

Commission on Community Investment and Infrastructure

RESOLUTION NO. 35-2013

**Adopted July 16, 2013**

RESOLUTION AUTHORIZING A GRANT AGREEMENT WITH THE MEXICAN MUSEUM, A CALIFORNIA NON-PROFIT CORPORATION, IN AN AMOUNT NOT TO EXCEED \$100,000, FOR PREDEVELOPMENT WORK FOR A NEW MUSEUM ASSOCIATED WITH A NEW MIXED-USE PROJECT ON A SITE THAT INCLUDES 706 MISSION STREET (ASSESSOR'S BLOCK 3706, LOT 93) AND SUCCESSOR AGENCY DISPOSITION PARCEL CB-1-MM (ASSESSOR'S BLOCK 3706, PORTION OF LOT 277), PURSUANT TO A MAY 4, 2010 AMENDED AND RESTATED EXCLUSIVE NEGOTIATIONS AGREEMENT WITH THE DEVELOPER OF THE MIXED-USE PROJECT

WHEREAS, On July 15, 2008, by Resolution No. 77-2008, the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") entered into an exclusive negotiation agreement with 706 Mission Co. LLC (the "Developer") to develop a mixed-use project that spans the Developer-owned property at 706 Mission Street and an adjacent Former Agency-owned site long-slated for development of the future home of The Mexican Museum. The proposed project includes: (a) a 43-story residential tower of approximately 510 feet in height, (b) a museum space of approximately 48,000 net square feet at the base of the tower fronting Jessie Square (the "Museum Space"), (c) a rehabilitated historically important Aronson Building, (d) approximately 5,000 square feet of additional retail and/or cultural uses on the ground floor of the Aronson Building, and (e) the purchase of the Jessie Square Garage for both project-related uses and the public (collectively, the "Project"); and

WHEREAS, On May 4, 2010, by Resolution No. 47-2010, the Former Agency authorized an Amended and Restated Exclusive Negotiation Agreement with the Developer (the "Developer ENA") to develop the Project; and,

WHEREAS, Pursuant to the Developer ENA, the Developer is required to pay to the Former Agency a total of Three Hundred Thousand Dollars (\$300,000), made in three (3) payments (the "Developer Payments"), each in the sum of One Hundred Thousand Dollars (\$100,000), in consideration of the Former Agency's grant of the exclusive right to Developer to negotiate transactions documents relative to the Project. The Developer ENA allows the Former Agency to use the Payments "for any legal purpose in support of the Project, including without limitation providing assistance to the Mexican Museum"; 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"), codified in relevant part in California's Health and Safety Code Sections 34161 – 34168 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”). (Together, AB 26 and AB 1484 are referred to as the “Redevelopment Dissolution Law.”); and

WHEREAS, Under the Redevelopment Dissolution Law, with approval from a successor agency’s oversight board and the State of California’s Department of Finance, 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 Developer ENA meets the definition of “enforceable obligations” under the Redevelopment Dissolution Law; and

WHEREAS, The Office of Community Investment and Infrastructure (“OCII”), as successor agency to the Former Agency, received the third and final Developer Payment in June 2012. Consistent with the terms of the Developer ENA, OCII staff is recommending approval of a grant agreement with the Museum to disburse the third Developer Payment (the “Grant Funds”) for the purpose of funding predevelopment work related to the new museum space in the Project (the “Grant Agreement”). The Grant Funds are in addition to the \$10.6 million in Former Agency funding authorized under a 2010 grant agreement between the Former Agency and the Museum to cover a substantial portion of the costs for predevelopment, planning, and interior improvements related to the new museum space; 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, such as this Grant Agreement, 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.”). This Grant Agreement, providing funding for the Museum’s ongoing predevelopment and planning work, is part of the Successor Agency’s compliance with the pre-existing enforceable obligation under the Developer ENA; and

WHEREAS, The Museum proposes to use the third Developer Payment of \$100,000 for the following purposes: (1) to augment the salary and pay for recruitment costs for a Director of Development (i.e., fundraising); (2) to augment professional fees and recruitment expenses associated with one or more fundraising consultant(s); (3) to conduct a professional direct mail membership solicitation to targeted prospects;

(4) to upgrade office infrastructure providing for essential telephone, communications and equipment; (5) to acquire fund development software and technical support for stewardship and record keeping; (6) to engage additional legal counsel necessary for the pre-development/construction phase of the Project; and (7) to engage public relations services for continued heightened awareness of the Museum and its capital campaign; and

WHEREAS, OCII staff is recommending approval of the Grant Agreement in order to memorialize the disbursement procedures and requirements that apply to the Grant Funds and facilitate the Museum's progress toward the development of museum space associated with the Project; and

WHEREAS, The Grant Agreement will provide funding for planning and predevelopment work for the future construction of the Museum Space and thus is exempt from the California Environmental Quality Act ("CEQA") on the following grounds: 1) under Section 15262 of the State CEQA Guidelines, the Grant Agreement is a planning study for possible future actions that have not yet been approved; 2) under Section 15061 (b) (3) of the CEQA Guidelines, the Grant Agreement does not have the potential for causing a significant effect on the environment because it merely provides funding for pre-development planning activities; and 3) under Section 15268 of the CEQA Guidelines, the Grant Agreement is a ministerial act that implements the Developer ENA, which requires OCII to use the Developer Payments for any legal purpose in support of the Project, including without limitation, providing assistance to The Mexican Museum; now therefore, be it

RESOLVED, The Commission on Community Investment and Infrastructure hereby authorizes the Executive Director to enter into a Grant Agreement, substantially in the form approved by the City Attorney acting as counsel to OCII, with The Mexican Museum, a California nonprofit, in an amount not to exceed \$100,000, for predevelopment work for a new museum associated with a new mixed-use project on a site that includes 706 Mission Street (Assessor's Block 3706, Lot 93) and Agency disposition parcel CB-1-MM (Assessor's Block 3706, portion of Lot 277) in the former Yerba Buena Center Redevelopment Project Area; provided, however, that the Grant Agreement shall be amended to require that the Mexican Museum report to OCII on a semi-annual basis starting on January 1, 2014 on its progress in raising funds for its sustainability and capital campaign and on its collaboration with other City agencies; and furthermore authorizes the Executive Director to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of July 16, 2013.

  
Commission Secretary