

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

**RESOLUTION NO. 94-2014
Adopted November 18, 2014**

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN EXCLUSIVE NEGOTIATION AGREEMENT WITH BLOCK 1 PROPERTY HOLDER, L.P., FOR A PROPOSED RESIDENTIAL PROJECT ON BLOCK 1 (BLOCK 3740, LOTS 027 AND 029-031) LOCATED ON FOLSOM STREET BETWEEN MAIN AND SPEAR STREETS; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (“Project Area”); and,

WHEREAS, The Former Agency, acting through the Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”), approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (“Redevelopment Plan”). Said Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (“Official Records”); and,

WHEREAS, On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (“Project Area Declaration of Restrictions”); and,

WHEREAS, In 2003, the Transbay Joint Powers Authority (“TJPA”), the City and County of San Francisco (the “City”), and the State of California (the “State”), acting by and through its Department of Transportation, entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 (“AB 812”), which required that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households. In 2006, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“Implementation Agreement”) which requires the Successor Agency, as successor in interest to the Former Agency, to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations; 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”), , which was 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”). (Together, AB 26 and AB 1484 are referred to as “Redevelopment Dissolution Law,” which is codified at California Health and Safety Code Sections 34161 – 34191.5); and,

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets (other than specified housing assets) and obligations were transferred to the Successor Agency, commonly known as the Office of Community Investment and Infrastructure (“OCII”). 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”), which is the City’s designated Successor Housing Agency under Health and Safety Code Section 34176. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect; and,

WHEREAS, Under the Redevelopment Dissolution Law, with approval from a successor agency’s oversight board and the State Department of Finance (“DOF”), a successor agency may continue to implement “enforceable obligations”—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies’ activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement, and AB 812 meet the definition of “enforceable obligations” under the Redevelopment Dissolution Law; and,

WHEREAS AB 1484 authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts, such as the Exclusive Negotiation Agreement (“ENA”) for Block 1 as considered by this Resolution, 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.”); and,

WHEREAS, On April 15, 2013, DOF issued a Final and Conclusive Determination for the Tax Increment Sales Proceeds Pledge Agreement, the Implementation Agreement, and the Affordable Housing Program funded by Low- and Moderate-Income Housing Funds (“LMIHF”) for the Project Area; and,

WHEREAS, Block 1 is a 53,622-square-foot parcel on Folsom Street between Main and Spear Streets, two blocks south and two blocks east of the future Transbay Transit Center. The site consists of four separate parcels, Assessor’s Block 3740, Lots 27, 29, 30, and 31, collectively referred to as Block 1. Lot 27 is a 33,782 square foot parcel owned by OCII (“OCII Parcel”). Lots 29, 30, and 31 are owned by Block 1 Property Holder L.P., an affiliate of Tishman Speyer (the “Developer”), and together total 19,840 square feet (“Private Parcels”); and,

WHEREAS, Block 1 is within Zone One of the Project Area, and therefore must adhere to the Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”) and its parcelization of blocks in Zone One, which requires that the OCII Parcel be aggregated with the adjacent Private Parcels for suitable development on Block 1; and,

WHEREAS, Prior to dissolution, the Former Agency acquired the OCII Parcel with LMIHF, with the purpose of developing affordable housing needed to fulfill the affordable housing requirements of AB 812. After acquiring the Private Parcels, the Developer approached OCII about a possible purchase of the OCII Parcel. The market-rate sale of the OCII Parcel to the Developer will help fund the OCII Affordable Project, as described below; and,

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

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

WHEREAS, Pursuant to the Development Controls, the development potential for Block 1

consists of a 300-foot tower on the east side of the parcel, two podium buildings between 65 and 85 feet tall on the south and west sides of the Block, and townhouses bordering Clementina Street to the north, all surrounding a 3,600 square foot open space parcel, and above a shared underground parking facility. To comply with AB 812, the two podium buildings will be developed as 100 percent affordable housing and 15 to 20 percent of the tower units including the attached townhouses will be inclusionary affordable units, depending on the project alternative as described below; and,

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

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

WHEREAS, OCII and the Developer now wish to enter into the ENA to set forth the terms and conditions upon which OCII and the Developer will enter into negotiations for the disposition of the OCII Parcel and development of the Project pursuant to a Disposition and Development Agreement. Key terms include: (1) payment to OCII of the fair market value of the OCII Parcel, which is \$14,740,000 with a 300-foot residential tower and \$19,180,000 with a 400-foot residential tower; (2) payment of a \$500,000 ENA Deposit by the Developer for OCII’s staff and legal

costs; (3) a maximum OCII subsidy of \$275,000 per unit for the affordable units located in the podium buildings; (4) sale of the affordable units pursuant to OCII's Limited Equity Program, in order to ensure the units will be permanently affordable; (5) creation of a homeowners association for the affordable units that is separate from the market-rate homeowners association in order to preserve the long-term affordability of the units; and (6) compliance with OCII policies, including the Small Business Enterprise Program, and insurance requirements; and,

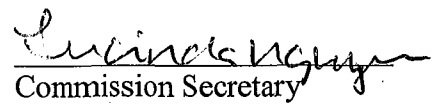
WHEREAS, The ENA also contemplates a sole source sale of the OCII Parcel to the Developer. OCII finds that (1) the proposed project, as an integrated development, will have a greater value than if the individual components were developed separately, (2) the proposed project satisfies the Development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

WHEREAS, Authorizing the Executive Director to execute an ENA is an administrative activity that is not a "project" as defined by California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5). This action allows for negotiations between OCII and the Developer and will not independently result in a physical change in the environment and is not subject to environmental review under CEQA. Subsequent actions are required to enter into a Disposition and Development Agreement and to provide approvals for the future development of the project; now, therefore, be it

RESOLVED, The Commission on Community Investment and Infrastructure hereby authorizes the Executive Director to execute an Exclusive Negotiation Agreement for the negotiation of a Disposition and Development Agreement for Block 1 located on Folsom Street between Main and Spear Streets, with Block 1 Property Holder, L.P., substantially in the form of the Agreement on file with the Secretary of this Commission, together with such changes thereto as the Executive Director reasonably determines, in consultation with the City Attorney's Office, are: (i) in OCII's best interest and (ii) do not materially increase OCII's obligations or liabilities; and, be it further

RESOLVED, The Commission on Community Investment and Infrastructure authorizes the Executive Director, in consultation with the City Attorney's Office, 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 November 18, 2014.


Commission Secretary