MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing a Third Grant Disbursement Agreement with The Mexican Museum, a California 501 (c) (3) non-profit charitable corporation (the “Museum”), in an amount not to exceed $1,030,881, for predevelopment work for a new museum facility 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 December 14, 2010 Grant Agreement between the Museum and the Successor Agency.

EXECUTIVE SUMMARY

On December 14, 2010, the former San Francisco Redevelopment Agency (“RDA”) authorized an Exclusive Negotiations Agreement and a Grant Agreement with The Mexican Museum, a California 501 (c) (3) non-profit charitable corporation (the “Museum”), for development of a new museum facility (the “Museum Space”) associated with a planned mixed-use project on a site at Third and Mission Streets in the now-expired Yerba Buena Center Redevelopment Project Area. The Exclusive Negotiations Agreement sets forth the terms and conditions for negotiating the Museum’s participation in the project (the “Museum ENA”). The Grant Agreement requires the disbursement of approximately $10.5 million for predevelopment and planning activities and the design and construction of tenant improvements for the Museum Space. The Grant Agreement stipulates that this funding is to be disbursed through one or more future grant disbursement agreements (“Grant Disbursement Agreements”). As legally binding and enforceable agreements that were executed prior to June 28, 2011, the Museum ENA and Grant Agreement are enforceable obligations that survived the RDA’s dissolution; the Grant Disbursement Agreements are ancillary obligations in compliance with the pre-existing enforceable obligations. Cal. Health & Safety Code §34177.3(a).

To date, two Grant Disbursement Agreements have been authorized totaling $1,750,000. In compliance with these agreements, the Museum has submitted satisfactory evidence of the progress it has made over the last year, as well as appropriate documentation of how the grant funds were used to date (See Exhibit A). In summary, the Museum has (1) strengthened its organizational capacity by further developing its Board of Trustees, creating two new advisory boards, and increasing memberships and fundraising; and (2) made significant progress on predevelopment activities related to the Museum Space, including cataloging and digitizing the majority of the objects in its collection, completing a 50% conceptual design package, completing final drafts of a space programming plan, strategic plan, and business plan for the Museum Space, and substantially negotiating the terms of a lease for the Museum Space.
The Museum has submitted a third disbursement request in the amount of $1,030,881 to continue its predevelopment efforts for the Museum Space (See Exhibit B). In summary, the Museum intends to use the funds to substantially complete its collections assessment, continue building its capital campaign, and further develop the design of the Museum Space. Once the money is expended, the Museum will have exhausted the money available for predevelopment work ($2,780,881). The remaining balance under the Grant Agreement ($7.8 million) is tax-exempt bond proceeds and must be used to construct the Museum's tenant improvements.

Staff has reviewed the Museum's scope of work for the $1,030,881 in predevelopment funding and is recommending approval of a new Grant Disbursement Agreement, which includes a budget for the use of the grant funds, the roles and responsibilities of each party, mechanisms for the disbursement of funds, default provisions, and compliance with OCII policies (the “Third Grant Disbursement Agreement,” see Exhibit B).

Pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”), as amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”) (together, “Redevelopment Dissolution Law”), the Successor Agency, commonly known as the Office of Community Investment and Infrastructure (“OCII”), is able to enter into the Third Grant Disbursement Agreement because it is in compliance with the Grant Agreement, an “enforceable obligation” that existed prior to June 28, 2011.

*Staff recommends authorizing the Third Grant Disbursement Agreement with the Museum.*

**DISCUSSION**

In December 2010, the RDA approved the Grant Agreement with the Museum which required the future disbursement of $10.5 million for the Museum Space. Specifically, the grant funds are to be used for (1) predevelopment activities, which include preparing and implementing the Museum’s predevelopment plan (as approved by the RDA Commission on October 18, 2011), operational and organizational planning, designing the Museum Space, hiring museum staff and other consultants, and securing regulatory approvals; and (2) design/ construction of the Museum’s tenant improvements, which include specialized HVAC/humidity control systems, all fixtures, furniture and equipment, all exhibit spaces, and exterior signage.

The Museum Space is part of a new mixed-use project being developed by an affiliate of Millennium Partners (the “Developer”), at the corner of Third and Mission Streets. The project includes a high-rise residential tower, commercial space, and the Museum Space in the base of the building. The project is being built on land the Developer owns, and land OCII owns, but will convey to the Developer under a Purchase and Sale Agreement approved by the Successor Agency Commission, the Oversight Board, and the Department of Finance. More information about this project can be found later in this memorandum.

On January 17, 2012, the RDA Commission authorized a Grant Disbursement Agreement with the Museum in an amount not to exceed $750,000 for predevelopment planning, staffing and consultant costs related to the Museum Space (the “First Grant Disbursement Agreement”). On
April 15, 2013, the Successor Agency Commission, also known as the Commission on Community Investment and Infrastructure (the “Commission”), authorized a second Grant Disbursement Agreement in an amount not to exceed $1,000,000 for continued predevelopment work (the “Second Grant Disbursement Agreement”).

**Predevelopment Work to Date**

To date, using the $1,750,000 in predevelopment funds disbursed to date, the Museum has made significant progress towards rebuilding its organizational capacity, which is critical for its success in the Museum Space, as detailed in Exhibit A. In particular, the Museum:

- Recruited seven new members of the Board of Trustees;
- Created several new Board Committees, including an Audit Committee, a Governance Committee, an Investment Advisory Committee, and a Communications and Community Engagement Committee;
- Increased the number of stakeholders by establishing an over 100-member International Advisory Board and an Arts and Letters Council;
- Reestablished its member donor base with over 200 memberships;
- Completed financial audits for 2011 and 2012, and initiated an audit for 2013; and
- Received approximately $196,000 of grant support from numerous organizations, including Chronicle Books, Fleishhacker Foundation, Koret Foundation, Millennium Partners, Rockefeller Philanthropy Advisors, Union Bank, and Wells Fargo, and over $130,000 of in-kind donations. In addition, for the 2014 and 2015 calendar years the Museum obtained firm commitments of support in the amount of $300,000, and another $200,000 is pending.

Additionally, the Museum has made significant progress on predevelopment activities related to the Museum Space, as detailed in Exhibit A. In particular, the Museum:

- Reviewed, cataloged and digitized 14,935 of its 15,444 objects as part of its Collections Assessment, Conservation, and Cataloguing Plan;
- Hired a full design team, including Pfau Long Architecture as the architect of record in partnership with A+D Architects, a local minority and women-owned small business, and TEN Arquitectos as the design architect;
- Completed a 50% conceptual design package for the Museum Space;
- Hired and worked with AECOM to complete final drafts of a space programming plan, strategic plan, and business plan for the Museum Space; and
- Substantially finished negotiating the terms of a lease with the City and County of San Francisco (the “City”) for the Museum Space.

**Proposed Third Grant Disbursement Agreement**

The Museum now needs additional funds to continue its predevelopment effort, so it has requested a third disbursement under the Grant Agreement in the amount of $1,030,881. These funds will be used for predevelopment planning, staffing, and consultant needs over the next year. As detailed in Exhibit B, these needs include:
Completion of the final phase of the Collections Assessment, Conservation, and Cataloguing Plan, an assessment of the Museum's collection, which will include records reconciliation and building the online collection;

Implementation and administration of a capital campaign, including the hiring of a Development Director and fundraising counsel;

Completion of the space programming plan, strategic plan, and business plan for the Museum Space; and

Completion of the basic conceptual design and schematic design packages, and initiation of the Design Development ("DD") package.

Under the proposed Third Grant Disbursement Agreement, the funding will be released in two equal payments to the Museum. Before each disbursement, the Museum will be required to provide an accounting of its expenditures of the grant funds in the previous disbursement. The proposed Third Grant Disbursement Agreement also includes: (1) provisions related to compliance with all applicable OCII policies and programs, including policies regarding small business enterprises, construction workforce, and insurance; (2) disbursement mechanisms; (3) default provisions; and (4) a form of funding request.

After the funds are disbursed under the Third Grant Disbursement Agreement, the remaining funds available under the Grant Agreement will be $7.8 million. Because the entirety of this remaining balance is tax-exempt bond proceeds, the use of these funds will be restricted to interior improvements to the Museum Space. The Museum plans to use a combination of funding sources to complete its predevelopment work, including grant funds and private funding that is being raised as part of its capital campaign through naming opportunities for the Museum. Already, there are three commitments for major gifts for naming opportunities including the Nelson A. Rockefeller Gallery and the Diego Rivera Gallery, and a commitment for a major gift by the Jeffries Family. A portion of the funds realized from these commitments will be used to complete the predevelopment work and the balance of the funds will be utilized to complete interior improvements.

Project Update

On July 16, 2013, the Commission approved a Purchase and Sale Agreement with the Developer and the Museum as a third party beneficiary (the "PSA"). Under the PSA, OCII will sell its property, including CB-1-MM (the vacant parcel fronting Jessie Square) and the Jessie Square Garage, for its appraised value of $34.28 million. In addition, the Developer will contribute a number of public benefits, including construction of the core and shell of the Museum Space, payment of a $5 million operating endowment for the Museum, and payment of a 28% affordable housing fee. The Commission also approved Part I of OCII's Long Range Property Management Plan ("Part I PMP"). Under the Part I PMP, OCII proposed selling CB-1-MM and the Jessie Square Garage to the Developer at its appraised value. The PSA and the Part I PMP were approved by the Oversight Board on July 22, 2013, and by the California Department of Finance ("DOF") on October 4, 2013. The City, acting through its various commissions and boards, completed its approval of all project entitlements in July 2013.

Since that time, two lawsuits have been filed against the project:
The first action, filed in August 2013, originally alleged violations of the California Environmental Quality Act, without clearly articulating the basis for such violations (which led to the dismissal of the cause of action). It also alleged zoning code violations against the City and OCII, among other claims. It is now reduced to a single claim that the City violated its own zoning codes related to the height, scale, and design of the residential tower when it approved the Project. This remaining claim is set for trial on October 2, 2014.

The second lawsuit, which was just filed on June 23, 2014, challenges the City’s May 2014 approval of the subdivision maps for the project. OCII was one of the applicants for the subdivision map approvals. The second lawsuit basically re-asserts the same claims as the first lawsuit, but directs those claims against the City’s map approvals and names the Successor Agency as a real party in interest. There are no current hearing dates or deadlines yet in this second action.

Despite the filing of the lawsuits, progress has been made on the project. In addition to the accomplishments of the Museum described above and the approval of the subdivision maps, the Developer has refined its architectural drawings for the residential tower and filed a site permit application. The Developer anticipates closing escrow on CB-1-MM and the Jessie Square Garage in the first quarter of 2015, followed by a groundbreaking in the second quarter of 2015. Construction of the project is projected to take approximately 40 months, with completion in mid-2018.

**Small Business Enterprise (“SBE”) Participation**

The Museum has worked closely with OCII’s contract compliance staff to comply with the Small Business Enterprise (“SBE”) Program. To date, the Museum has achieved 66.4% SBE participation for professional services consultants. Of the total fees, 59.3% of the firms are San Francisco-based SBEs, 43.4% are Minority-owned Business Enterprises (“MBEs”) and 44.5% are Woman-owned Business Enterprises (“WBEs”). During the construction phase of this project, the Museum is committed to meeting OCII’s requirements and goals which include the 50% SBE construction subcontracting participation goal, payment of prevailing wages, and the 50% local construction workforce hiring goal.

**Compliance with Redevelopment Dissolution Law**

The proposed Third Grant Disbursement Agreement also complies with Redevelopment Dissolution Law. With approval from a successor agency’s oversight board and DOF, a successor agency may continue to implement “enforceable obligations” — existing contracts, bonds, leases, etc. — which were executed 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 Grant Agreement meets the definition of “enforceable obligation” under Redevelopment Dissolution Law.
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 Third Grant Disbursement Agreement, if a pre-existing enforceable obligation requires that action. The Grant Agreement requires OCII to “disburse Grant Funds to Grantee.” Section 3.1 (a) of the Grant Agreement. See also Cal. Health & Safety Code § 34167 (f) (providing that Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing covenants and obligations, or . . . perform its obligation.”). The Third Grant Disbursement Agreement, providing funding for the Museum’s ongoing predevelopment and planning work, is part of OCII’s compliance with the pre-existing enforceable obligation under the Grant Agreement.

**California Environmental Quality Act ("CEQA")**

The proposed Third Grant Disbursement Agreement will provide funding for planning and predevelopment work for the future construction of the Museum Space. The Third Grant Disbursement Agreement is exempt from CEQA pursuant to Sections 15061(b)(3) and 15262 of the State CEQA Guidelines.

**STAFF RECOMMENDATION**

Given the Museum’s significant progress to date in strengthening its organizational capacity and undertaking predevelopment activities related to the Museum Space, staff recommends approving the Third Grant Disbursement Agreement.

*(Originated by Christine Maher, Senior Development Specialist)*

Exhibit A: Summary of Accomplishments and Expenditures to Date
Exhibit B: Third Grant Disbursement Agreement