MEMORANDUM

TO: Oversight Board

FROM: Tiffany Bohee
Executive Director

SUBJECT: Conditionally authorizing the Successor Agency to enter into an Assignment and Assumption Agreement with the City and County of San Francisco (the "City"), acting by and through the Mayor's Office of Housing and Community Development, so that a $250,000 loan agreement between Mission Neighborhood Center and the Former Redevelopment Agency may be used for affordable housing purposes, consistent with Redevelopment Dissolution Law.

EXECUTIVE SUMMARY

In 1994, the former San Francisco Redevelopment Agency ("Former Agency") approved a loan agreement with Mission Neighborhood Centers, Inc. ("MNC") that provided a loan in the amount of $250,000 (the "Loan") for the acquisition of 3001-21 24th Street and 3-5 Balmy Alley, a residential property, for on-site economic development purposes (the "Loan Agreement"). The Loan was made in accordance with the Former Agency'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. The source of funding for the 24th Street Revitalization Program was unrestricted general funds from the former Yerba Buena Center Redevelopment Project Area.

After MNC's acquisition of the properties in November 1994, it was discovered that the Balmy Alley property could not be converted to commercial use due to its existing residential zoning, and that the 24th Street property required expensive structural upgrades. As a result, MNC was unable to perform all of its obligations under the Loan Agreement. The Former Agency worked with MNC to address both of these impediments. In 2000, the Former Agency Commission authorized an additional $90,000 to complete the structural upgrades on the 24th Street property, but the upgrades were not made and the funds were never disbursed. In subsequent years, the Former Agency worked with MNC to amend the scope of the Loan Agreement so that the Loan could be used for housing purposes, as explained below, but the amendment was not completed prior to the dissolution of the Former Agency. Currently, the Loan is still in place and is secured by a deed of trust on both properties. The Loan Agreement provides for forgiveness upon maturity of the Loan in November 2014 if MNC has met all of the terms and conditions of the Loan Agreement.

Over the last several years, the Mayor's Office of Housing and Community Development ("MOHCD") has been working with MNC and Mercy Housing California on a proposed 35-unit affordable housing project for low- and very low-income households (the "Affordable Housing
Project”) on MNC’s 24th Street property. The Affordable Housing Project, which will fulfill a critical housing need, has a funding gap and is therefore currently not financially feasible.

In February 2014, MNC made a request to the Office of Community Investment and Infrastructure (“OCII”), as the successor agency to the Former Agency, to forgive the Loan so that it could reinvest the funds in the Affordable Housing Project. Staff determined that OCII could not forgive the Loan for the following reasons: (1) MNC has not met all of its obligations under the Loan Agreement to use the properties for economic development purposes, for the reasons stated 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)).

In support of MNC’s efforts to develop the Affordable Housing Project, OCII has worked with MNC and MOHCD on 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 would in turn assign the Loan Agreement to MOHCD, at its request. The Assignment and Assumption Agreement, attached as Exhibit A, simply transfers all of OCII rights and interests in the Loan Agreement to MOHCD. MOHCD would then work with MNC to revise the term and scope of the Loan Agreement to fit the needs of the Affordable Housing Project.

MOHCD has requested that OCII assign the Loan Agreement to MOHCD for purposes consistent with the development of the Affordable Housing Project. In its request, attached as Exhibit B, MOHCD explains that San Francisco is currently facing a severe affordable housing crisis, with median rents and sales prices among the highest in the state, and that the funding of affordable housing projects in areas like the Mission District, which is encountering significant economic displacement of businesses and residents, is a high priority. The request also outlines Mayor Ed Lee’s goal of creating 30,000 new or rehabilitated units, including 10,000 permanently affordable units.

Consistent with Redevelopment Dissolution Law, assignment of the Loan to MOHCD would help fill the Affordable Housing Project’s funding gap and would thereby benefit the taxing entities through the development of affordable housing, a critical need in San Francisco and in particular the Mission District where the Affordable Housing Project is located, and wind down the Former Agency’s activities by transferring responsibility for developing the Affordable Housing Project and administering the Loan to MOHCD. OCII’s Commission conditionally authorized the Assignment and Assumption Agreement on November 4, 2014 by Resolution No. 90-2014.

Staff recommends authorizing the Successor Agency to enter into the Assignment and Assumption Agreement, subject to the approval of the California Department of Finance.
BACKGROUND

In 1992, the Former Agency approved funding in the amount of $1,000,000 for the 24th Street Revitalization Program for property acquisition, small business loans, and public space improvements on 24th Street in the Mission District. According to Former Agency Resolution No. 221-92, approved on October 20, 1992, the source of funding for this program was “non-CDBG, non-tax increment funds from the Yerba Buena Redevelopment Project.”

The primary component of the 24th Street Revitalization Program was the property acquisition program, known as the Community Development Investment Fund (“CDIF”). Under the CDIF, nonprofit organizations were eligible to purchase, rehabilitate, and reuse vacant or blighted commercial properties on 24th Street to encourage commercial revitalization. Additionally, CDIF included a requirement that the acquisition provide economic benefits to the community in terms of both (1) permanent job creation for low- and moderate-income persons and (2) provision of neighborhood-serving retail or regional attractions to support existing neighborhood businesses.

DISCUSSION

Under the CDIF, the Former Agency approved the Loan Agreement with MNC in 1994 which provide MNC the $250,000 Loan (the “Loan”) to acquire two properties: (1) 3001-21 24th Street, which MNC was leasing for its Head Start program, and (2) 3-5 Balmy Alley (together, the “Site”). MNC, established in 1959, is one of the oldest nonprofits in the Mission District, provides programs that “promote self-sufficiency and community growth for San Francisco’s children, youth, families and seniors.” Currently, MNC operates 9 child development centers and three youth centers, as well as a Health Aging program for seniors.

Under the terms of the Loan Agreement, the Site (with the exception of the space MNC was using for Head Start) was to be used for commercial purposes and leased to for-profit tenants. However, after MNC acquired the Site in November 1994, it was discovered that the Balmy Alley property could not be converted to commercial use due to its existing residential zoning, and that the 24th Street property required expensive structural upgrades. As a result, MNC did not lease the 24th Street property for commercial purposes, and the Balmy Alley site has been leased to market-rate residential tenants. During the term of the Loan Agreement, the Former Agency and MNC worked to address these problems. In 2000, the Former Agency Commission authorized an amendment to the Loan Agreement to provide $90,000 for structural upgrades to the 24th Street property, but the upgrades were not made and the funds were never disbursed. In subsequent years, the Former Agency worked with MNC to amend those provisions of the Loan Agreement that require commercial uses on the Site, but such amendments were not completed prior to the dissolution of the Former Agency.

Currently, the Loan is still in place and is secured by a deed of trust on the Site. The Loan Agreement provides for forgiveness upon maturity of the Loan in November 2014 “if the Borrower fully and faithfully observes the terms and conditions of this Agreement and the Program. . . . If the Agency determines that all the conditions to discharge have been met, the Agency agrees to execute a reconveyance of the Deed of Trust for the Property and the
indebtedness represented by the Note will be deemed paid and satisfied, including all accrued interest.” [emphasis added] MNC Loan, § 2.4 at pp. 4-5.

Request for Forgiveness of the Loan

Non-Compliance with Terms of Loan Agreement

In February 2014, MNC made a request to OCII to forgive the Loan, based on substantial compliance with the Loan Agreement, so that it could reinvest the funds in the Affordable Housing Project. Based on the criteria in the Loan Agreement for forgiveness, staff determined that OCII could not forgive the Loan because:

(1) MNC did not complete the project contemplated under the Loan Agreement, due to the zoning and structural issues identified above;
(2) MNC did not lease and occupy the entirety of the Site in accordance with the Loan Agreement, due to the zoning and structural issues identified above; and
(3) MNC has continued to receive an exemption from property taxes for certain portions of the Site in violation of the Loan Agreement because it was unable to complete the project.

Non-Compliance with Redevelopment Dissolution law

In addition, any request for forgiveness of the Loan must comply with Redevelopment Dissolution Law, which directs, among other things, 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).

OCII, as the Successor Agency, and the Oversight Board would also have to find that forgiving the Loan “would be in the best interests of the taxing entities” and such findings would trigger review by the California Department of Finance (“DOF”). Cal. Health & Safety Code § 34181 (e). In light of the strict standards for forgiveness under Redevelopment Dissolution Law, the requirements in the Loan Agreement for forgiveness, and review of this transaction by DOF, staff does not believe that substantial compliance, as described by MNC, is sufficient for forgiveness of the Loan.

Proposed Assignment and Assumption Agreement

Over the last several years, MNC has been in discussions with MOHCD about the Affordable Housing Project, which will provide 35 affordable housing units for low- and very low-income households on MNC’s 24th Street property. Predevelopment funding for the Senior Housing Project was approved by MOHCD in 2012. Since then, the Affordable Housing Project has faced a number of impediments, including the availability of funding, the ongoing non-compliance with the Loan Agreement, and difficulties related to relocation of the Head Start program off-site. The Affordable Housing Project has a funding gap and is currently not financially feasible.
To support MNC’s efforts to develop the Affordable Housing Project, OCII staff has worked with MNC and MOHCD on a transaction that is consistent with Redevelopment Dissolution Law. Under 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. To effectuate the use of the Loan in the Affordable Housing Project, OCII would in turn assign the Loan Agreement to MOHCD, at its request. The Assignment and Assumption Agreement, attached as Exhibit A, simply transfers all of OCII rights and interests in the Loan Agreement to MOHCD. MOHCD would then work with MNC to revise the term and scope of the Loan Agreement to fit the needs of the Affordable Housing Project. OCII’s Commission conditionally authorized the Assignment and Assumption Agreement on November 4, 2014 by Resolution No. 90-2014.

Compliance with Redevelopment Dissolution Law

MOHCD has requested that OCII assign the Loan Agreement to MOHCD for purposes consistent with the development of the Affordable Housing Project. In its request, attached as Exhibit B, MOHCD explains that San Francisco is currently facing a severe affordable housing crisis, with median rents and sales prices among the highest in the state and that the funding of affordable housing projects in areas like the Mission District, which is encountering significant economic displacement of businesses and residents, is a high priority.

MOHCD also outlines Mayor Ed Lee’s goal of creating 30,000 new or rehabilitated units, including 10,000 permanently affordable units, by 2020 through a variety of mechanisms, including: (1) developing new affordable housing for seniors, transitional aged youth, families, and those requiring supportive services; (2) adding affordable housing tied to market-rate developments; (3) building capacity through land acquisition for future development; and (4) preserving existing affordable housing including at-risk small sites.

Consistent with Redevelopment Dissolution Law, assignment of the Loan to MOHCD would help fill the Affordable Housing Project’s funding gap and would thereby benefit the taxing entities through the development of affordable housing, a critical need in San Francisco and the Mission District in particular, and wind down the Former Agency’s activities by transferring responsibility for administering the Loan to MOHCD.

CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

Authorizing the Assignment and Assumption Agreement, which will assign the Loan Agreement to the City, 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).
STAFF RECOMMENDATION

Staff recommends authorizing the Assignment and Assumption Agreement, subject to the approval of DOF.

(Originated by Christine Maher, Senior Development Specialist)

Tiffany Bønee
Executive Director

Exhibit A: Draft Assignment and Assumption Agreement
Exhibit B: Request from Kate Hartley, Deputy Director of MOHCD, dated October 22, 2014