MEMORANDUM

TO: Office of Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Conditionally Authorizing the Executive Director to execute a First Amendment to the Transbay Option Agreement for the Purchase and Sale of Real Property and a Subordination Agreement, and to take related actions to facilitate a loan agreement between the Transbay Joint Powers Authority and Goldman Sachs Bank USA that funds the Transbay Terminal construction, subject to the approval of the Board of Supervisors of the City and County of San Francisco, the Oversight Board of the City and County of San Francisco and the California Department of Finance; Transbay Redevelopment Project Area

EXECUTIVE SUMMARY

In 2005, the City approved, the Redevelopment Plan (the "Redevelopment Plan") for the Transbay Redevelopment Project (the "Transbay Project"). The Transbay Project provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land (the "Project Area") in the City's financial district, including the new Transbay Transit Center ("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, non-housing 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.

In 2008, the Redevelopment Agency of the City and County of San Francisco ("Former Agency") entered into an Option Agreement for the Purchase and Sale of Real Property with the City and County of San Francisco ("City") and the TJPA (the "Option Agreement") whereby the City and TJPA granted to the Former Agency the exclusive and irrevocable option to purchase certain former State-owned parcels for disposition and development by third parties. As a condition of granting the option, the Former Agency pledged to provide TJPA the gross sales proceeds from the parcels for deposit into the trust account at closing of the purchase-sale, and the non-housing net tax increment generated by the parcels over time. The Option Agreement also required the Former Agency to perform all of its obligations under the Transbay Redevelopment Project Implementation Agreement (2006), which required, among other things, completion of public infrastructure and affordable housing obligations.

In January 2010, TJPA entered into a $171.0 million loan under the Transportation Infrastructure Finance and Innovation Act (the "TIFIA Loan") to fund a portion of the costs. The TJPA has not yet satisfied all of the disbursement conditions under the TIFIA Loan. As a result, TJPA cannot currently requisition proceeds under the TIFIA Loan. TJPA expects to satisfy all of the disbursement conditions and draw on the TIFIA Loan in late 2015, although the schedule is subject to change. TJPA intends to repay the TIFIA Loan with: 1) net tax increment that is not committed for affordable housing and that is generated by certain State-owned parcels in the Project Area; 2) future contributions from Alameda-Contra Costa Transit District ("AC Transit") related to use of the new TTC; and 3) income derived from certain permitted investments of 1) and 2) (together "Pledged Revenues").

To meet certain funding requirements in contracts and cash flow requirements in accordance with its current construction schedule for Phase 1 of the TTC in Fiscal Year 2015 and 2016, the TJPA must secure interim financing (the "Bridge Financing"). Phase 1 of the TTC includes construction of the new five-story multi-modal transit center. TJPA conducted a competitive procurement process and has been working with Goldman Sachs to negotiate a Credit Agreement and related documents to secure a direct loan to cover the immediate funding needs of the TJPA. The Bridge Financing will take the form of a direct loan in the amount of $171 million. The Bridge Financing will have a 4-year term, with lump sum repayment in full at maturity, and prepayment, in part or in full, at the option of TJPA at any point during the term that is at least one year after closing of the Bridge Financing. TJPA intends and is required by the terms of the Bridge Financing to repay the Bridge Financing in full with proceeds of the TIFIA Loan.

In addition to the security of Pledged Revenues and because the net tax increment portion of the Pledged Revenues is not yet mature, Goldman Sachs requires additional security as further protection in the unlikely event that TJPA is unable to draw down on the TIFIA Loan to repay the Bridge Financing in full within the four year term. This additional security includes: 1) a deed of trust on Parcel F (a site proposed for primarily commercial office development) that is expected to be reconveyed when the Bridge Financing is redeemed, unless the parcel is sold prior to that point in which case the proceeds of such sale would be deposited into a lockbox as collateral until the Bridge Financing is repaid in full; and 2) a recordable negative covenant on Parcels O, O', and O" (three parcels that will be subdivided into three developable rectangular blocks: Block 4, a mixed-income residential development; Block 3 a public open space; and Block 2 an affordable residential development), specifying if Block 4 portion of the parcels is sold before the Bridge Financing is redeemed, TJPA will deposit the proceeds from the sale into the lockbox as collateral until the Bridge Financing is repaid in full. The map included as **Attachment 1** shows the location of the real estate collateral. This additional security requires an amendment to the Option Agreement and a Subordination Agreement related to Parcel F and Parcels O, O', and O'' while the Bridge Financing is outstanding.

Under Redevelopment Dissolution Law, the Option Agreement is an "enforceable obligation" that the Office of Community Investment and Infrastructure, as the Successor Agency to the Former Agency ("OCII") has assumed and is required to implement. Any amendment to the Option Agreement requires the review and approval of the Oversight Board and the California Department of Finance to determine if the modification is "in the best interests of the taxing entities." i.e. the City, School District, Community College, and BART. Cal. Health & Safety

Code § 34181 (f). In addition, the Board of Supervisors, acting as the legislative body for the Successor Agency, must approve the amendment to the Option Agreement because it retained the authority to review material changes to OCII's obligations to provide affordable housing, Ordinance No. 215-12 (Oct. 4, 2012).

Under the proposed Option Agreement Amendment, OCII would retain the right to exercise its option even while the Bridge Financing is outstanding so long as the lien release amount is deposited into a lockbox as collateral until the loan is repaid in full. Authorizing the subordinations requires an amendment to the Option Agreement, which is included as **Attachment 2.** The subordinations will be released when the Bridge Loan is repaid. The subordination will specify that any party (or its successor) that acquires Block 4 through any Bridge Loan deed of trust is subject to the Block 4 affordable housing requirement required by OCII to meet the overall affordable housing percentage mandated for the Transbay Redevelopment Plan Area.

Staff recommends conditionally authorizing the Executive Director to execute a First Amendment to the Option Agreement for the Purchase and Sale of Real Property to subordinate its interest in Transbay Parcel F and Block 4 (portions of Parcels O, O', and O"), subject to the approval of the Board of Supervisors of the City and County of San Francisco, the Oversight Board of the City and County of San Francisco and the California Department of Finance.

BACKGROUND

In 2005, the City approved, by Ordinance No. 124-05, the Redevelopment Plan for the Transbay Redevelopment Project. The Redevelopment Project provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land in the City's financial district, including the new Transbay Transit Center and 10 acres of publicly owned property most of which was formerly owned by the State. The 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.

<u>Transbay Enforceable Obligations and Ancillary Agreements</u>

The State, acting by and through its Department of Transportation ("Caltrans"), the City, and the TJPA entered into that certain Cooperative Agreement, dated as of July 11, 2003 (the "Cooperative Agreement"), pursuant to which the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions. Consistent with and in furtherance of the Cooperative Agreement, the Redevelopment Plan, and the Redevelopment Project, the City, TJPA, and the former Redevelopment Agency of the City and County of San Francisco ("Former Agency") entered into that certain Transbay Development Project Tax

Increment and Sales Pledge Agreement (the "Pledge Agreement"), dated as of January 31, 2008, pursuant to which the parties provided for the irrevocable pledge of certain non-housing tax increment generated from the former State-owned parcels, as defined in the Pledge Agreement , to TJPA for construction and design of the Transbay Terminal Project. Also in furtherance of the Redevelopment Plan and Redevelopment Project, the TJPA and the Former Agency entered into that certain Implementation Agreement, dated as of January 20, 2005 (the "Implementation Agreement"), which requires, among other things, the Former Agency to prepare and sell the Agency Transfer Parcels to third parties, provide the TJPA with the Gross Sales Proceeds to help pay for the cost of constructing the Transbay Terminal Project, and execute all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation.

On January 31, 2008, the City, TJPA, and the Former Agency entered into the Option Agreement for the Purchase and Sale of Real Property ("Option Agreement"). The Option Agreement implemented the Former Agency's obligations under various agreements and state law related to the development and funding of the Transbay Terminal Project, public infrastructure and affordable housing; it also granted the Former Agency the option to take title to certain currently or formerly State-owned parcels (the "Agency Transfer Parcels"), subject to certain limitations.

Under Assembly Bill No. 812 (Chapter 99, Statutes of 2003, codified at California Public Resources Code section 5027.1) ("AB 812"), 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 35 percent of all dwelling units developed within the project area shall be available at an affordable housing cost to low- and moderate-income households. Specifically, 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 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 (the "Transbay Affordable Housing Obligation"). The Redevelopment Plan provided for the financing of the Transbay Terminal Project and thus triggered the Transbay Affordable Housing Obligation, which is explicitly incorporated into Section 4.9.2 of the Redevelopment Plan and into binding agreements.

The Redevelopment Plan established, under California Health and Safety Code section 33333, the land use controls for the Project Area, required development to conform to those land use controls, and divided the Project Area into two land use zones: Zone One and Zone Two. The Redevelopment Plan required the Former Agency to exercise land use authority in Zone One and authorized it to delegate to the San Francisco Planning Department (the "Planning Department") the land use controls of the San Francisco Planning Code (the "Planning Code"), as amended from time to time, in Zone Two.

To implement the Transbay Affordable Housing Obligation and other objectives for the Project Area, the Redevelopment Plan provides, among other things, that "[s]ubject to the terms of owner participation agreements [with the Agency], owners shall be required to provide for infrastructure, affordable housing and open space in conjunction with the development of improvements in the Project Area" (Section 4.2.5); "all real property sold, leased or conveyed by the Agency, as well as all property subject to owner participation agreements, is subject to the provisions of [the

Redevelopment Plan]" (Section 4.7.3); and "[l]eases, deeds, contracts, agreements and declarations of restrictions of the Agency may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes or any other provision necessary to carry out [the Redevelopment Plan]" (Section 4.7.3). The Former Agency recorded the Transbay Redevelopment Project Area Declaration of Restrictions against all property in the Project Area (the "Declaration of Restrictions").

TJPA demolished the former Transbay Terminal and ramps, and is constructing a modern publicly-owned multimodal terminal on the same site. The TTC is a public benefit and a central part of the Transbay Project. The TTC will help to revitalize the Project Area and stimulate private investment by serving as a center of transit, retail, entertainment, and community facilities for the new transit oriented neighborhood. TJPA's demolition of the former Transbay Terminal building and ramps has provided additional vacant land for development consistent with the Redevelopment Plan and Transbay Project.

Dissolution

On February 1, 2012, the Former Agency was dissolved pursuant to Assembly Bill No. IX 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, 53 Cal. 4th 231 (2011). On June 27, 2012, AB 26 was amended in part by Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (AB 26 and AB 1484 are codified in sections 33500 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the "Redevelopment Dissolution Law.").

Under Redevelopment Dissolution Law, the Office of Community Investment and Infrastructure ("OCII") was designated as the successor agency to receive the non-affordable housing assets of the Former Agency, and OCII succeeded, by operation of law, to the Former Agency's rights, title and interest in the Option Agreement, without the necessity for any assignment or other action on the part of any party. On October 2, 2012, the City's Board of Supervisors adopted Ordinance 215-12 (File No. 120898) acknowledging that the OCII is a separate legal entity, creating a commission for OCII (the "Commission") as a policy body of OCII and delegating to the Commission the authority to act in place of the former San Francisco Redevelopment Agency Commission to implement certain projects, but retaining authority to approve material changes in the affordable housing obligations of OCII. As required by Redevelopment Dissolution Law, the City also established the oversight board of OCII (the "Oversight Board").

On April 15, 2013, the California Department of Finance ("DOF") determined finally and conclusively that the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future OCII expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, OCII Executive Director (April 15, 2012[sic]) (the "Transbay Final and Conclusive Enforceable Obligations").

California Health and Safety Code Section 34177 provides that OCII, as a successor agency, is required to (1) perform obligations required pursuant to any enforceable obligation, and (2) continue to oversee development of properties until the contracted work has been completed.

The Option Agreement is an obligation that existed prior to June 28, 2011. Under the Option Agreement, Section 2.1, OCII holds an exclusive and irrevocable option to purchase (the "Option") the Agency Transfer Parcels, including, among others, Parcel F (Block 3721, Lot 015A) ("Parcel F") and Parcel O (portion of Block 3739, Lot 008), Parcel O' (portion of Block 3739, Lot 008), and Parcel O" (portion of Block 3739, Lot 008) (together the northern about one-third of Parcels O, O' and O" are referred to as "Block 4"), San Francisco, CA, on the terms and conditions of the Option Agreement. One of the conditions of the Option Agreement prohibits OCII from selling an Agency Transfer Parcel to a third party unless the sales price is equal to or greater than the Baseline Valuation for that Agency Transfer Parcel. Baseline Valuation is the minimum price for an Agency Transfer Parcel and is determined by an appraisal that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value (the "Baseline Valuation").

Parcel F and Block 4

The planned uses of Parcel F and Block 4 by third parties must comply with the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the "Development Controls"), which govern private projects in Zone One and require, among other things, the parcelization and assembly of land into blocks and lots that are suitable for development. Under the Redevelopment Project, OCII plans to aggregate and prepare Parcel F for disposition and development as primarily office use, and aggregate and prepare Block 4 for disposition and development as residential use, but these planned uses are subject to change. The current projections of housing units that will be built in the Project Area, assuming Block 4's projected capacity of 550 units, indicate that up to 45 percent of the units on Block 4 (or 248 units), will need to be affordable units to comply with the Transbay Affordable Housing Obligation.

Under the Option Agreement, Section 4.1(a), OCII may first exercise the Option only after the certain conditions have been satisfied, including, relative to Parcels F, O, O', and O", only after such parcels are not being used by TJPA for actual construction or demolition of bus ramps and siting of the temporary terminal facility, which are part of the TTC project. TJPA is currently using Parcel F for actual construction of the new bus ramps and train box, and Parcels O, O', and O" for the temporary terminal facility. TJPA currently expects its use of Parcel F and Parcels O, O', and O" for these purposes will end in late 2016 and late 2017, respectively, although the schedule is subject to change. Thus, TJPA and OCII do not expect that the conditions precedent to OCII's ability to exercise its rights under the Option Agreement will be satisfied until late 2016 and late 2017. OCII's ability to complete its work relative to Parcel F and Block 4 are facilitated by TJPA's timely completion of construction of Phase 1 of the TTC project. The property tax revenues that are expected to flow to the taxing entities upon completion of development of Parcel F and Block 4, as well as the other Agency Transfer Parcels, will be facilitated by TJPA's timely completion of construction of the TTC project.

Bridge Loan

In January 2010, TJPA entered into a $171.0 million TIFIA Loan to fund a portion of the Transbay Project costs. As of the effective date of this First Amendment, TJPA has not yet satisfied all of the disbursement conditions under the TIFIA Loan. As a result, TJPA cannot currently requisition proceeds under the TIFIA Loan. The disbursement conditions of the TIFIA Loan include among other things: the requirement that TJPA receive gross land sales proceeds of $429 million from the State-owned parcels (or allocation of alternative funding acceptable to TIFIA); and evidence that the Project is fully funded. TJPA expects to meet the condition regarding gross land sales proceeds during FY 2016 (late calendar year 2015), following the sale of Transbay Blocks 5, 8, and 9. A key component of meeting the full Project funding condition is bond proceeds associated with the Mello-Roos Community Facilities District ("CFD") currently being formed. The TIFIA Loan recognizes the formation of the CFD and its corresponding authorization to issue bonds as evidence of full funding for Phase 1, even before the bonds themselves are sold. The City anticipates the CFD to be formed in January 2015 after the Board of Supervisors takes its final action.

To obtain interim cash flow funding necessary to certify construction contracts and make construction disbursements for the Transbay Project, pending TJPA's satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA intends to close a bridge loan in the amount of up to $171.0 million (the "Bridge Loan") arranged by Goldman Sachs Bank USA ("Goldman") pursuant to that certain Credit Agreement, among TJPA, as borrower, the lenders party thereto (the "Lenders"), and Goldman, as administrative agent and collateral agent for the Lenders (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the "Credit Agreement").

As a condition to funding the Bridge Loan under the Credit Agreement, the Lenders require, among other things, the following actions to occur in order to protect and create certain security interests for the Bridge Loan:

1. Amendment to Option Agreement.

Under the Option Agreement and related documents, OCII, as the successor to the Redevelopment Agency, has an option to acquire from the TJPA or the City certain property previously owned by Caltrans, including Parcel F and Parcels O, O', and O". OCII is charged with preparing and selling the properties to third parties, depositing the gross sales proceeds into a trust account (which proceeds are dedicated to help paying for the cost of constructing the TTC project), and executing all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation. The Option Agreement recognizes that the gross sales proceeds for the former state-owned parcels are based on consideration of Transbay Redevelopment plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value. The preservation of this approach to valuation of Parcel O, O', and O"/Block 4, in particular, is important to ensure that OCII is able to fulfill its Transbay Affordable Housing Obligation.

The First Amendment to the Option Agreement expressly permits OCII to subordinate its option and TJPA to offer a first priority interest in Parcel F and Parcels O, O', and O" to the lenders during the term of the Bridge Loan. Further, the Amendment expressly permits OCII to exercise its option as to Parcel F and Block 4 while the Bridge Loan is outstanding provided that, among other things, the gross sales proceeds from OCII's sale of Parcel F or Block 4 are equal to or greater than a lien release price and the proceeds are deposited into a lockbox to secure repayment of the Bridge Loan.

The First Amendment expressly recognizes that in the event of a foreclosure or other sale of Parcel F or Block 4, the purchaser and the property shall continue to be subject to all of the conditions, restrictions and covenants provided in OCII's final and conclusive enforceable obligations and OCII retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on the properties.

Because the Option Agreement is one of the master enforceable obligation documents for the Transbay Project, any amendment is subject to the review and approval of the Oversight Board and DOF under Redevelopment Dissolution Law. In addition, because the First Amendment is changing terms related to Block 4, which includes a significant amount of affordable housing, the Board of Supervisors, acting as the Successor Agency, must review and approve the First Amendment since it is a material change to an affordable housing obligation, pursuant to the City Ordinance 215-12. Since the City is also a party to the Option Agreement, the Board of Supervisors will also be approving the First Amendment on behalf of the City.

The Oversight Board will be required to make findings that amendments to enforceable obligations are in the best interests of the taxing entities. Due to the importance of the TTC project to the City and the other taxing entities, staff believes the First Amendment to the Option Agreement is in the taxing entities' best interest as it facilitates the timely completion of construction of Phase 1 of the TTC project, which is a significant public benefit that will help to revitalize the Project Area and stimulate private investment, and is a central part of the Transbay Project.

2. Subordinations of OCII's options in Parcel F and Parcels O, O', and O."

OCII will subordinate its option to acquire Parcel F, and Parcels O, O', and O" to the Bridge Loan. OCII will retain the right to exercise its option for Parcel F or Block 4 while the Bridge Loan is outstanding provided that, among other things, the gross sales proceeds from OCII's sale of those properties are equal to or greater than a lien release price and the proceeds are deposited into a lockbox to secure repayment of the Bridge Loan. It is anticipated that Parcel F would be offered for sale first since the Temporary Terminal will occupy Block 4 for several years. Should Parcel F be sold for an amount greater than the lien release price, then the lien release price for Block 4 would be commensurately reduced. OCII will still be able to exercise its option to acquire for Block 2 or Block 3 during the Bridge Loan term without paying a lien release price as long as Parcels O, O', and O" have been subdivided into Blocks 2, 3 and 4. The subordination will specify that any party (or its successor) that acquires Block 4 through any Bridge Loan deed of trust is subject to the Block 4 affordable housing requirement required by OCII to meet the overall affordable housing percentage mandated for the Transbay Redevelopment Plan Area. The subordinations will be released when the Bridge Loan is repaid.

3. Deed of Trust for Parcel F.

The TJPA will mortgage its interest in Parcel F in favor of the Bridge Loan lenders. The TJPA will reserve the subgrade portion of the property that will be occupied by the train box and associated infrastructure from the conveyance. The deed will be reconveyed when the Bridge Loan is repaid.

4. Agreement Not to Encumber for Parcels O, O', and O."

The TJPA will agree not to sell or encumber Parcels O, O', and O" while the Bridge Loan is outstanding unless, among other things, the gross sales proceeds from any sale of Block 4 are equal to or greater than a lien release price, and the proceeds from any portion of Parcels O, O', and O" are deposited into a lockbox to secure repayment of the Bridge Loan. If the Bridge Loan is still outstanding 18 months after closing the Bridge Loan, the TJPA will take measures to subdivide the property and convert the agreement not to encumber against Parcels O, O', and O" into a deed of trust on just Block 4. OCII will retain the right to subdivide Parcels O, O', and O" into Block 2, 3, and 4, and exercise its option to acquire the Block 2 and 3 without meeting any lien release price. The agreement will be released when the Bridge Loan is repaid or a deed of trust is recorded against Block 4. Blocks 2 or 3 can be acquired by OCII during term of loan for any price and that gross sales proceeds (if any) from Blocks 2 or 3 must be deposited into Lockbox Account as security for loan repayment.

5. Caltrans' Release of its Power of Termination.

The Cooperative Agreement between the State, the City, and the TJPA provides the terms under which the State agreed to transfer State-owned parcels to the City and the TJPA for construction of the Transbay Project and redevelopment of the Transbay Project Area. The State retained a power of termination over the transferred State-owned parcels, which permits the State to retake the parcels if certain conditions are not achieved, primarily relating to timing for completion of the project and the improper transfer of any gross sales proceeds generated from the State-owned parcels. The State is required to release its power of termination over a parcel upon completion of the new Transit Center or deposit of certain funds into the trust account, which funds are dedicated to paying capital costs for the project.

Caltrans will release its power of termination over Parcel F and Block 4 upon the TJPA's deposit of the proceeds of the Bridge Loan into the trust account, less amounts necessary to reserve for capitalized interest, hedging costs, and transaction fees with respect to the Bridge Loan and up to $9.9 million to pay for construction management related soft costs for the Transbay Project. As a party to the Cooperative Agreement, the City will need to consent to Caltrans' early release of its power of termination.

Bridge Loan Repayment

The Bridge Loan has a four year term and may be prepaid by TJPA without penalty or premium after the first anniversary of the Bridge Loan. TJPA expects to draw on the TIFIA Loan, and prepay in full the Bridge Loan in late 2015, although the schedule is subject to change. In order to achieve that outcome, the CFD must have been formed and the TJPA will need to achieve the $429 million gross sales proceeds threshold. Upon the full repayment of the Bridge Loan, the Deed of Trust and the Negative Pledge will each be released when TJPA Pursuant to the Credit Agreement and the Subordinations. Thus, TJPA expects that OCII's Subordinations would be released in late 2015, one to two years before OCII would otherwise be eligible to exercise its Option to acquire Parcels F, O, O', and O", although the schedule is subject to change.

In the event that OCII is eligible to exercise its Option to acquire Parcel F or Parcels O, O', and O" before the TJPA repays the Bridge Loan in full, the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations expressly acknowledge the requirement for OCII to fulfill the Transbay Affordable Housing Obligation and authorize OCII to exercise the Option relative to Parcel F or Parcels O, O', and O", as the case may be, in accordance with the Option Agreement, and require the release of the Deed of Trust or the Negative Pledge, as applicable, provided that (1) TJPA is not in default under the Credit Agreement or the other Bridge Loan documents, (2) the Gross Sales Proceeds from the OCII's sale of Parcel F or Parcels O, O', and O", as the case may be, to a third party are equal to or greater than a lien release price that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value, (3) those Gross Sales Proceeds are deposited into the Lockbox Account, and (4) certain other conditions are satisfied.

In the event of a foreclosure sale or a sale pursuant to any power of sale contained in or under any mortgage, deed of trust, or other encumbrance upon Parcel F and Parcels O, O', and O", the purchaser or purchasers and their successors and assigns, and the property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions, and OCII retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on Parcel F and Parcels O, O', and O". Pursuant to the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations, the Lenders expressly acknowledge that the terms and conditions of the Transbay Final and Conclusive Enforceable Obligations, including the Transbay Affordable Housing Obligation, apply to and pass with Parcel F, and Parcels O, O', and O", and apply to and bind the successors in interest of any owner of Parcel F and Parcels O, O', and O"; and that Parcels F, and Parcels O, O', and O" shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions.

In order to (1) permit TJPA to offer the Real Estate Collateral as security for the Bridge Loan, and (2) authorize TJPA and OCII to subordinate to the Deed of Trust and the Negative Pledge the Option Agreement and OCII's rights and privileges under the Option relative to the Real Estate Collateral, all for the purpose of facilitating timely completion of construction of Phase 1 of the Transbay Project, and the significant public and tax benefits that derive therefrom under the Redevelopment Project, the City, TJPA, and OCII wish to enter into this First Amendment.

Recommendation

This First Amendment will: (1) facilitate timely completion of construction of Phase 1 of the TTC project, which is a public benefit, will help to revitalize the Project Area and stimulate private investment, and is a central part of the Transbay Project, (2) preserve OCII's authority to implement the disposition and development of Block 4 and Parcel F , (3) provide assurances that OCII will be able to fulfill the Transbay Affordable Housing Obligation, and (4) generate timely receipt of property tax revenues by the taxing entities.

NEXT STEPS

In late November, the Board of Supervisors will consider the transaction on behalf of the City as a party to the Option Agreement and also acting as the Successor Agency with regard to the material change to the affordable housing terms on Block 4. In early December, the Oversight Board will consider the transaction. The matter will then be immediately referred to the Department of Finance, which will have five business days to determine if it will review the Oversight Board action or not. If DOF elects to review the matter, they may take up to 60 days to complete their review. The TJPA expects to close the Bridge Loan financing soon after final DOF approval.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorizing the Executive Director to approve the First Amendment to the Option Agreement 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 Bohee
Executive Director

Attachment 1: Map
Attachment 2: First Amendment to the Option Agreement
Attachment 3: Subordination of Option Agreement for Parcel F
Attachment 4: Subordination of Option Agreement for Parcel O