assessed the additional use of the temporary Transbay Terminal by Greyhound, another transit carrier; and,

b. 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; and,

c. Addendum #3 – adopted by the TJPA on January 17, 2008, evaluated the addition of 546 Howard Street to the Transit Center; and,

d. 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; and,

e. Addendum #5 – adopted by the TJPA on April 9, 2009, evaluated the building design of the new Transit Center; and,

f. Addendum #6 – adopted by the TJPA on December 8, 2011, evaluated minor refinements to the proposed bus ramp component of the Transit Center.

WHEREAS, 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; and,

WHEREAS, 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 development of approximately 556 units of market-rate and affordable housing on Transbay Blocks 6/7 is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168; and,

WHEREAS, OCII staff has reviewed the Permanent Loan and related actions for the Project and finds the proposed actions to be Implementing Actions to facilitate construction of market-rate and affordable housing on Transbay Blocks 6/7 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; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Actions contemplated herein, considered and reviewed the Final EIS/EIR and addenda, has made documents related to the Implementing Actions, the Final EIS/EIR, and addenda available for review by the OCII Commission and the public, and these files are part of the record before OCII; and,

WHEREAS, The Final EIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Agency Commission by Resolution No. 11-2005 dated January 25, 2005 were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Actions; now therefore, be it

RESOLVED, The Office of Community Investment and Infrastructure finds and determines that authorizing the Executive Director to execute a Permanent Loan for the Project is an Implementing Action within the scope of the project analyzed in the Final EIS/EIR and Addenda and requires no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

a. The Implementing Action is within the scope of the project analyzed in the Final EIS/EIR and Addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the Final EIS/EIR;
b. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the Final EIS/EIR and Addenda was undertaken that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Final EIS/EIR; and,
c. No new information of substantial importance to the project analyzed in the Final EIS/EIR and Addenda has become available which would indicate that (a) the Implementing Actions will have significant effects not discussed in the Final EIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the Final EIS/EIR will substantially reduce one or more significant effects on the environment.

RESOLVED, The Commission on Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby authorizes the Executive Director to execute the Permanent Loan Agreement for Transbay Block 7, in the amount of $25,560,000, which amount includes the previously approved Predevelopment Loan amount of $3,382,523, with Mercy Housing California 64, L.P. a California limited partnership, for activities related to the construction of 119 affordable housing units plus one manager's unit and a child care facility, with associated open space at 222 Beale Street on Transbay Block 7, substantially in the form approved by the City Attorney, acting as counsel to OCII, and to execute any related documents and adopting environmental findings pursuant to the California Environmental Quality Act.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of August 18, 2015.

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Commission Secretary