

Oversight Board of the City and County of San Francisco

RESOLUTION NO. 8-2013

Adopted July 22, 2013

RESOLUTION ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING, SUBJECT TO THE REVIEW AND APPROVAL OF THE DEPARTMENT OF FINANCE, A PURCHASE AND SALE AGREEMENT WITH 706 MISSION CO LLC AND WITH THE MEXICAN MUSEUM, AS A THIRD PARTY BENEFICIARY, FOR THE DISPOSITION AND USE OF THREE PROPERTIES: (1) AN IMPROVED SUBTERRANEAN PUBLIC PARKING GARAGE COMMONLY KNOWN AS THE JESSIE SQUARE GARAGE LOCATED GENERALLY BELOW JESSIE SQUARE PLAZA (ASSESSOR'S BLOCK 3706, LOT 275 AND PORTIONS OF LOT 277); (2) AN APPROXIMATELY 9,778-SQUARE-FOOT UNDEVELOPED PARCEL FRONTING MISSION STREET BETWEEN THIRD AND FOURTH STREETS ADJACENT TO JESSIE SQUARE PLAZA (ASSESSOR'S BLOCK 3706, A PORTION OF LOT 277); AND (3) A 3,690-SQUARE-FOOT AIR RIGHTS PARCEL LOCATED ABOVE JESSIE SQUARE PLAZA (ASSESSOR'S BLOCK 3706, A PORTION OF LOT 277).

WHEREAS, The Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the "Former Redevelopment Agency") was dissolved on February 1, 2012, pursuant to the California Assembly Bill known as AB 26 and the California Supreme Court's decision and order in the case entitled *California Redevelopment Association et al. v. Ana Matosantos*. All of the Former Redevelopment Agency's non-housing assets, including all real property, were transferred to the Successor Agency (also known as the Office of Community Investment and Infrastructure, or OCII) as the successor agency to the Former Redevelopment Agency; and

WHEREAS, The Successor Agency is the owner of three properties: (1) an approximately 9,778-square-foot undeveloped parcel fronting Mission Street between Third and Fourth Streets, adjacent to Jessie Square Plaza (Assessor's Block 3706, a portion of Lot 277) (the "Mexican Museum Site"); (2) an improved subterranean public parking garage commonly known as the Jessie Square Garage located generally below Jessie Square Plaza (Assessor's Block 3706, Lot 275 and portions of Lot 277) (the "Jessie Square Garage"); and (3) a 3,690-square-foot air rights parcel above Jessie Square Plaza (Assessor's Block 3706, a portion of Lot 277) (the "Air Rights Parcel") (collectively, the "Agency Property"); and

WHEREAS, The Agency Property is located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 and was subject to the Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1 (the "Project Area"), which was duly adopted, by Ordinance No. 98-66 (April 29, 1966) in accordance with Community Redevelopment Law, and

which expired by its own terms on January 1, 2011 (the “Redevelopment Plan”). The purpose of the Redevelopment Plan was to redevelop and revitalize blighted areas in the Project Area; and

WHEREAS, The Former Redevelopment Agency originally acquired the Agency Property with federal urban renewal funds provided through a Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by the U.S. Department of Housing and Urban Renewal (the “HUD Contract”). Under the HUD Contract, the Former Redevelopment Agency was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan and the federal standards for urban renewal under Title I of the Housing Act of 1949; and

WHEREAS, In 1983, the Former Redevelopment Agency and the City and County of San Francisco (the “City”) executed, with HUD concurrence, the Yerba Buena Center Redevelopment Project Closeout Agreement (“YBC Closeout Agreement”) whereby the Former Redevelopment Agency agreed to retain the Agency Property (and other parcels identified as “Project Property” in Exhibit A to the YBC Closeout Agreement) for disposition, subject to applicable federal law and subject further to restrictions on the use of any proceeds received from the sale or lease of the Project Property (See Section 1(b) & (c) of the YBC Closeout Agreement). Under the YBC Closeout Agreement, HUD required the Former Redevelopment Agency to use the Project Property and proceeds from its sale for “necessary and/or appropriate economic development activities,” which included “the development, operation, maintenance, and security of an office building, hotel, retail and housing and related parking integrated with open space . . . and cultural facilities.” YBC Closeout Agreement, § 1 (c) & Exhibit B, § 1 (a) (Aug. 10, 1983). In approving the YBC Closeout Agreement, HUD emphasized that “all future proceeds from the sale or lease of Project Property must be treated as program income under the CDBG [Community Development Block Grant] program;” and

WHEREAS, The YBC Closeout Agreement is an enforceable obligation requiring the Successor Agency to retain the property until it is transferred for “necessary and/or appropriate economic development activities.” YBC Closeout Agreement, § 1 (b) (“The Project Property shall be retained for disposition by the Agency.”). Furthermore, the Former Redevelopment Agency, and now the Successor Agency, have held the Agency Property for the governmental purposes described in the YBC Closeout Agreement and the CDBG program (See 24 C.F.R. §§ 570.201 (completion of urban renewal projects under Title I of the Housing Act of 1949) and 24 C.F.R. § 570.800 (pre-1996 federal urban renewal regulations continue to apply to completion of urban renewal projects)) (“CDBG Program Requirements”); and

WHEREAS, For over 30 years the Former Redevelopment Agency held the Agency Property for the governmental purposes identified in the YBC Closeout Agreement and identified the Mexican Museum Site as the future, permanent home of The Mexican Museum. The Successor Agency, as successor in interest to the Former

Redevelopment Agency, and The Mexican Museum, a California nonprofit corporation (“The Mexican Museum”) are parties to that certain Agreement for Disposition of Land for Private Development dated as of July 30, 1993 (as amended, the “LDA”) which contemplated the development of a stand-alone museum for The Mexican Museum on the Agency Property. The LDA has been amended eight times, most recently on December 7, 2004. Under the Eighth Amendment, the Former Redevelopment Agency and The Mexican Museum agreed to work cooperatively to explore alternatives for the museum facility, including the inclusion of The Mexican Museum as a cultural component in a larger development; and

WHEREAS, In 2000, the Former Redevelopment Agency originally approved, by Agency Resolution No. 89-2000 (June 20, 2000), the construction of the Jessie Square Garage and subsequently amended, by Agency Resolutions Nos. 185-2002, 191-2002, 192-2002 (Oct. 22, 2002), the development program and funding for the Jessie Square Garage. Development of the Jessie Square Garage satisfied numerous objectives of the Redevelopment Plan, the YBC Closeout Agreement, and the LDA with The Mexican Museum; and

WHEREAS, The Jessie Square Garage was built as part of a larger construction project that included surrounding public improvements (including Jessie Square Plaza and the substructures for the Contemporary Jewish Museum and the Mexican Museum sites (“Jessie Square Garage/Improvements”). The Jessie Square Garage/Improvements were financed with approximately \$43.1 million in tax allocation revenues bonds (2003 Series B and 2003 Series C) authorized by the Board of Supervisors (the “Garage Bonds”). As a result of the pledge and use of this tax increment to pay the debt service on the bonds, the City receives less property tax revenue for the City’s general fund. In order to make up for this lost revenue, the City and the RDA entered into that certain Cooperation and Tax Increment Reimbursement Agreement dated as of January 13, 2003, whereby the RDA agreed to pay to the City the operating revenues from the garage in the amount needed to reimburse the City for the foregone property tax revenues. To the extent that operating revenues are insufficient to cover the full amount of lost property tax revenues in any given tax period, the RDA, and now OCII, accrues debt to the City in the amount of the shortfall, plus interest. The Cooperation and Tax Increment Reimbursement Agreement is included on OCII’s Recognized Obligation Payment Schedule 13-14A as ROPS Line 138; and

WHEREAS, 706 Mission Co. LLC owns certain real property commonly known as 706 Mission Street, San Francisco, California (Assessor’s Block 3706, Lot 93). The Developer Property is currently improved in part with an existing 10-story building of approximately 100,000 square feet of office and retail space (the “Aronson Building”), which has been designated as a Category I Significant Building pursuant to the City’s Planning Code and which has been informally determined to be eligible for placement on the National Register of Historic Places. The Agency Property and the Developer Property are collectively referred to herein as the “Site;”

WHEREAS, The Successor Agency, as successor in interest to the Former Redevelopment Agency, and the Developer are parties to that certain Exclusive Negotiation Agreement dated on or about July 15, 2008, as amended by that certain Amended and Restated Exclusive Negotiation Agreement dated on or about May 4, 2010, (as so amended, the “ENA”) regarding the parties’ mutual understanding of the terms under which Successor Agency and Developer would negotiate a purchase and sale agreement pursuant to which Successor Agency would sell the Agency Property to the Developer; and

WHEREAS, The ENA contemplated that the Successor Agency would transfer the Agency Property to Developer and that Developer would construct an integrated development on the Site, which has since been refined and now is proposed to consist of (a) residential uses in a new tower of approximately 510 feet in height (480 feet plus a 30 foot mechanical penthouse) (the “Tower”), (b) a cultural component of approximately 48,000 net square feet fronting Jessie Square (the “Cultural Component”) for The Mexican Museum (which excludes the Restaurant/Retail Space as defined below), (c) the historic rehabilitation of the Aronson Building (the “Historic Rehabilitation”), (d) approximately 4,800 gross square feet of additional restaurant/retail uses on the ground floor of the Aronson Building (the “Restaurant/Retail Space”), which will be owned by Developer and shall be separately leased by Developer to The Mexican Museum for revenue generation in connection with the operation of the Cultural Component, and (e) the purchase of the Jessie Square Garage (collectively, the “Project”). Under the terms of the ENA, the Jessie Square Garage would be dedicated to both Project-related uses and public uses; and

WHEREAS, Developer has obtained or will seek to obtain the various regulatory approvals, permits, and authorizations that are required for the development and construction of the Project from the public agencies with land use jurisdiction over the Project, including, without limitation, an amendment to the City’s zoning map, the adoption of a special use district under the City’s Planning Code, a Section 309 determination and Section 309 exceptions, a Major Permit to Alter, an increase to the shadow budget for Union Square, a Section 295 finding of no substantial adverse shadow impact and a shadow budget allocation, subdivision approvals and Building Permits and the Environmental Impact Report and Mitigation Monitoring and Reporting Program related to such approvals (such regulatory approvals, permits, and authorizations, collectively the “Regulatory Approvals”); and

WHEREAS, The Mexican Museum Site is the last vacant parcel to be developed under the expired Redevelopment Plan. The Successor Agency and The Mexican Museum have agreed that the Project is the best opportunity to develop a new museum facility for The Mexican Museum, and to complete the buildout of the Project Area contemplated by the Redevelopment Plan. The Successor Agency, as successor in interest to the Former Redevelopment Agency, and The Mexican Museum are parties to that certain Exclusive Negotiations Agreement dated as of December 14, 2010 (the “Museum ENA”), and that certain Grant Agreement dated December 14, 2010 (the “Grant Agreement”). The Museum ENA sets forth

the terms and conditions for negotiating The Mexican Museum's participation in the Project. Under the terms of the Museum ENA and related extensions, the Museum ENA expired on June 30, 2013. The Grant Agreement requires the Agency to disburse through one or more future grant disbursement agreements approximately \$10.5 million of funding for predevelopment and planning activities and the design and construction of tenant improvements for the Cultural Component; and

WHEREAS, On June 27, 2012, California's Governor approved legislation amending Assembly Bill No. 26 (statutes 2011, chapter 5) ("AB 26") entitled Assembly Bill No. 1484 (statutes 2012, chapter 26) ("AB 1484") (together, AB 26 and AB 1484 are the "Redevelopment Dissolution Law"). AB 1484 imposes certain requirements on the successor agencies to redevelopment agencies established by AB 26, including a requirement that suspends certain dispositions of former redevelopment agency property until certain state-imposed requirements are met. Excluded from such suspension are certain transfers of property to the "appropriate public jurisdiction" in furtherance of a "governmental purpose" if the oversight board for a successor agency directs the successor agency to transfer the property, as well as "obligations required pursuant to any enforceable obligations." Cal. Health & Safety Code §§ 34177(c); 34181(a); 34191.4; and

WHEREAS, Redevelopment Dissolution Law requires successor agencies to perform obligations required pursuant to any enforceable obligation that existed prior to June 28, 2011, Cal. Health & Safety Code § 34177 (c); and,

WHEREAS, The Successor Agency staff is now recommending approval of a Purchase and Sale Agreement (the "PSA") by the Oversight Board to transfer the Agency Property to the Developer pursuant to the governmental purposes of and enforceable obligations mandated by the YBC Closeout Agreement, the CDBG Program Requirements, the ENA, the Museum ENA, and as described above, in compliance with AB 1484, and in furtherance of the expired Redevelopment Plan. The disposition of the Agency Property is subject to the terms of the YBC Closeout Agreement and the CDBG Program Requirements and thus serves the governmental purposes applicable to completion of urban renewal projects (i.e., disposition for economic development purposes). The disposition of the Agency Property is also addressed in Part 1 of the Long Range Property Management Plan that the Oversight Board has or will approve, by Resolution 7-2013, under Section 34191.5 of the California Health and Safety Code; and

WHEREAS, The Mexican Museum included as a third party beneficiary of certain sections of the PSA, including provisions related to design and construction of the core and shell of the museum space, conveyance and leasing of the museum space, the endowment, and termination of the LDA. None of these sections may be modified or amended without the prior written consent of The Mexican Museum. Additionally, pursuant to these beneficiary rights, The Mexican Museum has remedies to enforce those sections of the PSA; and

WHEREAS, Pursuant to the PSA, the purchase price for the Agency Property is \$34,280,000, which is equal to the sum of (1) the \$21,620,000 fair market value of the Jessie Square Garage and the \$12,570,000 fair market value of Parcel CB-1-MM “As-Is Scenario A,” each as reflected in the Valuation Report for Jessie Square/Parcel CB-1-MM/Jessie Square Garage prepared by CBRE for the Successor Agency, dated June 12, 2013 and (2) the \$90,000 fair market value of the Jessie Square Airspace Parcel as reflected in the Valuation Report for the Jessie Square Airspace Parcel prepared by CBRE for the Successor Agency, dated June 12, 2013; and

WHEREAS, Consistent with the terms of the Developer ENA, the PSA obligates the Developer to construct the base, core and shell of the Cultural Component, which will be approximately 48,000 net square feet fronting Jessie Square Plaza. The Mexican Museum will be responsible for the cost of tenant improvements to the Cultural Component. The Museum anticipates funding the tenant improvements through a combination of the grant funds authorized under the 2010 Grant Agreement with the RDA, fundraising, and a potential reauthorization of hotel tax bonds by the City; and

WHEREAS, Under the Developer ENA, the Developer was required to convey the core and shell of the museum space to the RDA at no cost upon completion of construction. Under Redevelopment Dissolution Law, the Successor Agency’s ownership of the Project’s cultural component is inconsistent with the mandate to wind down redevelopment activities. Therefore, the PSA contemplates a transfer of the core and shell of the museum space to the City at no cost, rather than the Successor Agency, upon completion of construction, and a lease between the City and the Successor Agency. If the City does not ultimately agree, and no other public designee of the Successor Agency can be identified, then the Developer will retain ownership of the museum space, which will be deed restricted as a cultural use. The Developer will then enter into a lease with The Mexican Museum; and

WHEREAS, The PSA requires the Developer to with the City’s Residential Inclusionary Affordable Housing Program (the “Inclusionary Program”) through the payment of an in-lieu fee based on 20% of the units in the Project plus an additional in-lieu fee to the Successor Agency based on 8% of the units in the Project. The payment to the Successor Agency will fund its retained housing obligations; and

WHEREAS, The PSA also requires the Developer to contribute \$5 million to an operating endowment for The Mexican Museum to help support its ongoing operations; and

WHEREAS, Under the PSA, the Jessie Square Garage will be conveyed to the Developer. Consistent with the City approvals for the Project, a maximum of 1:1 parking would be available for residents of the Project; the balance would remain available for general public parking, including parking for St. Patrick’s Church, the Contemporary Jewish Museum, and The Mexican Museum. The Developer will repay the outstanding debt associated with the Garage Bonds and the Cooperation and Tax Reimbursement Agreement. The amount of this

indebtedness as of June 1, 2013 is \$25,284,468 under the Garage Bonds and \$18,311,670 under the Cooperation and Tax Reimbursement Agreement, for a total payment of \$43,596,138. The Developer will receive a dollar-for-dollar credit toward the payment of the purchase price based on repaying this indebtedness. Any costs of paying off this debt in excess of the appraised value will be considered a public benefit in favor of the Successor Agency; and

WHEREAS, In recognition of the significant investment of public funds by OCII and the City in the development of the public open spaces at Yerba Buena Gardens (the “Gardens”) and in the surrounding neighborhood, the Developer has agreed to pay to the Successor Agency the following: , (1) an ongoing annual fee to support Gardens’ operations, cultural operations and capital expenditures, and for other purposes benefiting South of Market public open spaces, at least 50% of which will used within the Gardens; and (2) a one-time fee for general operations, cultural operations, capital expenditures and other purposes benefiting South of Market public open spaces; and

WHEREAS, The PSA requires a transfer payment upon the first and each subsequent sale of a residential condominium unit in the Project for specified public benefits within the South of Market neighborhood (the “Transfer Payment”). The Transfer Payment will fund (i) affordable housing, (ii) homeless, youth and senior services, and (iii) small business and nonprofit rental assistance; and

WHEREAS, The PSA requires the Developer to make a number of pedestrian improvements, as follows: (1) the Developer will work with OCII and the City to pursue various upgrades to Stevenson Street, including physical improvements and a full-time traffic manager, at the Developer’s sole expense; (2) the Developer will pursue a second midblock crosswalk on Mission Street between Third and Fourth Streets or equivalent pedestrian improvements, if recommended by a pedestrian study that will be undertaken pursuant to Planning Commission Motion No. 18894, at the Developer’s sole expense; and (3) the Developer will make a payment of \$86,400 to fund a six-month pilot program that will station personnel from the City’s Department of Parking and Traffic at key intersections (i.e., Mission and Third Streets, Mission and Fourth Streets, and Stevenson and Third Streets); and

WHEREAS, The PSA requires the Developer the make three performance deposits totaling \$2.7 million that will be applied to the redemption of the Garage Bonds if the Project moves forward. However, in the event the Developer fails to close escrow and the Project does not move forward, the Developer has agreed to pay liquidated damages consisting of (1) any performance deposits held by the Successor Agency at that time, (2) replenishment of any grant funds expended by The Mexican Museum pursuant to the Grant Agreement, and (3) the Successor Agency’s existing staffing costs; and

WHEREAS, In addition to receiving value in excess of the Agency Property’s appraised value, the transaction contemplated under the PSA has the additional benefit of defeasing the Garage Bonds, which will free up future tax increment that would otherwise have been used for debt service. Thus, the transaction will result in an

increase in payments to taxing entities during future years as well as facilitate the winding down of the Successor Agency's obligations with respect to this existing obligation; and

WHEREAS, The transaction contemplated under the PSA will generate an additional in-lieu fee to the Successor Agency based on 8% of the units in the Project. The payment to the Successor Agency will fund its retained housing obligations, thereby reducing future draws from the Redevelopment Property Tax Trust Fund; and

WHEREAS, The transaction contemplated under the PSA will generate more revenues from property taxes payable to the taxing entities, including the City and County of San Francisco, the Bay Area Rapid Transit District, the San Francisco Community College District, and the San Francisco Unified School District, as well as the State of California, compared with the existing, undeveloped conditions; and,

WHEREAS, The PSA was conditionally approved by the Commission on Community Investment and Infrastructure by Resolution No. 32-2013 on July 16, 2013; and

WHEREAS, Based on the analysis contained in the Final Environmental Impact Report for the Project (the "FEIR"), and the findings pursuant to the California Environmental Quality Act ("CEQA") adopted by the San Francisco Planning Commission (the "Planning Commission") on March 21, 2013, by Motion No. 18829 certifying the FEIR and establishing a Mitigation Monitoring Program as part of the FEIR (which Planning Commission certification of the FEIR was appealed to the Board of Supervisors, and upheld by the Board of Supervisors on May 7, 2013), Successor Agency staff requests that the Oversight Board adopt findings in accordance with CEQA that the Agreement is an Implementing Action for the construction of the Project, pursuant to the approvals granted by the Planning Commission. Staff, in making the necessary findings for the Implementing Action contemplated herein, considered and reviewed the FEIR. Documents related to the Implementing Action and the FEIR have been and continue to be available for review by the Oversight Board and the public and are part of the record before the Oversight Board; and

WHEREAS, The Oversight Board hereby finds that the Agreement is an action in furtherance of the implementation of the Project for purposes of compliance with CEQA and by this Resolution, the Oversight Board adopts the environmental findings, attached as Exhibit A hereto, related to the FEIR, pursuant to CEQA and the CEQA Guidelines (the "Findings"). Such Findings are made pursuant to the Oversight Board's role as the responsible agency under CEQA for the Project. The Findings are hereby incorporated herein by this reference as if fully set forth; and

WHEREAS, A copy of the PSA is on file with the Secretary of the Oversight Board and fully incorporated herein; and,

WHEREAS, If the Oversight Board approves the PSA as a disposition of successor agency properties under Section 34181 (a) of the Health and Safety Code, the Successor Agency will notify the DOF, which has five days from the notice to request review of the disposition. If it does not request review, the Oversight Board's approval will become final. If DOF requests review, it has sixty days to review the matter under Section 34181 (f).

WHEREAS, The Oversight Board now desires to approve the PSA because it fulfills the enforceable obligations of the Successor Agency under the YBC Closeout Agreement; NOW THEREFORE BE IT

RESOLVED, The Oversight Board has reviewed and considered the Final Environmental Impact Report and hereby adopts the CEQA findings as attached and incorporated herein, and the Oversight Board finds and determines that, subject to the review and approval of the the Department of Finance, the Executive Director is authorized to enter into a Purchase and Sale Agreement, substantially in the form approved by the City Attorney acting as counsel to the Successor Agency, with 706 Mission Co LLC and with the Mexican Museum, as a third party beneficiary, for the disposition and use of three properties: (1) an improved subterranean public parking garage commonly known as the Jessie Square Garage located generally below Jessie Square Plaza (Assessor's Block 3706, Lot 275 and portions of Lot 277); (2) an approximately 9,778-square-foot undeveloped parcel fronting Mission Street between Third and Fourth Streets adjacent to Jessie Square Plaza (Assessor's Block 3706, a portion of Lot 277); and (3) a 3,690-square-foot air rights parcel located above Jessie Square Plaza (Assessor's Block 3706, a portion of Lot 277) 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.

Exhibit A: CEQA Findings

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of July 22, 2013.


Natasha Jones
Oversight Board Secretary