CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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April 10, 2020

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: April 15, 2020 Budget and Finance Committee Meeting

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Item 1 **File 20-0238** *(Continued from April 8, 2020)*	**Department:** Human Services Agency (HSA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would (1) approve a second modification to the grant between the Human Services Agency (HSA) and the Low Income Investment Fund (LIIF) for administration of the San Francisco Child Care Facilities Fund and provision of technical assistance to child care providers to increase the grant amount by $40,926,045 from $25,377,250 to an amount not to exceed $66,303,295; and (2) extend the term by two years, for a total agreement term of July 1, 2017 through June 30, 2022.

Key Points

- The Low Income Investment Fund (LIIF) launched the Child Care Facilities Fund to provide technical assistance and capital support to early care and education providers in 1998. LIIF is administered by the Office of Early Care and Education (OECE) in the Human Services Agency. The most recent grant between HSA and LIIF to administer the Fund was approved by the Board of Supervisors in September 2017.

Fiscal Impact

- The proposed increase of $40,926,045 in FY 2020-21 and FY 2021-22 is funded by $6 million in excess revenue from the Education Revenue Augmentation Fund (ERAF), Child Care Capital Fund citywide child care development impact fees and IPIC neighborhood area plan child care development impact fees, as well as the General Fund, subject to Board of Supervisors appropriation approval. Funding will also come from CalWORKS, which is federally-funded under the Temporary Assistance for Needy Families (TANF) program.

Policy Consideration

- The Budget Outlook Update, prepared by the Budget and Legislative Analyst's Office, Mayor's Budget Office, and Controller, projects a FY 2019-20 shortfall in the General Fund budget ranging from $167 million to $287 million, increasing to between $528 million to $779 million in FY 2020-21 due to the impacts of the COVID-19 public health emergency.
- Because of the projected shortfall in the General Fund budget, the Budget and Legislative Analyst considers approval of General Fund monies for the proposed contract modification in FY 2020-21 and FY 2021-22, totaling $10,931,494 ($1,210,944 in General Fund, $6,000,000 in excess ERAF funds, and $3,270,550 in contingency funds) to be a policy matter for the Board of Supervisors.

Recommendations

1. Amend the proposed resolution to clarify that the total increase is $40,926,045, from $25,377,250 under the first modification to a not to exceed amount of $66,303,295 under the second modification.
2. Approve the proposed resolution, as amended, for a total amount of $55,371,801, including an increase of $29,994,552 in the proposed second modification. Approval of an additional increase of $10,931,494 in the second modification, to be funded by the General Fund in FY 2020-21 and FY 2021-22 is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

In 1998, the Low Income Investment Fund (LIIF) launched the Child Care Facilities Fund to provide technical assistance and capital support to early care and education providers. LIIF is administered by the Office of Early Care and Education (OECE) in the Human Services Agency.

In September 2017, the Board of Supervisors retroactively approved a grant between HSA and the Low Income Investment Fund (LIIF)[1] for administration of the San Francisco Child Care Facilities Fund and provision of technical assistance to child care providers for the period of July 1, 2017, to June 30, 2020, in the amount of $25,377,250 (File 17-0832). In July 2018, HSA approved a first modification[2] to the grant with LIIF which did not change the grant's not to exceed amount, and therefore, did not require approval from the Board of Supervisors.

Competitive Process

OECE selected LIIF after issuing a competitive request for proposals (RFP) in November 2016 to provide administration services to the San Francisco Child Care Facilities Fund and technical assistance to child care providers. LIIF was the only vendor who submitted a proposal. The RFP selection panel consisted of individuals knowledgeable on the subject matter and included staff from HSA, OECE, and the Office of Community Investment and Infrastructure (OCII). LIIF scored 91 points out of a total of 100. The contract term specified in the RFP is July 1, 2017 to June 30, 2020 with an option to extend for two additional years.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (1) approve a second modification to the grant between the Human Services Agency (HSA) and the Low Income Investment Fund (LIIF) for administration of the San Francisco Child Care Facilities Fund and provision of technical assistance to child care providers to increase the grant amount by $40,926,045 from $25,377,250 to an amount not to exceed $66,303,295; and (2) extend the term by two years, for a total agreement term of July 1, 2017 through June 30, 2022.

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[1] The Low Income Investment Fund is a non-profit Community Development Financial Institution, a designation given by the U.S. Treasury Department to organizations that provide financial services in low-income communities.

[2] The first modification added a subcontract/consultancy service that was not part of the original scope of services. This new service included One-on-One Business Technical Assistance & Coaching, Family Child Care Business Workshop, Technology Trainings, and Financial Coaching workshops, which is being provided by Mission Economic Development Agency for FY 2018-19 and FY 2019-20 only. This service totals $112,331, which is within the contingency amount of $2,307,023 of the original grant.

Under the proposed grant, LIIF will continue to provide services in the following areas:

- Administration of facility grants (pre-development, capital development, start-up, move-in and renovation and repair grants) that increase and maintain licensed early care and education center and family child care capacity by developing new and improving existing facilities;
- Administration of financial assistance for licensed early learning settings such as: development, marketing, underwriting, financial grants and loans, monitoring, and repayment;
- Administration of the Child Development Capital Fund;
- Trainings and technical assistance related to the facilities' development process, including feasibility analysis, capital planning, architecture and design, construction development, permit process, start-up, and facility maintenance;
- Project management to ensure early childhood and education sites maintain a reasonable phase of construction and sign-off in larger, more complex projects;
- Individual technical assistance on capital campaigning, project financing, financial projections and board development;
- Data collection of facility development and expansion for reporting and evaluation purposes;
- Consultation and assistance regarding fiscal and operating issues to licensed early care and education centers serving low/moderate income children.
- Administration of the Interagency Plan Implementation Committee (IPIC)[3] capital new development grants to increase access to early childhood education services within specific neighborhood area plans, and track fund expenditures and total project expenditures by project.

In addition, as part of the proposed second modification, LIIF will conduct a San Francisco Early Care and Education Facility Needs Assessment for FY 2019-20 with a detailed analysis of the citywide supply and demand by neighborhood, with bi-yearly updates.

Contractor Performance

According to the March 2019 Program Monitoring Report, LIIF was on target to achieve or exceed service and outcome objectives with the exception of three, in which HSA staff recommended reducing two service and outcome objectives to match actual performance.[4]

Facility Selection

According to Mr. Graham Dobson, Senior Policy Analyst at OECE, the following priority criteria are used to award new facility funding:

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[3] The Interagency Plan Implementation Committee (IPIC) is coordinated by the San Francisco Planning Department and is responsible for prioritizing projects and funding, and coordinating ongoing planning efforts for designated neighborhood area plans.

[4] According to the Program Monitoring Report, the goal for (1) expansion childcare spaces funded through the Family Child Care Expansion grant should be reduced from 10 to 3, and (2) pre-development and startup grants should be reduced from 15 to 6.

- Facilities located in residential developments wholly or partially funded by the City and County of San Francisco (e.g. HOPE SF communities, alignment with the City's affordable housing plan, and public/private partnerships);
- Applicants serving a greater number of low to moderate income and/or CalWORKS, homeless or at-risk families, and/or enrollment of City-subsidized children;
- Early care and education spaces to be created and/or preserved will serve infants and/or toddlers;
- Early care and education spaces to be created and/or preserved will provide specialized services for children with special physical health or mental health needs;
- Acquisition of property for child care facility serving children under the age of 5;
- Nonprofit, 501(c)3 centers.

Additional funding criteria for facility grants include the following:

- The applicant must increase the number of child care spaces;
- The applicant must demonstrate financial and organizational viability for the child care operations for the term of the grant;
- The applicant must demonstrate that the grant funds are necessary to undertake or complete the project;
- The applicant must provide evidence that it has control of the designated child care site for the term of the grant (e.g., a lease with a minimum remaining term of five years for grants under $100,000; a lease with minimum term of 10 years for grants $100,000 to less than $200,000; a lease with minimum term of 15 years for grants $200,000 to less than $500,000, a lease with minimum term of 20 years for grants $500,000 to less than $700,000, a lease with minimum term of 25 years for grants $700,000 to less than $1,000,000) or a lease with a minimum term of 30 years for grants greater than $1,000,000).

In terms of how provider sites are selected for capital repair, a child care program must demonstrate the following:

- Without the grant funds their program will be closed; or
- Without repairs or equipment to be paid for with grant funds, the health and safety of children in care will be at risk; or
- The grant will be used to increase the accessibility of their program to children, families, or staff with special needs;
- Agency must demonstrate long-term sustainability beyond the term of the grant;
- The facility is located in a neighborhood where there is a demonstrated shortage of licensed early care and education serving low to moderate income families.

FISCAL IMPACT

The proposed resolution would increase the not-to-exceed amount of the contract by $40,926,045, for a total not to exceed $66,303,295. According to Mr. Dobson, changes to the scope of services include the following:

- Alignment and coordination with citywide training and technical assistance systems of support for early childhood education providers to access (e.g. First 5 San Francisco, Children's Council of San Francisco, Wu Yee Children's Services);
- Alignment with First 5 San Francisco on resources for the purpose of facility and open space development and design to improve the quality of classrooms and outdoor play areas;
- Conduct a San Francisco Early Care and Education Facility Needs Assessment for FY 2019-20 with a detailed analysis of the citywide supply and demand by neighborhood, with bi-yearly updates.

Mr. Dobson states that the City has added $9 million of excess revenue from the Education Revenue Augmentation Fund (ERAF)[5] to augment services provided to support child care and early education facility development. The one-time additional funding of $9 million for the LIIF grant is available to be awarded to child care and early education providers for FY 2019-20, FY 2020-21, and FY 2021-22 with $3 million for each fiscal year. According to Mr. Dobson, the two-year contract extension will accommodate the influx of this new facility funding.

In addition to ERAF, funding for the LIIF grant will come from Child Care Capital Fund citywide child care development impact fees and IPIC neighborhood area plan child care development impact fees[6], as well as the General Fund, subject to Board of Supervisors appropriation approval. Funding will also come from CalWORKS, which is federally-funded under the Temporary Assistance for Needy Families (TANF) program. Table 1 below details the sources and uses of funds for the proposed grant from FY 2017-18 through FY 2021-22.

[5] The Educational Revenue Augmentation Fund, or ERAF, is a state program that shifts a portion of local property taxes to public school systems in each county. If county auditors determine the fund has enough money to meet the minimum state funding requirements for its public schools and community colleges, the remaining funds are returned to the local governments.

[6] Impact fees are imposed by San Francisco Planning Code Sections 414 and 414A on new or proposed development projects to generate funding for the additional public infrastructure and facilities needed to serve new development.

Table 1. Sources and Uses of Funds for Proposed LIIF Grant

Sources of Funds	FY 2017-18 (Actual)	FY 2018-19 (Actual)	FY 2019-20 (Budget)	Existing Agreement	FY 2020-21 (Proposed)	FY 2021-22 (Proposed)	Proposed Modification	Total
CalWorks	$427,871	$185,635	$651,051	$1,264,557	$651,051	$651,051	$1,302,102	$2,566,659
Child Care Capital Fund	$1,390,375	$3,193,465	$8,486,530	$13,070,370	$12,561,049	$5,500,000	$18,061,049	$31,131,419
IPIC Fees	$1,262,643	$108,571	$3,199,797	$4,571,011	$5,783,401	$4,848,000	$10,631,401	$15,202,412
General Fund	$322,848	$274,308	$605,472	$1,202,628	$605,472	$605,472	$1,210,944	$2,413,572
ERAF	$0	$0	$3,000,000	$3,000,000	$3,000,000	$3,000,000	$6,000,000	$9,000,000
Subtotal	***$3,403,737***	***$3,761,978***	***$15,942,850***	***$23,108,566***	***$22,600,973***	***$14,604,523***	***$37,205,496***	***$60,314,061***
Contingency			**$2,268,684**	**$2,268,684**		**$3,720,550**	**$3,720,550**	**$5,989,234**
Total Sources	**$3,403,737**	**$3,761,978**	**$18,211,534**	**$25,377,250**	**$22,600,973**	**$18,325,073**	**$40,926,046**	**$66,303,295**

Uses of Funds	FY 2017-18 (Actual)	FY 2018-19 (Actual)	FY 2019-20 (Budget)	Existing Agreement	FY 2020-21 (Proposed)	FY 2021-22 (Proposed)	Proposed Modification	Total
Salaries & Benefits	$476,853	$526,831	$686,504	$1,690,188	$717,519	$749,775	$1,467,294	$3,157,482
Operating Expense	$2,823,770	$228,680	$449,356	$3,501,806	$418,182	$429,182	$847,364	$4,349,170
Indirect Cost (15%)	$103,114	$113,327	$170,379	$386,820	$170,355	$176,844	$347,199	$734,019
Consultancy Detail	$0	$27,736	$84,595	$112,331	$0	$0	$0	$112,331
Capital Detail	$0	$2,865,404	$14,552,016	$17,417,420	$21,294,917	$13,248,722	$34,543,639	$51,961,059
Subtotal	***$3,403,737***	***$3,761,978***	***$15,942,850***	***$23,108,565***	***$22,600,973***	***$14,604,523***	***$37,205,496***	***$60,314,061***
Contingency (10%)				**$2,268,684**			**$3,720,550**	**$5,989,234**
Total Uses	**$3,403,737**	**$3,761,978**	**$18,211,534**	**$25,377,250**[7]	**$22,600,973**	**$18,325,073**	**$40,926,046**	**$66,303,295**

Source: Appendix B-2 to Proposed Second Modification

Note: According to HSA, in FY 2017-18, expenditures that belonged to the Capital Detail category were erroneously included in the Operating Expense category. This was corrected for FY 2018-19 onwards.

The proposed expenditures during the two-year extension include cost of living increase for six full-time LIIF program staff, which are partially funded through this agreement. Operating expenditures in the proposed two-year term extension are lower than the current fiscal year because of lower rent. The "capital detail" account include grants for all phases of capital improvements for and development of early child care facilities. According to Mr. Dobson, there are 24 childcare facilities identified capital improvements during the proposed two-year extension and the Department expects to disburse grants for an additional 40 sites beyond that.

[7] Figure may not add due to rounding.

POLICY CONSIDERATION

The Budget Outlook Update (March Joint Report), prepared by the Budget and Legislative Analyst's Office, Mayor's Budget Office, and Controller, project a FY 2019-20 shortfall in the General Fund budget ranging from $167 million to $287 million due to the impacts of the COVID-19 public health emergency. That shortfall could increase to between $528 million and $779 million in FY 2020-21.

Because of the projected shortfall in the General Fund budget, the Budget and Legislative Analyst considers approval of General Fund monies for the proposed contract modification in FY 2020-21 and FY 2021-22, totaling $10,931,494 ($1,210,944 in General Fund, $6,000,000 in excess ERAF funds, and $3,270,550 in contingency funds, shown in Table 1 above) to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed resolution to clarify that the total increase is $40,926,045, from $25,377,250 under the first modification to a not to exceed amount of $66,303,295 under the second modification.
2. Approve the proposed resolution, as amended, for a total amount of $55,371,801, including an increase of $29,994,552 in the proposed second modification. Approval of an additional increase of $10,931,494 in the second modification, to be funded by the General Fund in FY 2020-21 and FY 2021-22 is a policy matter for the Board of Supervisors.

Items 2, 3, & 4 **Files 20-0339, 20-0340, & 20-0341** *(Continued from April 8, 2020)*	**Department:** Human Rights Commission

EXECUTIVE SUMMARY

Legislative Objectives

- File 20-0339: The proposed emergency ordinance would amend the Administrative Code to establish the COVID-19 Disaster Family Relief Fund as a "Category 8" fund. Under Administrative Code Section 10.100-1, monies in a Category 8 fund are automatically appropriated and do not require Board of Supervisors' authorization for spending. The provisions of this ordinance expire sixty days after it becomes effective.
- File 20-0340: The proposed ordinance contains the same provisions as File 20-0339 for establishing the COVID-19 Disaster Family Relief Fund. The provisions of this ordinance expire sixty days after the Mayor withdraws the state of emergency proclamation related to COVID-19.
- File 20-0341: The proposed ordinance would appropriate $10 million from the General Reserve to the Human Rights Commission.

Key Points

- Under the proposed ordinance**s**, the Human Rights Commission would administer the COVID-19 Disaster Family Relief Fund. Monies in this fund would be available for up to 5,000 families with a minimum monthly disbursement of $500. In evaluating applicants, the Department would assess (1) the severity of the financial hardship, (2) the extent to which the family qualifies for federal or state financial relief, and (3) how disbursement may impact eligibility for other public assistance.

Fiscal Impact

- File 20-0341 would appropriate $10 million from the General Reserve to a General Fund account under the Human Rights Commission. As noted above, spending from the COVID-19 Disaster Family Relief Fund does not require Board of Supervisors' approval. Upon termination of the fund, any remaining money will revert to the General Fund.

Policy Consideration

- According to the Controller's March 31, 2020 presentation to the Board of Supervisors, the General Reserve currently contains $150 million.

Recommendations

1. Amend the proposed appropriation ordinance (File 20-0341) to clarify that once the COVID-19 Disaster Family Relief Fund is established, the Controller will transfer the funds from the Human Rights Commission account into the proposed COVID-19 Disaster Family Relief Fund.
2. Amend the proposed ordinances (File 20-0339, 20-0340, and 20-0341) to require a quarterly written report from the Human Rights Commission to the Board of Supervisors detailing the disbursement of funds from the COVID-19 Disaster Family Relief Fund.
3. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors. Passages of ordinances require two readings by the Board of Supervisors; ordinances are effective 30 days after passage.

City Charter Section 2.107 states that the Board of Supervisors may pass emergency ordinances on their first reading with a 2/3 affirmative vote. Emergency ordinances become effective upon approval by the Mayor, the expiration of the ten-day period for the Mayor to approve or veto, or the Board of Supervisors' override of the Mayor's veto. Emergency ordinances expire sixty days after their passage.

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance. As with other ordinances, passage of the ordinance requires two readings by the Board of Supervisors and the ordinance is effective 30 days after passage.

BACKGROUND

On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the Novel Coronavirus 2019 Disease ("COVID-19") pandemic. On March 16, 2020, the San Francisco Health Officer issued Order C19-07b, generally requiring, among other things, residents to remain at home and most businesses to shutter. On March 31, 2020 the Health Officer issued Order C19-07b, which extends and tightens those rules through May 3, 2020. While necessary to maintain public health, these restrictions have imposed financial hardship to residents.

DETAILS OF PROPOSED LEGISLATION

File 20-0339: The proposed emergency ordinance would amend the Administrative Code to establish the COVID-19 Disaster Family Relief Fund as a "Category 8" fund. Under Administrative Code Section 10.100-1, monies in a Category 8 fund are automatically appropriated and do not require Board of Supervisors' authorization for spending. The provisions of this ordinance expire sixty days after it becomes effective.

File 20-0340: The proposed ordinance contains the same provisions as File 20-0339 for establishing the COVID-19 Disaster Family Relief Fund. The provisions of this ordinance expire sixty days after the Mayor withdraws the state of emergency proclamation related to COVID-19.

File 20-0341: The proposed ordinance would appropriate $10 million from the General Reserve to the Human Rights Commission.

Disbursement of COVID-19 Disaster Family Relief Fund

Under the proposed ordinances, the Human Rights Commission would administer the COVID-19 Disaster Family Relief Fund. Monies in this fund would be available for up to 5,000 families[1] in

[1] Families must have at least one dependent that is 18 years old or younger.

San Francisco who are experiencing financial hardship, with a minimum disbursement of $500 per month per family. In evaluating applicants, the Human Rights Commission would assess:

1. the severity of the financial hardship
2. the extent to which the family qualifies for federal or state financial relief
3. how disbursement may impact eligibility for other public assistance

The Human Rights Commission would conduct outreach through community-based organizations.

FISCAL IMPACT

File 20-0341 would appropriate $10 million from the General Reserve to a General Fund account under the Human Rights Commission. The proposed ordinance should be amended to clarify that once the COVID-19 Disaster Family Relief Fund is established, the Controller will transfer the funds from that account into the proposed COVID-19 Disaster Family Relief Fund. As noted above, spending from the COVID-19 Disaster Family Relief Fund does not require Board of Supervisors' approval. Upon termination of the fund, any remaining money will revert to the General Fund.

POLICY CONSIDERATION

Administrative Code Section 10.60 (b) provides for a General Reserve equal to 2.75 percent of budgeted General Fund revenues in FY 2019-20. If the General Reserve is drawn down, the Administrative Code provides for appropriation of sufficient funds in the Annual Appropriation Ordinance to restore the required funding level. However, the Board of Supervisors may suspend this provision following a declaration of an emergency due to a natural disaster.

According to the Controller's March 31, 2020 presentation to the Board of Supervisors, the General Reserve currently contains $150 million.

RECOMMENDATIONS

1. Amend the proposed appropriation ordinance (File 20-0341) to clarify that once the COVID-19 Disaster Family Relief Fund is established, the Controller will transfer the funds from that account into the proposed COVID-19 Disaster Family Relief Fund.
2. Amend the proposed ordinances (File 20-0339, 20-0340, and 20-0341) to require a quarterly written report from the Human Rights Commission to the Board of Supervisors detailing the disbursement of funds from the COVID-19 Disaster Family Relief Fund.
3. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.

Item 8 **Files 20-0317**	**Department:** Mayor's Office of Housing and Community Development

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve: (1) a $43,040,000 million limited payment guarantee agreement between the City and Silicon Valley Bank, and (2) a $3,202,238 limited payment guarantee between the City and Raymond James Tax Credit Investment, Inc.

Key Points

- The Maceo May Apartments are an affordable housing development on Treasure Island, for which financing was approved by the Board of Supervisors in January 2020. Residents of Treasure Island filed a lawsuit with multiple claims, including lack of proper remediation of hazardous materials at Area 12 of Treasure Island and requesting, among other things, cessation of all development on Treasure Island. Although the Maceo May Apartments project site is not within Area 12 of Treasure Island, the Silicon Valley Bank, the owner of the multifamily housing revenue bonds, and Raymond James Tax Credit Investment, Inc., a tax credit investor, are requesting additional assurance of repayment of their loan and investment.
- According to the proposed limited payment guarantee agreements, if a court issues a temporary injunction to stop work or any other order which affects construction, such that construction lender cannot be repaid by permanent lender at the time of the loan's maturity date (which may be extended pursuant to the terms of the construction loan), the City would be responsible for paying Silicon Valley Bank and Raymond James Tax Credit Investment, Inc.

Fiscal Impact

- If the limited payment guarantee is triggered by the failure of the Maceo May Apartments project to satisfy permanent loan closing conditions due to a court decision related to the lawsuit, the City would have to guarantee payment to Silicon Valley Bank for $43 million, the amount of multifamily housing revenue bonds, and to Raymond James Tax Credit Investment, Inc. for $3.2 million, which is the amount the investor has invested in the construction phase of the project.
- TIDA and MOHCD have agreed that TIDA will use funds from its accrued Master Developer Housing Subsidy funds to pay the obligation under the Bank Guaranty to the fullest extent possible, and MOHCD will pay any remaining amount due under the Bank Guaranty and Investor Guaranty. TIDA currently projects receipt of approximately $24 million in accrued Master Developer Housing Subsidy by the time the Project is expected to convert to permanent financing, which could be used to partially pay the Bank Guaranty of $43 million. The balance of approximately $19 million to pay the Bank Guaranty and approximately $3.2 million to pay the Investor Guaranty would be paid by MOHCD.

Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Previously Approved Financing for Maceo May Affordable Housing Project

On January 14, 2020, the Board of Supervisors approved a loan agreement between the Mayor's Office of Housing and Community Development (MOHCD) and Maceo May Apts, L.P. for $24.3 million to provide gap financing (File 19-1300) and the issuance of $44.6 million by the City on behalf of Maceo May Apts, L.P. in multifamily housing revenue bonds (19-1299) for the Maceo May affordable housing project. Maceo May, which is located on Treasure Island, is planned to have 104 affordable housing units (and one manager unit) for formerly homeless veterans for a total development cost of $74.18 million.

Multifamily Housing Revenue Bonds

The multifamily housing revenue bond transaction consists of several components. The City will issue the bonds of approximately $44.6 million to finance a portion of the construction phase of the Maceo May project, The City entered into (1) a loan agreement with Maceo May Apts., L.P., and assigned its interest in the loan agreement to U.S. Bank National Association, a banking association, which serves as trustee for the bond funds; and (2) a Trust Indenture with the U.S. Bank National Association, under which U.S. Bank disburses the proceeds of the multifamily housing revenue bonds to Maceo May Apts., L.P. to construct Maceo May Apartments[1,2] and ensures bond repayment is made to Silicon Valley Bank during the construction period and, afterwards, to California Community Reinvestment Corporation.

According to Ms. Cindy Heavens, Senior Project Manager at MOHCD, multifamily housing revenue bonds are typically paid down by a combination tax credit investors, State funds (if applicable) and City gap financing, with the remaining portion of the bonds repaid by the operating income from the housing project (also known as permanent financing). Investment from the tax credit investor also repays the construction loan.

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[1] In order to obtain tax credits, affordable housing developers form partnerships with financial entities consisting of limited partners and general partners. The limited partner, typically an investor, owns 99.99 percent of the partnership and therefore received that share of the project's available tax credits. The general partner, a developer, owns 0.01 percent of the partnership. In this case, RJ MT Maceo May Apts L.L.C., a limited liability company owned by Raymond James Tax Credit Investment, Inc., is the limited partner of Maceo May Apts., L. P. Chinatown Community Development Center, Inc. and Swords to Plowshares formed limited liability companies, which are the joint general partners of Maceo May Apts., L.P.

[2] . Maceo May Apts, L.P. (as borrower) entered into a Bond Purchase Agreement with Silicon Valley Bank (as construction lender) and California Community Reinvestment Corporation, a nonprofit corporation, (as permanent lender, for the multifamily housing revenue bonds.

Lawsuit

In January 2020, residents of Treasure Island filed a lawsuit with multiple claims, including lack of proper remediation of hazardous materials at Area 12 of Treasure Island and requesting, among other things, cessation of all development on Treasure Island. The Maceo May project site is not within Area 12 of Treasure Island. Nevertheless, because of this new risk to development on the entire island, the Silicon Valley Bank, the owner of the multifamily housing revenue bonds, and Raymond James Tax Credit Investment, Inc., a tax credit investor, are requesting additional assurance of repayment of their loan and investment, respectively, in the limited event the lawsuit results in a work stoppage at the Maceo May project, and the Maceo May project cannot be completed in a timely manner to obtain permanent financing to repay the construction loan and comply with state requirements.

In consultation with the City Attorney's Office, the risk of a work stoppage at Maceo May appears to be de minimis. A hearing on a motion to dismiss has been scheduled for the end of May.

DETAILS OF PROPOSED LEGISLATION

The proposed legislation would approve: (1) a $43,040,000 million limited payment guarantee agreement between the City and Silicon Valley Bank, and (2) a $3,202,238 limited payment guarantee between the City and Raymond James Tax Credit Investment, Inc. According to the proposed limited payment guarantee agreements, if a court issues a temporary injunction to stop work or any other order which affects construction, such that construction lender cannot be repaid by permanent lender at the time of the loan's maturity date (which may be extended pursuant to the terms of the construction loan), the City would be responsible for paying Silicon Valley Bank and Raymond James Tax Credit Investment, Inc.

FISCAL IMPACT

If the limited payment guarantee is triggered by the failure of the project to satisfy permanent loan closing conditions due to a court decision related to the above described lawsuit, the City would have to guarantee payment to Silicon Valley Bank for $43,040,000, the amount of multifamily housing revenue bonds for the Maceo May project. In addition, the City would have to guarantee repayment of $3,202,238 to Raymond James Tax Credit Investment, Inc., which is the amount the investor has invested in the construction phase of the project.[3]

In the event that the guaranties are triggered, TIDA and MOHCD have agreed that TIDA will use funds from its accrued Master Developer Housing Subsidy funds to pay the obligation under the Bank Guaranty to the fullest extent possible, and MOHCD will pay any remaining amount due under the Bank Guaranty and Investor Guaranty. These funds will only be due and payable should the Project fail to satisfy conversion conditions for permanent financing at the time the construction loan matures. The initial term of the construction loan is 32 months with an ability to extend the loan for an additional 4 months. TIDA currently projects receipt of approximately $24 million in accrued Master Developer Housing Subsidy by the time the Project is expected to

[3] According to File 19-1300, Raymond James Tax Credit Investment, Inc. has provided $29,093,852 of the project's total development cost of $74,175,996.

convert to permanent financing, which could be used to partially pay the Bank Guaranty of $43 million. The balance of approximately $19 million to pay the Bank Guaranty and approximately $3 million to pay the Investor Guaranty would be paid by MOHCD.

According to MOHCD staff, given the low risk that payment of the guaranties will be triggered, MOHCD is not encumbering funds to cover this potential expense at this time. Rather, should payment be required, MOHCD will delay commitments to future projects in its pipeline in order to meet any payment obligations. Funds to meet this obligation may be drawn from a number of MOHCD sources, including the Housing Trust Fund, Inclusionary Fees, Jobs Housing Linkage Fees, and the 2019 General Obligation Bond, in addition to the accrued master developer subsidies collected by TIDA.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.