CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Government Audit and Oversight Committee

FROM: Budget and Legislative Analyst

SUBJECT: June 11, 2018 Government Audit and Oversight Committee Meeting

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Item 5 **File 18-0525**	**Department:** Mayor's Office of Housing and Community Development

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes (1) the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco for up to $300,000 to hold the property for resale under the City's Below Market Rate Inclusionary Housing Program; (2) the adoption of findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and (3) the execution of any documents necessary to implement this Resolution.

Key Points

- In August 2017 the City Attorney filed a lawsuit against the owner of a one bedroom one bathroom Below Market Rate (BMR) condominium located in the Soma Grand at 1160 Mission Street, Unit 812. The owner was found to be using the unit as a rental income property in violation of the program requirements.
- The first mortgage lender initiated foreclosure proceedings and the trustee sale is scheduled for June 25, 2018.
- The owner purchased the property in 2008 at the below market rate price of $221,698. He paid the down payment with the assistance of a MOHCD DALP loan in the principal amount of $33,255 to cover 15 percent of the purchase price. The payoff amount now owed to MOHCD includes the equitable share of appreciation, 15percent or $10,587, for a total $43,842 owed to MOHCD.
- Any property subject to a non-judicial foreclosure must be sold at a public auction. MOHCD cannot facilitate the transfer of the property to a qualified homebuyer at the public auction due to the BMR program requirement that all BMR units be sold through a lottery. As a result, the transfer of the property from the mortgage company's possession to a new owner-occupant requires first a trustee sale, then a MOHCD resale by lottery. Given the unit's restrictions, bidding is unlikely to proceed as at an unrestricted auction.

Fiscal Impact

- If there are no bidders or the property otherwise reverts to the beneficiary (the lender), MOHCD's DALP loan along with all junior liens would be eliminated. If MOHCD acquires the property, the BMR DALP loan will be recovered when MOHCD resells the property through the city lottery process. The up to $300,000 approved in the proposed resolution would allow MOHCD to acquire the property at public auction and to hold it for resale.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

Administrative Code Section 23.1 requires Board of Supervisors approval of all resolutions and ordinances approving real property transactions.

BACKGROUND

Unit 812 at the Soma Grand

In August 2017 the City Attorney filed a lawsuit against the owner of a one bedroom one bathroom Below Market Rate (BMR) condominium located in the Soma Grand at 1160 Mission Street, Unit 812. The owner was found to be using the unit as a rental income property in violation of the program requirements and lawful and fair business practices. The City filed a Complaint against the owner citing 1) violations of the San Francisco Planning Code, 2) the Notice of Special Restrictions signed with the title to the property, and 3) the Unfair Competition Law. As of December 2017, when a default judgment was entered against the owner, the owner was ordered to comply with the restrictions of the BMR program or sell the property.

At roughly the same time, the Soma Grand Homeowners Association (HOA) issued a notice of default to the owner for his failure to pay HOA dues. While the City's lawsuit was pending, JPMorgan Chase, who held the First Deed of Trust on the property began the foreclosure process due to failure to make mortgage payments. As of JPMorgan's first Notice of Default in June 2017, the owner was behind in payments by $11,532. After JPMorgan issued a notice of default but before initiating a trustee sale, they sold their interest in the Deed of Trust to Selene Finance, a Texas-based residential mortgage company. Selene Finance continued foreclosure proceedings and the trustee sale is scheduled for June 25, 2018.

Below Market Rate Inclusionary Housing Program

The property was designated as Below Market Rate by the San Francisco Planning Commission in December of 2003 under the City's BMR Inclusionary Housing Program. The BMR Program, administered by the Mayor's Office of Housing and Community Development (MOHCD), requires housing developers to set aside a percentage of units in new housing projects larger than 9 units[1]. The set aside units must be rented or sold at a below market rate and must remain affordable to qualifying households for the life of the project, pursuant to Planning Code Section 415. A Notice of Special Restrictions specifies income levels and conditions of the BMR program that go with the land and must be agreed to by all buyers. Chief among the conditions, purchasers of BMR units must (1) reside in the BMR unit as a primary residence and (2) refrain from renting out the BMR unit, without the written consent of MOHCD. The owner of unit 812 breached both conditions.

[1] Alternative options available to developers are to reserve a percentage of units in another residential project they build, pay a fee, or, in some cases, dedicate land that will become affordable housing.

Below Market Rate Down Payment Assistance Program

Separate and in addition to the inclusionary housing requirement, MOHCD operates a program called the Below Market Rate Down Payment Assistance Loan Program (BMR-DALP), which provides down payment assistance for the purchase of below market rate units. The BMR-DALP is a subordinated loan that requires no monthly payments for 30 years. In addition to the principal amount owed at the end of the 30 year term, MOHCD is entitled to a share of the property appreciation equal to the proportion of the down payment supported by the BMR-DALP loan. To qualify residents must be first time home buyers, must live in the property as their primary residence, and must meet moderate or low income requirements. The owner of unit 812 at the Soma Grand was a recipient of a BMR-DALP loan in 2008.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would

(1) approve and authorize the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco for up to $300,000 to hold the Property for resale under the City's Below Market Rate Inclusionary Housing Program;
(2) adopt findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and
(3) authorize and direct the execution of any documents necessary to implement this Resolution.

AMI-Based Valuation

An appraisal of the property is not required pursuant to the Notice of Special Restrictions under the Planning Code recorded against the title of the property in 2006. Rather BMR property valuation is calculated based on the Area Median Income (AMI) in place the year the purchase is made. When the City or a third party purchases the unit at foreclosure, the transaction is treated as a new sale[2]. Households who pay more than 33 percent of their income for housing are considered to be housing cost-burdened, so MOHCD structures the pricing to ensure owners pay no more than one third of their income towards housing payments.

Using the 2018 annual income limit at 100 percent of AMI[3] for a two-person household[4], $94,700, one third of the annual income, $31,251, is used as the basis to calculate the mortgage the household could support inclusive of condo fees, taxes, and insurance. The maximum BMR sale price is $348,799, as summarized in Table 1.

[2] The MOHCD price calculation method for a BMR sale by owner generates a lower sales price as the calculation relies on income limits in place the year the purchase was made.

[3] Unadjusted Annual Income Limits, established by the United Stated Department of Housing and Urban Development

[4] MOHCD prices new sale BMR Units based on the income level for a Household that is one person larger than the total number of bedrooms in the Unit in all cases except for studio BMR Units, which assume a one-person Household, and SRO Units, which are priced based on three-fourths (3/4) of the price for studio.

Table 1. Maximum Sales Price Calculation for 2 Person Household

Household Size	**Annual**	**Monthly**
2018 Area Median Income (AMI)	$94,700	
Housing cost share of income (33%)	X 0.33	
Income available for housing costs	$31,251	$2,604
Less, annual Homeowner Association (HOA) fee	(8,496)	(708)
Less, property taxes @ 1.1792%	(4,113)	(342)
Annual income available for mortgage payments	$18,642	$1,554
10 Year Average Interest Rate*	4.3%	
Supportable Mortgage	$313,919	
Down Payment	$34,880	
Initial Affordable Price	**$348,799**	

*Freddie Mac 10-year rolling average

MOHCD is willing to pay no more than $300,000 for the purpose of the public auction. The City will incur seller transaction costs such as broker commissions, title insurance, inspections, and other seller fees or costs when they sell the unit in the lottery process. Another consideration is the unknown condition of the unit, which may affect the final BMR price. With $300,000 the City is likely to be able to absorb additional costs and possible changes to the final BMR price. A third party that bids more than $300,000 would bear the seller transaction fees mentioned above, but cannot sell the unit for more than the maximum sale price of $348,799.

Loan repayment

The owner purchased the property directly from the developer in 2008 at the below market rate price of $221,698. He paid the down payment with the assistance of a BMR-DALP loan in the principal amount of $33,255 to cover 15 percent of the purchase price. The payoff amount owed to MOHCD includes the principal amount of the BMR-DALP loan, $33,255, plus the equitable share of appreciation, in this case 15 percent or $10,587, for a total $43,842 owed to MOHCD. Based on mortgage payments made by the owner to date, the first mortgage lender, Selene Finance, is owed the loan balance of $167,656. In the event the unit is sold for the maximum BMR sale price and all liens are paid off, remaining proceeds are $82,325. Table 2 shows estimated uses in the event that the unit sells for the maximum affordable price.

Table 2. Estimated Sources and Uses

Estimated Sources	
Maximum BMR Sale Price	**348,799**
Uses	
1st loan payoff	167,656
BMR DALP payoff	43,842
HOA Delinquency (as of 6/4/17)	35,355
Est. Closing Costs (including commission)	19,621
Total	**266,474**
Proceeds to Seller	82,325

In April 2018, the City Attorney's Office obtained a Default Judgment of $210,000 against the owner for civil penalties, attorneys' fees, and costs related to violations of the Planning Code and unfair business practices. The proceeds of $82,325 shown in Table 2 above will be applied to the Default Judgment.

Trustee Sale

Pursuant to California Civil Code, any property subject to a non-judicial foreclosure must be sold at a public auction. MOHCD cannot facilitate the transfer of the property to a qualified homebuyer at the public auction due to the BMR program requirement that all BMR units be sold through a lottery. As a result, the transfer of the property from the mortgage company's possession to a new owner-occupant requires multiple steps: a bank sale by auction, then a MOHCD resale by lottery.

According to MOHCD's Homeownership & Below Market Rate Compliance Manager, Ms. Cissy Yin, MOHCD staff will announce the affordability restrictions placed on the BMR unit at the public auction, so that the price restrictions and the resale price of the unit is understood in advance of bidding. As the unit cannot be sold for more than $348,799, due to its permanent affordability restriction, it is unlikely to be purchased for more than that amount. MOHCD is willing to bid no more than $300,000. In the event that a third party bids more than $300,000 at the trustee sale, MOHCD has the legal right to require the third party to sell it back to MOHCD immediately in order to sell the property through the standard lottery process[5]. In brief, the trustee sale is a legal requirement, but given the unit's restrictions, bidding is unlikely to proceed as at an unrestricted auction.

FISCAL IMPACT

MOHCD has a vested interest in the repayment of its DALP loan. Whoever purchases the property at the public auction takes the title subject to the existing liens and restrictions. If the winning bid is in any amount higher than the first mortgage loan balance of $167,656, all

[5] MOHCD could also require the third party winning bidder to sell the unit directly to a qualified homebuyer selected through a MOHCD-administered lottery at the BMR maximum sale price, but not sell the unit to MOHCD. This will reduce transaction costs and time.

surplus funds will be made available for the remaining beneficiaries to claim based on their lien position. Lien positions are outlined below in Table 3.

Table 3. Lien Priority

Position	Lien	Amount
First	Selene Finance loan payoff	$167,656
Second	BMR lien	No cash value
Third	MOHCD BMR DALP	$43,842
Fourth	Homeowner Association dues	$35,355
Fifth	City Attorney Judgement	$210,000

MOHCD is requesting authorization to bid up to $300,000 for the BMR unit, because, in the event that the auction of the units does not receive bids (in the absence of MOHCD bidding), the unit would revert to the lender (Selene Finance), and MOHCD's BMR-DALP loan along with all junior liens would be eliminated. If MOHCD acquires the property, the BMR-DALP loan will be repaid when MOHCD resells the property through the City lottery process.

RECOMMENDATION

Approve the resolution.

Item 7 File 18-0359	Department: Human Services Agency (HSA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the grant agreement between the Human Services Agency (HSA), and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities for the five-year period from July 1, 2018, through June 30, 2023, for a total not to exceed amount of $16,916,977. The proposed grant agreement does not include any extension options.

Key Points

- The Human Services Agency (HSA) provides Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities within the City and County of San Francisco. Funded by the Community Living Fund administered through HSA's Department of Aging and Adult Services (DAAS), the SSHRSA program aims to facilitate independent community living for eligible residents within the City. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, tenant well-being inspections, and management of unit modifications for reasonable accommodations.
- According to HSA, the non-profit Brilliant Corners was chosen again as the SSHRSA provider for the proposed grant agreement through sole source rather than a competitive bidding process because the organization is currently the only San Francisco provider of scattered site housing for seniors and adults with disabilities. In addition, Brilliant Corners currently holds the master leases of all units inhabited by the program participants and the leases are not transferable.

Fiscal Impact

- The proposed resolution would approve the grant agreement between HSA and Brilliant Corners for a total not-to-exceed amount of $16,916,977, including a 10 percent contingency of $1,537,907. The grant is fully funded by the Community Living Fund, which receives General Fund monies.
- The proposed budget was developed by Brilliant Corners in collaboration with HSA program staff. The current contract's annual amount is $3,038,086, while the proposed agreement's annual amount is $3,075,814. The majority of the funding is allocated for rental subsidies, while the other budgeted items are dependent on factors such as changes in rent, fair market value, client income etc. Consequently, the amounts in these categories may vary year-to-year depending on these factors and other operational issues.

Recommendation

- Approve the proposed resolution.

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

The Human Services Agency (HSA) provides Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities within the City and County of San Francisco. Funded by the Community Living Fund[1] administered through HSA's Department of Aging and Adult Services (DAAS), the SSHRSA program aims to facilitate independent community living for eligible residents within the City. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, tenant well-being inspections, and management of unit modifications for reasonable accommodations. SSHRSA provides housing options for individuals in skilled nursing facilities in San Francisco, including Laguna Honda Hospital and Zuckerberg San Francisco General Hospital, or individuals who are at imminent risk for nursing home or institutional placement but are willing and able to live in the community with appropriate support.

In July 2013, the Board of Supervisors approved a resolution authorizing the third amendment to the contract between Department of Public Health (DPH) and the West Bay Housing Corporation (now known as Brilliant Corners) to (1) extend the term retroactively from July 1, 2013 through June 30, 2018 and (2) increase the total contract amount by $16,480,867 from $9,569,430 to $26,050,297 (File 13-0512). The purpose of the contract was to provide SSHRSA services. According to Ms. Rocio Duenas, HSA Contract Manager, the contract was transferred to HSA because the target population is more aligned with the agency's services and purpose.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new grant agreement between the Human Services Agency (HSA), and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities for the five-year period from July 1, 2018, through June 30, 2023, for a total not to exceed amount of $16,916,977. The proposed grant agreement does not include any extension options.

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[1] The San Francisco Administrative Code, Section 10.100-12, created the Community Living Fund (CLF) to support aging in place and community placement alternatives for individuals who may otherwise require care within an institution. The CLF provides for home and community-based services, or a combination of equipment and services, that will help individuals who are currently, or at risk of being, institutionalized to continue living independently in their homes, or to return to community living. This is the source of funding for the entire term of the contract.

Sole Source Agreement

According to Ms. Duenas, the non-profit Brilliant Corners was chosen again as the SSHRSA provider for the proposed grant agreement through sole source rather than a competitive solicitation process because the organization is currently the only San Francisco provider of scattered site housing for seniors and adults with disabilities. In addition, Brilliant Corners currently holds the master leases of all units inhabited by the program participants and the leases are not transferable. Ms. Duenas states that the master lease model allows the program to maintain a pool of housing placements for this population. Because of the master leases, changing contractors would likely result in disruptions and displacements for clients, as well as possible loss of units and a decrease in the available housing pool.

The Human Services Agency conducts an internal determination of sole source grant agreements to non-profit organizations, subject to Human Services Commission or the Department of Adult and Aging Services Commission approval[2]. The Human Services Agency uses the same criteria as the City's Office of Contract Administration to award sole source agreements, including (a) goods and services are only available through one source, (b) only one prospective vendor is willing to contract with the City; and (c) the goods or services are licensed or patented to a single vendor. The Department of Adult and Aging Services Commission approved the award of the sole source grant agreement to Brilliant Corners on March 7, 2018.

Grant Agreement Services

As part of the proposed grant agreement, Brilliant Corners will provide scattered site housing and rental subsidy administration through HSA's Department of Aging and Adult Services. The program's goal is to provide rapid re-housing and community integration for the individuals being transitioned out of Laguna Honda and other skilled nursing facilities[3] who are considered at risk of institutionalization. Brilliant Corners currently provides subsidies for 102 participants and has served 108 participants thus far in FY 2017-18. Brilliant Corners transitioned nine new individuals from facilities to the community and is anticipating five additional move-ins. Under the new grant agreement, Brilliant Corners will conduct regular inspections to ensure unit habitability and the well-being of participants. As the master lease holder, Brilliant Corners will also serve as a liaison between the landlord and the program participants including initial occupancy, lease violations, and overall maintenance and concerns. According to Ms. Duenas, the proposed grant agreement will allow eligible, low-income, and at-risk individuals who are willing and able to living in the community an opportunity to do so while freeing up limited institution beds for those who need it.

[2] While Administrative Code Chapter 21 requires sole source goods and services to be made in accordance with the Director of the Office of Contract Administration's regulations, Section 21.02 states that grants to nonprofit organizations to provide community services are not covered by Chapter 21.

[3] Referrals were accepted from the following Skilled Nursing Facilities: Central Gardens, Tunnell Center, Kindred Golden Gate, California Pacific Medical Center (CPMC) Davies, Zuckerberg San Francisco General Hospital Unit 4A

FISCAL IMPACT

The proposed resolution would approve the grant agreement between HSA and Brilliant Corners for a total not-to-exceed amount of $16,916,977, including a 10 percent contingency[4] of $1,537,907, as shown in Table 1 below. The grant is fully funded by the Community Living Fund, which receives General Fund monies.

Table 1: Brilliant Corners Proposed Grant Budget from FY18-19 through FY22-23

Expenditures	FY18-19	FY19-20	FY20-21	FY21-22	FY22-23	Total
Salaries and Benefits	$348,641	$348,641	$348,641	$348,641	$348,641	$1,743,204
Operating Expenses	159,089	101,638	101,003	100,508	99,813	562,052
Indirect Cost (15 %)[5]	76,159	67,542	67,447	67,372	67,268	345,788
Client Pass Through[6]	2,491,925	2,557,993	2,558,723	2,559,293	2,560,092	12,728,026
Subtotal	**$3,075,814**	**$3,075,814**	**$3,075,814**	**$3,075,814**	**$3,075,814**	**$15,379,070**
Contingency (10%)						1,537,907
Total						**$16,916,977**

According to Ms. Duenas, the proposed budget was developed by Brilliant Corners in collaboration with HSA program staff. The current contract's annual amount is $3,038,086, while the proposed agreement's annual amount is $3,075,814. The majority of the funding is allocated for rental subsidies, while the other budgeted items are dependent on factors such as changes in rent, fair market value, client income etc. Consequently, the amounts in these categories may vary year-to-year depending on these factors and other operational issues.

RECOMMENDATION

Approve the proposed resolution.

[4] According to Ms. Duenas, the 10 percent contingency is allocated only if and when there is a need for the funds and must be preapproved by the department.

[5] According to HSA, indirect costs are organizational costs that cannot be isolated to an individual program or contract. The agency allows contractors to allocate indirect costs as an additive of direct costs not to exceed 15 percent of direct costs.

[6] Direct Client Pass Through expenditures are funds that are paid directly by the contractor on behalf of clients of the program. This includes rental subsidy payments and client utility payments. These funds are not included in the indirect calculation.