MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing, pursuant to a December 14, 2010 Grant Agreement with The Mexican Museum, a Second Grant Disbursement Agreement with The Mexican Museum, a California non-profit corporation, in an amount not to exceed $1,000,000, 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)

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 non-profit corporation (the "Museum"), for development of a new museum (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 "Project"). 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.

On January 17, 2012, the RDA 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"). Per that agreement, 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 Attachment A).

The Museum has submitted a second disbursement request in the amount of $1.0 million for continued predevelopment planning, staffing and consultant costs related to the Museum Space (See Attachment B). Accordingly, staff of the Office of Community Investment and Infrastructure ("OCI") and the successor agency to the RDA, 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,
compliance with OCII policies, and a form of funding request, in an amount not to exceed $1.0 million (the “Second Grant Disbursement Agreement”).

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 is able to enter into the Second 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 Second Grant Disbursement Agreement with the Museum.*

**DISCUSSION**

In December 2010, the RDA approved the Grant Agreement which required the future disbursement of $10.5 million for the Museum Space. “The Agency shall disburse Grant Funds to Grantee in accordance with one or more Grant Disbursement Agreements…” Section 3.1(a) of Grant Agreement. Specifically, the grant funds are to be used for (1) predevelopment activities, which include preparation and implementation of the Museum’s predevelopment plan (as approved by the RDA Commission on October 18, 2011), operational and organizational planning, design of the Museum Space, hiring museum staff and other consultants, and regulatory approvals; and (2) the design and construction of tenant improvements for the Museum Space, which include specialized HVAC/humidity control systems, all fixtures, furniture and equipment, all exhibit spaces, and exterior signage.¹

The Museum has used the funds disbursed under the First Grant Disbursement Agreement to make significant progress over the past year in preparing for the eventual move to the Museum Space. As further detailed in Attachment A, the Museum used the $750,000 for (1) staffing and other administrative costs related to implementation of the Museum’s predevelopment plan and the Museum’s participation in the Project; (2) the first phase of an assessment of the Museum’s collection in order to determine its spacing and layout needs for the Museum Space; (3) development of a capital campaign; (4) legal services; (5) advice and counsel for preparation of an operating pro-forma; and (6) the hiring of a project manager. As required by the First Grant Disbursement Agreement, the Museum has submitted an accounting of its expenditure of the grant funds. Of the original $750,000 disbursed to the Museum, approximately $173,222 remains unexpended. The Museum intends to use these remaining funds for uses consistent with the terms of the First Grant Disbursement Agreement, including paying the recently hired project manager and hiring a museum planner and program planner.

¹ The California Department of Finance (“DOF”) has recently sought to redistribute some of OCII’s existing tax increment funds to taxing entities. Letter, S. Szalay, DOF, to Tiffany Bohee, OCII (April 1, 2013). Of these funds, approximately $1.7 million was set aside for the Grant Agreement. OCII is vigorously contesting DOF’s proposed action and filed a meet and confer request challenging DOF’s determination.
Proposed Second Grant Disbursement Agreement

The Museum, however, needs additional funds to continue its predevelopment effort, and so it has requested a second disbursement under the Grant Agreement in the amount of $1.0 million. These funds will be used for predevelopment planning, staffing, and consultant needs over the next year. As detailed in Attachment B, these needs include:

- staffing and administrative costs and consultants related to continued implementation of the Museum’s predevelopment plan and the Museum’s participation in the Project;
- the second phase of an assessment of the Museum’s collection in order to determine its spacing and layout needs for the Museum Space;
- implementation and administration of a capital campaign;
- continued legal services; and
- the hiring of an architectural team.

Under the proposed Second Grant Disbursement Agreement, the funding will be released in four 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 Second 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 Second Grant Disbursement Agreement, the remaining funds available under the Grant Agreement will be $8.82 million.

Project Update

On May 4, 2010, the RDA authorized an Amended and Restated Exclusive Negotiation Agreement (the “Developer ENA”) with 706 Mission Co., LLC (the “Developer”) to develop the Project. The Project incorporates both OCII-owned disposition parcel CB-1-MM (the “Museum Site”) and a property at 706 Mission Street owned by the Developer. Significantly, the RDA initially acquired the Museum Site with federal urban renewal funds and subsequently entered into a “Closeout Agreement” (August 11, 1983) with the U.S. Department of Housing and Urban Development and the City governing the site. Under the Closeout Agreement, the RDA (and now OCII) must retain the Museum Site until disposition for purposes consistent with Closeout Agreement. The Project includes (1) a 520-foot residential tower with up to 215 residential units, (2) the Museum Space containing between 35,000 and 40,000 net square feet fronting Jessie Square, (3) a rehabilitated historically important Aaronson Building with seven floors of flex space, (4) additional retail and/or cultural uses on the ground floor of the Aaronson Building, and (5) the purchase of Jessie Square Garage for both project-related uses and public parking. The Developer ENA also includes significant Developer-provided public benefits, including: a 28% affordable housing in-lieu fee; construction of the core and shell of the Museum Space; a $5 million endowment for the Mexican Museum; and annual contributions to the Yerba Buena Gardens common area maintenance account. More information about the Project and its associated public benefits are summarized in Attachment C.
Future Commission Actions

The Environmental Impact Report for the Project was certified by the Planning Commission on March 21, 2013; an appeal of the certification is currently pending before the Board of Supervisors. Upon successful resolution of the appeal, the Historic Preservation Commission, Planning Commission, Recreation and Parks Commission, and ultimately the Board of Supervisors will be asked to consider approval of entitlements for the Project. Additionally, this Commission and the Oversight Board will be asked to consider a purchase and sale agreement with the Developer that complies with the 1983 Closeout Agreement, and enforceable obligation under Redevelopment Dissolution Law, and that will include terms for (1) the sale of Jessie Square Garage and (2) the sale of the Museum Site, including terms for the construction of the Museum Space, a long-term lease with the Mexican Museum for the Museum Space, payment of affordable housing fees, and other public benefits as described above (the “Purchase and Sale Agreement”). It may also include the sale of Jessie Square, which is structurally and legally tied to the Jessie Square Garage, to the Developer as permanent deed-restricted open space.

Staff will be asking the Commission and the Oversight Board to consider the Purchase and Sale Agreement before the OCII’s long-range property management plan (required by Redevelopment Dissolution Law) has been approved by the Oversight Board and the State Department of Finance, on grounds that the dispositions comply with an enforceable obligation (i.e. the Closeout Agreement) and fulfill a governmental purpose. More information about these transactions and their compliance with Redevelopment Dissolution Law will be presented before the Commission and the Oversight Board at a later date.

Compliance with Redevelopment Dissolution Law

The proposed Second Grant Disbursement Agreement also complies with Redevelopment Dissolution Law. With approval from a successor agency’s oversight board and the State Department of Finance, 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 Second Grant Disbursement Agreement, if a pre-existing enforceable obligation requires that action. As noted above, 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 Second 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**

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

*(Originated by Christine Maher, Development Specialist)*

Tiffany Bonee  
Executive Director

Attachment A: Summary of Accomplishments and Expenditures under the First Grant Disbursement Agreement  
Attachment B: Scope of Services and Budget for the Second Grant Disbursement Agreement  
Attachment C: Project Summary