

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 24-2019

AUTHORIZING A FOURTH GRANT DISBURSEMENT AGREEMENT WITH THE MEXICAN MUSEUM, A CALIFORNIA NON-PROFIT CORPORATION, AND 706 MISSION STREET CO LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN AN AMOUNT NOT TO EXCEED \$1,000,000, FOR TENANT IMPROVEMENTS FOR A NEW MUSEUM FACILITY AT THE 706 MISSION STREET PROJECT, PURSUANT TO A DECEMBER 14, 2010 GRANT AGREEMENT BETWEEN THE MUSEUM AND THE SUCCESSOR AGENCY; FORMER YERBA BUENA CENTER PROJECT AREA

WHEREAS, On December 14, 2010, the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") approved, by Resolution No. 157-2010, a Grant Agreement (the "Grant Agreement") between the Former Agency and the Mexican Museum ("Museum") to authorize over a ten year period \$10,566,000 of Former Agency funding to cover a substantial portion of the costs for predevelopment, planning, and tenant improvement work, including exterior signage, related to museum space (the "Museum Space") in a proposed mixed-use project on a site at 706 Mission Street (Assessor's Block 3706, Lot 93) and Former Agency disposition parcel CB-1-MM (Assessor's Block 3706, portion of Lot 277) (the "Project") located in the now-expired Yerba Buena Center Redevelopment Project Area; and,

WHEREAS, The funding sources for the Grant Agreement included a substantial amount of tax-exempt bond proceeds requiring compliance with federal tax laws. Accordingly, the Grant Agreement requires the Museum to use the funds for "redevelopment activities" defined in the Community Redevelopment Law (Sections 33678(b), 33020, and 33021 of the California Health and Safety Code), and for purposes consistent with federal tax laws; and,

WHEREAS, Article 3 of the Grant Agreement requires disbursement of the Grant Funds to the Museum, under certain terms and conditions, in accordance with one or more grant disbursement agreements. The Former Agency approved, by Resolution No. 5-2012, a First Grant Disbursement Agreement on January 17, 2012, which authorized the expenditure of an amount not to exceed \$750,000 by the Museum for the purpose of funding Predevelopment Activities related to the Museum's sustainable operational and fiscal participation in developing the Museum Space associated with the Project; and,

WHEREAS, On February 1, 2012, state law dissolved redevelopment agencies and transferred certain of the former agencies' assets and obligations to successor agencies. Cal. Health & Safety Code Section 34170 et seq. (the "Redevelopment Dissolution Law"). As a result, the Former Agency ceased to exist and the Successor Agency, commonly known as the Office of Community Investment and Infrastructure ("OCII"), assumed certain obligations of the Former Agency, including those "enforceable obligations" that were entered into prior to the suspension of redevelopment agencies' activities; and,

WHEREAS, San Francisco Ordinance No. 215-12 (Oct. 4, 2012) implemented Redevelopment Dissolution Law by establishing, among other things, the Successor Agency Commission, also known as the Commission on Community Investment and Infrastructure (the "CCII" or "Commission") and delegating to it the authority to take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency; and,

- WHEREAS, The Grant Agreement meets the definition of “enforceable obligations” under the Redevelopment Dissolution Law and is listed as item no. 151 on the Recognized Obligations Payment Schedule approved by the Oversight Board and the California Department of Finance; and,
- WHEREAS, On April 16, 2013, the Successor Agency approved, by Resolution No. 11-2013, a Second Grant Disbursement Agreement in the amount not to exceed \$1,000,000. On July 15, 2014, the Successor Agency approved, by Resolution No. 58-2014, a Third Grant Disbursement Agreement in the amount not to exceed \$1,030,881. These agreement provided funding for ongoing predevelopment and planning work of the Museum; and,
- WHEREAS, On May 23, 2013, the San Francisco Planning Commission approved the Project. Case No. 2008.1084EHKXRTZ. Under Section 429 of the Planning Code, the Project required a public art component valued at an amount equal to one percent of the hard construction costs for the Project (the “Public Art Fee”); and,
- WHEREAS, The Successor Agency approved that certain Agreement for Purchase and Sale of Real Estate dated as of July 16, 2013, by and among the Successor Agency, as transferor, Developer, as transferee, and the Museum, as third party beneficiary, recorded on April 17, 2014 as Instrument No. 2014-J864850 in Official Records of the City and County of San Francisco (as may be amended from time to time, the "PSA"), which, among other obligations, establishes the Museum’s obligation to design and construct tenant improvements and other improvements related to the Museum Space. Subsequently, the Oversight Board to the Successor Agency and the California State Department of Finance approved the PSA; and,
- WHEREAS, In March 2015, the City and County of San Francisco and Museum entered into a 66 year lease, with an option extension of an additional 33 years, for the Museum Space at a base rent of \$1.00 for the term of the lease; provided, however, that the Museum would be responsible for, among other things, any taxes and common area maintenance payments (“Lease”); and,
- WHEREAS, On January 12, 2017, the Planning Department reported that the Project intended to apply the required Public Art Fee, which was estimated at \$2,100,000, toward the design, fabrication, and installation of a façade screen, a unique artwork designed by artist Jan Hendrix, for placement on the exterior walls of the Project related to the Museum Space (“Façade Screen”). S.F. Planning Dept., Memo to the Planning Commission, Case No. 2008.1084EHKXRTZ (Jan. 5, 2017). The estimated cost of the façade screen exceeded \$3 million; and,
- WHEREAS, The Museum and the Developer have jointly requested that OCII authorize a fourth disbursement of \$1,000,000 of the Grant Funds for the purpose of supplementing the Developer’s Public Art Fee and completing design, fabrication and installation of the Façade Screen; and,
- WHEREAS, The proposed use of funds for the Façade Screen is consistent with the Grant Agreement’s requirements that funds pay for the costs of the Museum Space’s Interior Improvements, which are defined as including “tenant improvements and related exterior improvements;” Grant Agreement at page 2 (Recital I); and,

- WHEREAS, OCII staff recommend approval of the Developer and Museum’s funding request and of a new Grant Disbursement Agreement , which includes a budget for the use of the funds, the roles and responsibilities of each party, mechanisms for the disbursement of funds, default provisions, compliance with OCII policies, and a form of funding request, in an amount not to exceed \$1,000,000 (the “Fourth Grant Disbursement Agreement”), which amount would be paid on behalf of the Museum to the Developer pursuant to the terms of the Fourth Grant Disbursement Agreement; 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 Fourth Grant Disbursement Agreement, if a pre-existing enforceable obligation requires that action. The Fourth Grant Disbursement Agreement, providing funding for the Museum’s tenant improvements, is part of the Successor Agency’s compliance with its pre-existing enforceable obligation under the Grant Agreement, which has been approved by the California Department of Finance on OCII’s Recognized Obligations Payment Schedules; and,
- WHEREAS, In originally approving the Project, the San Francisco Planning Commission, as lead agency, certified, by Motion No. 18829 (March 21, 2013), the 706 Mission Street Final Environmental Impact Report (“FEIR”) under the California Environmental Quality Act (“CEQA”) and concluded that the Project would result in significant and unavoidable impacts related to the topics of transportation and shadow. Impacts for all other topics analyzed in the FEIR were determined to be less than significant or less than significant with mitigation; and,
- WHEREAS, In approving the PSA, OCII, as a responsible agency under CEQA, determined that the PSA implemented the Project and adopted environmental findings related to the FEIR. OCII Resolution 32-2013 (July 16, 2013); and,
- WHEREAS, The Planning Department has determined that the Façade Screen constitutes a design modification to the Project, but would not result in any new environmental impacts that were not already analyzed in the FEIR or in any impacts that would be more severe than those identified in the FEIR. Note to File, M. Li, Environmental Planning Division, Re: 706 Mission Street – The Mexican Museum and Residential Tower Project Design Modifications (Aug. 29, 2019); and,
- WHEREAS, OCII hereby finds that approval of the Fourth Grant Disbursement Agreement is an action in furtherance of the implementation of the Project (“Implementing Action”) and has reviewed the Implementing Action for purposes of compliance with CEQA; and,
- WHEREAS, OCII is making the necessary findings for the Implementing Action contemplated herein, considered and reviewed the FEIR, and has made documents related to the Implementing Action and FEIR available for review by the Commission and the public, and these files are part of the record before the Commission; and,
- WHEREAS, The FEIR findings adopted in accordance with CEQA by the Commission in Resolution No. 32-2013, dated July 16, 2013, reflected the independent judgment and analysis of OCII, were and remain adequate, accurate and objective and were prepared and adopted following the procedures required by CEQA, and the findings are incorporated herein by reference as applicable to the Implementing Action; and now therefore, be it

RESOLVED That the Commission finds and determines that the Fourth Grant Disbursement Agreement is an Implementing Action within the scope of the Project analyzed in the FEIR and requires no further environmental review beyond the FEIR pursuant to the State CEQA Guidelines Section 15180, 15162 and 15163 for the following reasons:

- (1) the Implementing Action is consistent with the Project analyzed in the FEIR and does not require major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,
- (2) no substantial changes have occurred with respect to the circumstances under which the Project analyzed in the FEIR will be undertaken that would require major revisions to the FEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIR; and,
- (3) no new information of substantial importance relating to the development of the Project has become available, which would indicate that (i) the Project will have significant effects not discussed in the FEIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the FEIR, will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the FEIR; and, be it further

RESOLVED, The Commission has reviewed and considered the FEIR and the Planning Department's Note to File (Aug. 29, 2019) and hereby adopts the CEQA findings set forth in Resolution No. 132-2013 and hereby incorporates such findings by reference as though fully set forth in this Resolution; and be it further

RESOLVED, The Commission finds and determines that the Executive Director is authorized to enter into the Fourth Grant Disbursement Agreement, substantially in the form approved by Successor Agency counsel, with the Developer on behalf of the Museum, in an amount not to exceed \$1,000,000 for tenant improvement work for the Museum Space at the Project in the former Yerba Buena Center Redevelopment Project Area and furthermore is authorized 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 September 17, 2019.

Commission Secretary