

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 05-2015
Adopted March 23, 2015

**AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AN ASSIGNMENT
AND ASSUMPTION AGREEMENT TO ASSIGN THE NOVEMBER 16, 1994
COMMUNITY DEVELOPMENT INVESTMENT FUND LOAN AGREEMENT, IN THE
AMOUNT OF \$250,000, WITH MISSION NEIGHBORHOOD CENTERS, INC. TO THE
CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE
MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT,
CONSISTENT WITH THE LOAN AGREEMENT AND THE CALIFORNIA
DEPARTMENT OF FINANCE'S DIRECTION ON RECONSIDERATION**

- WHEREAS, On September 27, 1994, the Commission of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the "SFRA"), approved, by Resolution No. 195-94, a Community Development Investment Fund Loan Agreement with Mission Neighborhood Centers, Inc., a non-profit public benefit corporation ("MNC" or "Borrower") in the amount of \$250,000 (the "Loan") for acquisition of the properties at 3001-21 24th Street and 3-5 Balmy Alley for economic development purposes (the "Loan Agreement"); and,
- WHEREAS, On February 1, 2012, the SFRA was dissolved pursuant to California Assembly Bill 26 ("AB 26") and the California Supreme Court's decision and order in the case entitled California Redevelopment Association et al. v. Ana Matosantos, and the successor entity to the SFRA became the City and County of San Francisco (the "City"). Four months later, in June 2012, the California State Legislature passed a follow-up bill to AB 26, commonly called Assembly Bill 1484 ("AB 1484") (AB 26 and AB 1484, as amended from time to time, are referred to as the "Redevelopment Dissolution Law"); and,
- WHEREAS, Under AB 1484, the successor entity to the SFRA became a public entity that is separate from the City (the "Successor Agency"). The Successor Agency is also known as the Office of Community Investment and Infrastructure, or OCII. Under Redevelopment Dissolution Law, the Successor Agency assumed all of the SFRA's enforceable obligations. The Successor Agency is charged with winding-down these enforceable obligations and disposing of all real property, pursuant to Redevelopment Dissolution Law, and subject to review by an oversight board and the California Department of Finance ("DOF"), which is the lead implementing agency under Redevelopment Dissolution Law. As a result of these legislative acts, the Successor Agency is a party to the Loan Agreement; and,

WHEREAS, On October 2, 2012, the Board of Supervisors, in its capacity as the legislative body of the Successor Agency, adopted Ordinance No. 215-12, acknowledging that OCII is a separate legal entity as a result of AB 1484, creating the Successor Agency Commission, also known as the Community Investment and Infrastructure Commission (the "Commission"), as the policy body of OCII, and delegating to the Commission the authority to act in place of the SFRA to among other matters, implement, modify, enforce and complete the SFRA's enforceable obligations, approval all contracts and actions related to the assets transferred to or retained by the Commission, including, without limitation, the authority to exercise land use, development, and design approval, consistent with the applicable enforceable obligations, and take any actions that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency; and,

WHEREAS, The Loan was made in accordance with the SFRA's Community Development Investment Fund for the 24th Street Revitalization Program, which required that the acquisition provide economic benefits to the community in terms of (1) permanent job creation for low- and moderate-income persons and (2) provision of neighborhood-serving retail or regional attraction to support existing neighborhood businesses. SFRA Commission Resolution No. 221-92 (Oct. 20, 1992) described the source of funding for the 24th Street Revitalization Program as non-Community Development Block Grant, non-tax increment funds from the Yerba Buena Center Redevelopment Project Area; and,

WHEREAS, In November 1994, MNC acquired 3001-21 24th Street and 3-5 Balmy Alley, but has been unable to perform all of its obligations under the Loan Agreement because the Balmy Alley property could not be converted to commercial use due to its existing residential zoning and the 24th Street property required expensive structural upgrades. The Former Redevelopment Agency worked with MNC to address both of these impediments, but ultimately MNC was unable to perform all of its obligations under the Loan Agreement. The Loan Agreement is still in effect and is secured by a deed of trust on 3001-21 24th Street and 3-5 Balmy Alley. The Loan Agreement provides for forgiveness upon maturity of the Loan if MNC has met all of the terms and conditions of the Loan Agreement; and,

WHEREAS, In February 2014, MNC made a request to OCII to forgive the Loan so that it could reinvest the funds in an affordable housing project on its 24th Street property in partnership with Mercy Housing and the Mayor's Office of Housing and Community Development ("MOHCD"). OCII determined that it could not forgive the Loan for the following reasons: (1) MNC has not met its obligations under the Loan Agreement to use the properties for economic development purposes, for the reasons state above; and (2) forgiveness of the loan would not comply with Redevelopment Dissolution Law, which directs successor agencies to "[e]nforce all former redevelopment agency rights for the benefit of taxing entities, including but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment agency" (Cal. Health & Safety Code

§ 34177 (f)), and make findings that the forgiveness of the loan “would be in the best interests of the taxing entities” (Cal. Health & Safety Code § 34181 (e)); and,

WHEREAS, In support of MNC’s efforts to develop the affordable housing project, OCII worked with MNC and MOHCD to develop a transaction that is consistent with Redevelopment Dissolution Law. As part of the proposed transaction, MNC agreed that it would sell its Balmy Alley property and contribute a total of \$250,000 of the sales proceeds, which represents the Loan, to the affordable housing project. OCII in turn would assign the Loan Agreement to MOHCD, at its request; and,

WHEREAS, At its meeting of November 12, 2014, the Oversight Board approved Resolution No. 11-2014, which conditionally authorized OCII to enter into an assignment and assumption agreement with MOHCD, so that the Loan Agreement could be used for affordable housing purposes; and,

WHEREAS, Consistent with Redevelopment Dissolution Law, the Oversight’s Board’s approval action was sent to the California Department of Finance (“DOF”) for review. On February 17, 2015, DOF preliminarily notified OCII that it could not approve the action as currently structured for affordable housing purposes due to certain restrictions in Sections 4.1 and 13.3 of the Loan Agreement, but indicated that assignment of the Loan Agreement to MOHCD was authorized pursuant to Section 13.3 of the Agreement. DOF also indicated that assignment of the Loan Agreement to MOHCD would be considered a transfer of assets and, as such, would require an additional approval from the Oversight Board. (See Exhibit A, Email, K. Wyatt, DOF Analyst, to T. Bohee, OCII Executive Director.); and,

WHEREAS, On February 20, 2015, DOF formally notified OCII that it had completed its review, and reaffirmed that it was unable to approve the resolution because the assignment of the loan for affordable housing purposes was inconsistent with Section 13.3 of the Loan Agreement. DOF remanded, under Cal. Health & Safety Code § 34179 (h), the resolution back to the Oversight Board for reconsideration and advised it to revisit its options in connection with the Loan Agreement. (See Exhibit B, Letter, J. Howard, DOF Program Budget Manager, to S. Oerth, OCII Deputy Director.); and,

WHEREAS, OCII determined it has very limited options in connection with the Loan Agreement. As previously noted, OCII determined that it is unable to forgive the loan because MNC was unable to comply with all of its obligations under the Loan Agreement. Additionally, given the constraints of Redevelopment Dissolution Law, OCII is unable to amend or repurpose the Loan Agreement. Therefore, OCII has determined that its options are: (1) to attempt to collect on the Loan from MNC, or (2) to assign the Loan Agreement to MOHCD as is, without any stipulations, consistent with Section 13.3 of the Loan Agreement and the direction received from DOF; and,

WHEREAS, Given OCII's limited authority and resources, as well as the size of the Loan, it would not be in the best interest of the taxing entities for OCII to attempt to collect on the Loan. Therefore, OCII is recommending that the Loan Agreement be assigned to MOHCD, as is, pursuant to the Assignment and Assumption Agreement attached as Exhibit C; and

WHEREAS, Because MOHCD is the City's administrator of community and economic development programs and loans, it is better suited than OCII to administer the Loan Agreement. Additionally, consistent with Redevelopment Dissolution Law, assignment of the Loan Agreement to MOHCD will help wind down the Former Redevelopment Agency's activities as required by Redevelopment Dissolution Law by transferring responsibility for administering the Loan to MOHCD; and,

WHEREAS, Assignment of the Loan Agreement also requires the review and approval of the Oversight Board and the California Department of Finance for the following reasons: (1) to determine compliance with Redevelopment Dissolution Law's standard that modifications of existing agreements are in the best interest of the taxing entities (Cal. Health & Safety Code § 34181 (e), and (2) to review the assignment to MOHCD as an asset transfer (Cal. Health & Safety Code § 34177 (e)); and,

WHEREAS, Authorizing the Assignment and Assumption Agreement, which will assign the Loan Agreement to MOHCD, will not independently result in a physical change in the environment. This action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3); now, therefore, be it

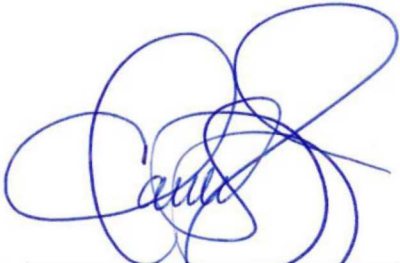
RESOLVED, The Oversight Board, hereby finds, for the reasons stated above, that the Assignment and Assumption Agreement would be in the best interests of the taxing entities, and authorizes the Successor Agency to enter into an Assignment and Assumption Agreement, substantially in the form attached hereto, with the City and County of San Francisco, acting by and through the Mayor's Office of Housing and Community Development, to assign the Loan Agreement with Mission Neighborhood Centers to the City, consistent with Redevelopment Dissolution Law, and conditioned upon review and approval by the California Department of Finance, and furthermore authorizes the Successor Agency to enter into any and all ancillary documents and take any additional actions necessary to consummate the transaction.

Exhibit A: Email, K. Wyatt, DOF Analyst, to T. Bohee, OCII Executive Director, February 27, 2015

Exhibit B: Letter, J. Howard, DOF Program Budget Manager, to S. Oerth, OCII Deputy Director, February 27, 2015

Exhibit C: Draft Assignment and Assumption Agreement

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of March 23, 2015.



Oversight Board Secretary

From: Wyatt, Kelly <Kelly.Wyatt@dof.ca.gov>
Sent: Tuesday, February 17, 2015 4:27 PM
To: Bohee, Tiffany (CII)
Cc: Morales, James (CII); Maher, Christine (CII); Stacy, Zachary
Subject: San Francisco OB Requirements for Assignment of MNC Loan

Tiffany,

As always, it was nice to talk with you Wednesday. Pursuant to section 13.3 of the loan agreement, we do believe the assignment to the Mayor's Office of Housing and Community Development (MOHCD) is authorized. However, due to the restrictions detailed in section 4.1 and 13.3 of the loan agreement, we do not believe we can approve Oversight Board (OB) 11-2014 action as currently presented, and Finance will issue a determination letter for that action in the near future.

The question came up of whether we thought an assignment, as authorized by section 13.3 of the loan agreement, would need to go back to the OB since the Agency would only be taking actions that are already authorized within the existing enforceable obligation. In general, we feel all actions should be considered by the OB, but from a legal interpretation, we were not ready to commit to an answer during Wednesday's meeting.

After further discussions, assigning the loan agreement to MOHCD would constitute an asset transfer since the \$250,000 receivable would flow to MOHCD. Therefore, HSC section 34177 (e), which states Successor Agencies are required to dispose of assets as directed by the OB, would require an additional approval from the OB.

Should you have any questions in regard to the above, please don't hesitate to contact me.

Regards,

Kelly Wyatt

Analyst, Local Government Unit
Department of Finance
(916) 445-1546, extension 3728



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. ■ GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 20, 2015

Ms. Sally Oerth, Deputy Director
City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Dear Ms. Oerth:

Subject: Objection of Oversight Board Action

The City and County of San Francisco Successor Agency (Agency) notified the California Department of Finance (Finance) of its November 12, 2014 Oversight Board (OB) resolution on November 12, 2014. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency's OB Resolution No. 11-2014 related to the Agency entering into an Assignment and Assumption Agreement in connection with a 1994 Loan Agreement with Mission Neighborhood Center (Borrower), is not approved. It is our understanding the Agency intends the ultimate use of the property to be affordable housing, which is not authorized pursuant to Article 13.3 of the Loan Agreement.

As authorized by HSC section 34179 (h), Finance is returning your OB action to the board for reconsideration. The Agency and the OB should revisit its options in connection with the outstanding loan receivable.

Please direct inquiries to Wendy Griffe, Supervisor, or Kelly Wyatt, Lead Analyst at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Program Budget Manager

cc: Ms. Tiffany Bohee, Executive Director, City and County of San Francisco
Mr. James Whitaker, Property Tax Manager, San Francisco County
Ms. Elizabeth Gonzalez, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office
California State Controller's Office

**ASSIGNMENT AND ASSUMPTION OF
COMMUNITY DEVELOPMENT INVESTMENT FUND LOAN AGREEMENT**

This Assignment and Assumption of the Community Development Investment Fund Loan Agreement (the “Assignment and Assumption Agreement”) is dated as of this ___ day of _____, 2015, by and between the Successor Agency to the Redevelopment Agency of City and County of San Francisco, a public body organized and existing under the laws of the State of California (the “Successor Agency” or “Assignor”), and the City and County of San Francisco (the “City”), a municipal corporation, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD” or “Assignee”).

WITNESSETH

- A. On September 27, 1994, the Commission of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the “SFRA”), approved by Resolution No. 195-94, a Community Development Investment Fund Loan Agreement with Mission Neighborhood Centers, Inc., a non-profit public benefit corporation (“MNC” or “Borrower”) in the amount of \$250,000 (the “Loan”) for acquisition of the properties at 3001-21 24th Street and 3-5 Balmy Alley for economic development purposes (the “Loan Agreement”). The Loan Agreement was executed by Borrower and SFRA on November 16, 1994. The Loan was also evidenced by a Promissory Note executed by Borrower dated November 16, 1994 (the “Note”), and secured by a deed of trust on 3001-21 24th Street and 3-5 Balmy Alley dated November 16, 1994 and recorded on November 28, 1994 in the San Francisco County official records as Instrument No. 94-F717567-00 (the “Deed of Trust”, and together with the Loan Agreement and Note, the “Loan Documents”); and
- B. On February 1, 2012, the SFRA was dissolved pursuant to California Assembly Bill 26 (“AB 26”) and the California Supreme Court’s decision and order in the case entitled California Redevelopment Association et al. v. Ana Matosantos, and the successor entity to the SFRA became the City and County of San Francisco (the “City”). Four months later, in June 2012, the California State Legislature passed a follow-up bill to AB 26, commonly called Assembly Bill 1484 (“AB 1484”) (together with AB 26, “Redevelopment Dissolution Law”); and

- C. Under AB 1484, the successor entity to the SFRA became a public entity that is separate from the City (the “Successor Agency”). The Successor Agency is also known as the Office of Community Investment and Infrastructure, or OCII. Under Redevelopment Dissolution Law, the Successor Agency assumed all of the SFRA’s enforceable obligations. The Successor Agency is charged with winding-down these enforceable obligations and disposing of all real property, pursuant to Redevelopment Dissolution Law, and subject to review by an oversight board and the California Department of Finance (“DOF”), which is the lead implementing agency under Redevelopment Dissolution Law. As a result of these legislative acts, the Successor Agency is a party to the Loan Agreement; and
- D. The Loan was made in accordance with the SFRA’s Community Development Investment Fund for the 24th Street Revitalization Program, which required that the acquisition provide economic benefits to the community in terms of (1) permanent job creation for low- and moderate-income persons and (2) provision of neighborhood-serving retail or regional attraction to support existing neighborhood businesses. SFRA Resolution No. 221-92 (Oct. 20, 1992) described the source of funding for the 24th Street Revitalization Program as non-Community Development Block Grant, non-tax increment funds from the Yerba Buena Center Redevelopment Project Area; and
- E. In November 1994, MNC acquired 3001-21 24th Street and 3-5 Balmy Alley, but has been unable to perform all of its obligations under the Loan Agreement because the Balmy Alley property could not be converted to commercial use due to its existing residential zoning and the 24th Street property required expensive structural upgrades. The Loan Documents are still in effect. The Loan Agreement provides for forgiveness upon maturity of the Loan if MNC has met all of the terms and conditions of the Loan Agreement; and
- F. In February 2014, MNC made a request to OCII to forgive the Loan so that it could reinvest the funds in an affordable housing project on its 24th Street property in partnership with Mercy Housing and MOHCD. OCII determined that it could not forgive the Loan for the following reasons: (1) MNC has not been able to meet all of its obligations under the Loan Documents to use the properties for economic development purposes for the reasons described in Recital E above; and (2) forgiveness of the loan would not comply with Redevelopment Dissolution Law, which directs successor agencies to “[e]nforce all former redevelopment agency rights for the benefit of taxing entities, including but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment

agency” (Cal. Health & Safety Code § 34177 (f)), and make findings that the forgiveness of the loan “would be in the best interests of the taxing entities” (Cal. Health & Safety Code § 34181 (e)); and

- G. Given the constraints of Redevelopment Dissolution Law, OCII determined that the only other options in connection with the Loan Agreement were: (1) to attempt to collect on the Loan from MNC or (2) to assign the Loan Agreement to MOHCD as is, without any stipulations, consistent with Section 13.3 of the Loan Agreement.
- H. On March 23, 2015, the Oversight Board, consistent with its authority under AB 26, by Resolution No. ____-2015, determined (1) that it was not in the best interest of the taxing entities for OCII, given its limited authority and resources, as well as the size of the Loan, to attempt to collect on the Loan, and (2) assignment to MOHCD, as the City’s administrator of community and economic development programs, would wind down the Former Agency’s activities by transferring responsibility for administering the Loan to MOHCD; and
- I. Under Redevelopment Dissolution Law, DOF must receive notice and information about all Oversight Board actions, which do not take effect until DOF has either not requested review within five days of the notice or requested review and approved the action within 40 days of its review request. On March 23, 2015, the Successor Agency provided a copy of Oversight Board Resolution No. ____-2015 to DOF, which _____; and
- J. Assignor and Assignee now wish to enter into the Assignment and Assumption Agreement to transfer all right, title, interest, obligations, duties, and responsibilities of the Assignor under the Loan Documents to Assignee.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

- 1. Assignment. The Assignor does hereby irrevocably and unconditionally assign, transfer, set over and convey unto the Assignee all of the Assignor's right, title, privilege and interest in and to the Loan Documents; and
- 2. Assumption. The Assignee does hereby assume all right, title, interest, obligations, duties, and responsibilities of the Assignor under the Loan Documents; and

3. Further Instruments. The Assignor and the Assignee hereby agree that they will, from time to time, execute and deliver such further instruments as may be reasonably required to implement and effectuate the purpose of the Assignment and Assumption Agreement; and
4. Successors and Assigns. This Assignment and Assumption Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Assignor and Assignee; and
5. Authority. Assignor and Assignee each represent and warrant to the other party that it is fully empowered and authorized to execute and deliver this Assignment and Assumption Agreement, and the individual signing the Assignment and Assumption Agreement on behalf of such party represents and warrants to the other party that he or she is full empowered and authorized to do so; and
6. Counterparts. This Assignment and Assumption Agreement may be executed in any number of counterparts, all of which, together, shall constitute the original agreement; and
7. Governing Law. This Assignment and Assumption Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Assignment and Assumption Agreement shall be litigated in courts located with the County of San Francisco, State of California; and
8. Entire Agreement. This Assignment and Assumption Agreement contains the entire agreement between the parties with respect to the subject matter of this Assignment and Assumption Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this Assignment and Assumption Agreement. No prior drafts of this Assignment and Assumption Agreement or changes from those drafts to the executed version of this Assignment and Assumption Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Assignment and Assumption Agreement; and

This Assignment and Assumption Agreement is effective on either (a) the date on which the Oversight Board approves it if DOF does not request to review it within the five-day statutory

review period provided under Redevelopment Dissolution Law, or (b) the date on which DOF approves this Assignment and Assumption Agreement if DOF does request to review it within the five-day statutory review period provided under Redevelopment Dissolution Law.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement on the date indicated above.

ASSIGNOR:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California

By: _____
Tiffany Bohee
Executive Director

APPROVED AS TO FORM:

By: _____
James B. Morales
General Counsel

Authorized by Oversight Board Resolution No. ____-2015, adopted March 23, 2015.

ASSIGNEE:

City and County of San Francisco, a municipal corporation

By: _____
Olson Lee
Director
Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Evan Gross
Deputy City Attorney