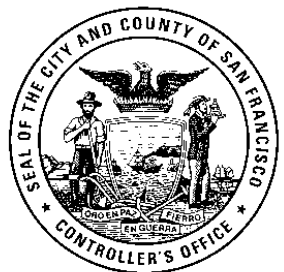


# The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and the Office of Community Investment and Infrastructure Has Not Effectively Enforced the Museum's Grant Agreement

Office of Community Investment and Infrastructure (OCII)  
Real Estate Division (RED)



March 21, 2024

City & County of San Francisco  
Office of the Controller  
City Services Auditor

## About the Audits Division

The City Services Auditor (CSA) was created in the Office of the Controller through an amendment to the Charter of the City and County of San Francisco (City) that voters approved in November 2003. Within CSA, the Audits Division ensures the City's financial integrity and promotes efficient, effective, and accountable government by:

- Conducting performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of service delivery and business processes.
- Investigating reports received through its whistleblower hotline of fraud, waste, and abuse of city resources.
- Providing actionable recommendations to city leaders to promote and enhance accountability and improve the overall performance and efficiency of city government.

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## Audit Authority

This audit was conducted under the authority of the San Francisco Charter, Section 3.105 and Appendix F, which requires that CSA conduct periodic, comprehensive financial and performance audits of city departments, services, and activities.

## Statement of Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for the findings and conclusions based on our audit objectives. The Audits Division is independent per the GAGAS requirements for internal auditors.



# OFFICE OF THE CONTROLLER

## CITY AND COUNTY OF SAN FRANCISCO

Greg Wagner  
Controller

Todd Rydstrom  
Deputy Controller

March 21, 2024

Commission on Community Investment  
and Infrastructure  
Office of Community Investment and Infrastructure  
1 South Van Ness Avenue, 5<sup>th</sup> floor  
San Francisco, CA 94103

Thor Kaslofsky  
Executive Director  
Office of Community Investment and Infrastructure  
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Oversight Board  
Office of Community Investment of  
and Office Infrastructure  
1 South Van Ness Avenue, 5<sup>th</sup> floor  
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Andrico Penick  
Director  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

Dear Commissioners, Board Members, Executive Director Kaslofsky, and Director Penick:

The Office of the Controller, City Services Auditor (CSA), Audits Division, presents its report on the audit of select agreements between the Office of Community Investment and Infrastructure (OCII) and the Real Estate Division (RED) and The Mexican Museum (the Museum) regarding the Museum's planned move to a new location in San Francisco's South of Market neighborhood. The audit had as its objectives to assess the compliance and performance outcomes of the Museum in accordance with its agreements with OCII and the City and County of San Francisco (City), including the grant agreement, grant disbursement agreements, purchase and sale agreement, and lease and facilities agreement (the agreements). The audit was requested by Board of Supervisors President Peskin.

The audit found that the Museum:

- Has not demonstrated that it has the financial or organizational expertise to complete the planned interior improvements at what is to be its new location at 706 Mission Street (the project) without extended delays.
- Appears to have only a small fraction, an estimated 2 percent, of the funds needed to complete the project.
- Has not complied with several requirements in the lease and facilities agreement.
- Spent grant funds on ineligible and questionable activities, which were not sufficiently supported.

The audit also found that OCII did not effectively enforce the grant agreement requirements or thoroughly review the documents that were intended to support the Museum's expenditure of grant funds.

The report includes 10 recommendations for OCII and 4 recommendations for RED to improve their oversight and management of their agreements with the Museum. The responses of OCII and RED are attached as Appendix A, and the Museum's response is attached as Appendix B. CSA's comments on the Museum's response are attached as Appendix C. CSA will work with the departments to follow up every six months on the status of the open recommendations made in this report.

CSA appreciates the assistance and cooperation of all staff involved in this audit. For questions about the report, please contact me at [mark.p.delarosa@sfgov.org](mailto:mark.p.delarosa@sfgov.org) or 415-554-7574 or CSA at 415-554-7469.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark de la Rosa', with a stylized, flowing script.

Mark de la Rosa  
Director of Audits

cc: Board of Supervisors  
Budget Analyst  
Citizens Audit Review Board  
City Attorney  
Civil Grand Jury  
Mayor  
Public Library



## Executive Summary

The Office of Community Investment and Infrastructure (OCII), a state-authorized local entity, administers a grant agreement totaling \$10.6 million with The Mexican Museum (the Museum), a nonprofit organization in San Francisco. Under the grant, the Museum must use the funds for predevelopment and interior improvements for its new space at 706 Mission Street (the premises). The grant agreement was established in 2010 and is set to expire in June 2024. The Museum is also party to two other agreements related to this space:

- A purchase and sale agreement between OCII and 706 Mission Street Co LLC (Developer). The Museum was a third-party beneficiary of this agreement.
- A lease and facilities agreement for the premises administered by the City's Real Estate Division (RED).

From 2010 through 2023, OCII disbursed \$4 million of the \$10.6 million through five grant disbursement agreements under the grant. The audit had its objectives to:

- Assess the compliance and performance outcomes of the Museum in accordance with the agreements with OCII and the City, including the grant agreement, grant disbursement agreements, purchase and sale agreement, and lease and facilities agreement.
- Determine whether the Museum spent funds and completed project activities for predevelopment and interior improvements in accordance with the terms of its grant agreement with OCII, applicable laws, and guidelines.
- Assess OCII's management and oversight of its agreements with the Museum.

## WHAT WE FOUND

The Museum has only a small fraction of the funds needed to complete the project.



The Museum has not demonstrated that it can fund the interior improvements at the premises.

In late 2022, the Museum forecast that it would need \$49.8 million of capital funds (excluding the city grant funds) to complete the interior improvements but estimated that it had only approximately \$835,000 (2 percent of the amount needed) in available cash and could not document that it had raised any additional capital funds.

6 | The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and OCII Has Not Effectively Enforced the Museum's Grant Agreement

The Museum has not complied with key requirements of the lease and facilities agreement.



Did not substantially complete interior improvements within 24 months after the issuance of the temporary certificate of occupancy.

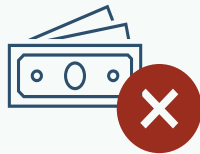


Did not provide annual financial reports to the Real Estate Division.



Did not provide a compliant certificate of insurance.

The Museum spent \$43,616 for ineligible activities, and \$930,247 for questionable activities.

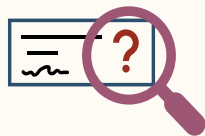


Ineligible expenses include requests for \$21,250 in duplicate expenses, which OCII paid, and legal services not tied to the grant's purpose.



Questionable expenses include requests for \$534,187 for salaries and benefits, and \$177,072 for accounting and auditing fees, all of which were not sufficiently supported.

OCII has not effectively enforced the grant agreement.



Approved costs submitted by the Museum without proper proof of payment.



Did not review documentation from the Museum in a timely manner.



Used different methods to disburse funds and to allocate reimbursable costs.

## WHAT WE RECOMMEND

The report includes 10 recommendations for OCII and 4 recommendations for RED to improve their administration of the agreements.

Key recommendations include that OCII should:

- Require the Museum to provide specific, realistic, and achievable fundraising goals to demonstrate it can fund the project and open to the public without extended delays and work with RED to determine whether fundraising is sufficient to complete the build-out of the premises.
- Seek reimbursement from the Museum for any grant money spent on ineligible activities.
- No longer approve any requests for reimbursement of costs related to the storage of the collection or any other operational expense of the Museum unless OCII amends the grant agreement to specifically include these activities. Develop clear and specific criteria for reimbursement of administrative costs and costs directly related to predevelopment and interior improvements at the premises.

Key recommendations include that RED should:

- Require the Museum to provide, within 60 days of the issuance of this report, a plan indicating how it will complete the build-out of the premises, including a realistic schedule, with detailed milestones, showing when the space will open to the public. If RED determines that the Museum is no longer a viable project, RED should develop an alternative use for the space pursuant to the lease and facilities agreement.
- Require the Museum to provide annual reporting packets and proof of insurance that comply with the lease and facilities agreement.

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## Glossary

City	City and County of San Francisco
CCHE	California Cultural and Historical Endowment
CSA	City Services Auditor, Audits Division
Developer	706 Mission Street Co LLC, an affiliate of Millennium Partners
Fort Mason	Fort Mason Center for Arts & Culture
GDA	Grant Disbursement Agreement
MoAD	Museum of the African Diaspora
the Museum	The Mexican Museum
OCII	Office of Community Investment and Infrastructure
Premises	The museum space at 706 Mission Street
RED	Real Estate Division
SFRA	San Francisco Redevelopment Agency

# Introduction

## BACKGROUND

### The Mexican Museum

The Mexican Museum (the Museum) is a California 501(c)(3) nonprofit organization with a mission to “voice the complexity and richness of Latino art and culture throughout the Americas, and to engage and facilitate dialogue among the broadest public.” The Museum originally opened in 1975 in the Mission District and moved to Fort Mason Center for Arts & Culture (Fort Mason) in 1982. According to the Museum, it left Fort Mason in 2018 in anticipation of moving to a new space at 706 Mission Street. The new space would enable the Museum to be accessible, transparent, and focused on providing diverse communities with educational events and enjoyable experiences through art and culture of Latin American origin.

### The Office of Community Investment and Infrastructure

The Office of Community Investment and Infrastructure (OCII) is a state-authorized local entity that is the successor to the former San Francisco Redevelopment Agency (SFRA)<sup>1</sup> in accordance with the California Community Redevelopment Law. OCII's efforts to wind down what were SFRA's redevelopment activities are overseen by two governing bodies: the Oversight Board and the Commission on Community Investment and Infrastructure.

### The Museum's History and the City's Role

The development of the space intended for the Museum is part of a mixed-use project developed by 706 Mission Street Co LLC, an affiliate of Millennium Partners (the Developer), at the corner of Third and Mission Streets. The project includes a 510-foot building with up to 190 residential condominium units, commercial space, and approximately 48,000 net square feet of museum space (the cultural component).

The City's plans to redevelop and revitalize the area in which the project is located began in 1966. Key milestones and events related to the Museum and the City's role in its location are listed below and summarized in the timeline in Exhibit 1:

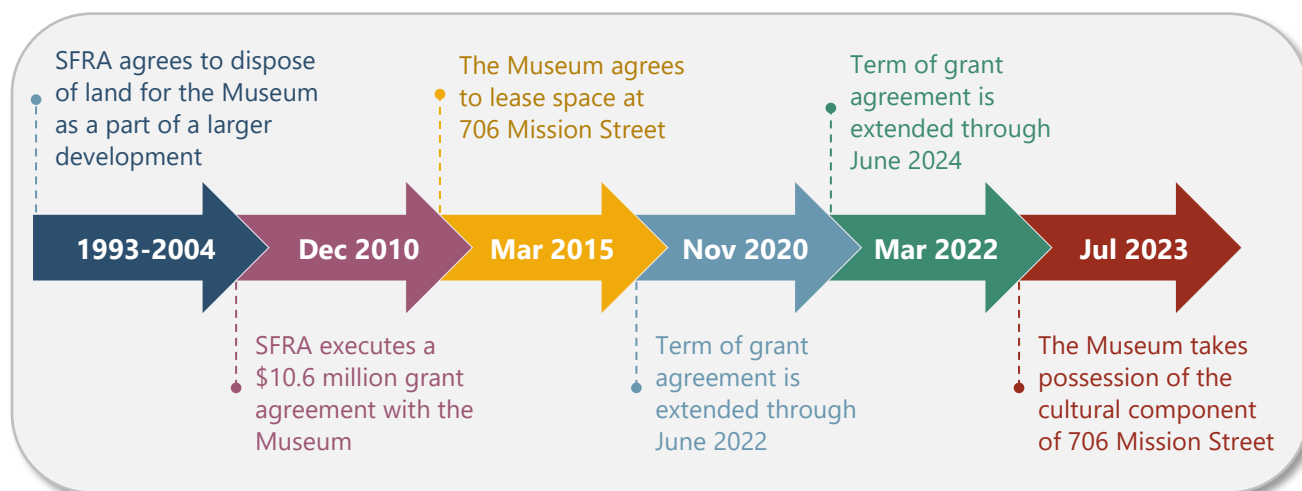
- **April 1966** – SFRA approves a Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1 to provide for the revitalization of certain lands and future uses.

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<sup>1</sup> The San Francisco Redevelopment Agency, along with all other redevelopment agencies in California, was dissolved as of February 1, 2012, as per the California Health and Safety Code, Section 34170 et seq.

- **June 1993** – SFRA approves an agreement for the disposition of land for the development of a stand-alone museum located at what is now 706 Mission Street. Under the eighth amendment in 2004, SFRA and the Museum agree that the museum space will be part of a larger development.
- **July 2008**
  - SFRA establishes an exclusive negotiation agreement with the Developer to develop a mixed-use project that will include a museum space.
  - The City's Arts Commission acts as a fiscal agent of a memorandum of understanding between SFRA and the Museum to provide \$820,000 in grant funds to develop organizational capacity for the Museum.
- **December 2010** – SFRA establishes a \$10.6 million grant agreement with the Museum for predevelopment activities and interior improvements related to the new museum space. The agreement is set to expire in December 2020.
- **January 2011** – The Yerba Buena Redevelopment Plan expires.
- **January 2012** – SFRA executes the first grant disbursement agreement.
- **February 2012** – The State of California dissolves SFRA. Consequently, OCII assumed continuing enforceable obligations of SFRA, including the grant agreement.
- **April 2013** – OCII executes the second grant disbursement agreement.
- **July 2013** – OCII and the Developer execute a Purchase and Sale Agreement for 706 Mission Street. The Museum is a third-party beneficiary of the cultural component.
- **July 2014** – OCII executes the third grant disbursement agreement.
- **March 2015** – The Real Estate Division (RED) and the Museum execute a 66-year lease and facilities agreement for the premises. The base rent is to be \$1 for the entire lease term.
- **September 2019** – OCII executes the fourth grant disbursement agreement.
- **September 2020** – The Department of Building Inspection issues a temporary certificate of occupancy for the premises.
- **November 2020** – The grant agreement is amended to extend the term to June 2022.
- **March 2022** – OCII executes the fifth grant disbursement agreement and the grant agreement is amended to extend its term to June 2024.
- **June 2023** – The Developer transfers ownership of the premises to the City.
- **July 2023** – RED provides the Museum with the keys so it can be in possession of the premises.

## Exhibit 1: Summary of key events in the Museum project



Source: CSA analysis

Exhibit 2 summarizes the agreements related to the Museum.

## Exhibit 2: Agreements related to the Museum

Agreement Type	Agreement Parties	Term or Effective Date	Not-to-Exceed Amount	Purpose of Agreement
Grant Agreement	SFRA <sup>a</sup> and the Museum	12/14/2010-6/14/2024 <sup>b</sup>	\$10,566,000	<ul style="list-style-type: none"> <li>Pay for costs associated with "predevelopment activities and interior improvements" related to museum space.</li> <li>Funding to be disbursed through grant disbursement agreements detailing specific uses of requested disbursement amounts.</li> </ul>
Memorandum of Understanding	SFRA and the Museum	7/15/2008	\$820,000	<ul style="list-style-type: none"> <li>Pay for costs to develop organizational capacity.</li> <li>The Arts Commission acted as SFRA's fiscal agent and oversaw that the grant was spent in accordance with the terms and conditions of the memorandum of understanding.</li> </ul>
Purchase and Sale Agreement	OCII and 706 Mission Street Co LLC	7/16/2013	N/A	<ul style="list-style-type: none"> <li>Developer purchased real property (where 706 Mission Street is now) from OCII and agreed to include a cultural component of 48,000 net square feet for City to lease to the Museum, a third-party beneficiary.</li> </ul>
Lease and Facilities Agreement	RED and the Museum	3/20/2015	N/A	<ul style="list-style-type: none"> <li>A 66-year lease to the Museum at a base rent of \$1 for the lease term with an option to extend for 33 more years.</li> </ul>

Notes:

<sup>a</sup> In February 2012 the State of California dissolved SFRA. Consequently, OCII assumed the continuing enforceable obligations of the grant agreement.

<sup>b</sup> The grant agreement was amended twice to extend its term. The second amendment was a 24-month extension, making the agreement effective until June 14, 2024.

Source: OCII and RED agreements.



## OBJECTIVE

The main objective of this audit was to assess the compliance and performance outcomes of the Museum in accordance with its agreements with OCII and the City, including the grant agreement, grant disbursement agreements, purchase and sale agreement, and lease and facilities agreement.<sup>2</sup> This audit was requested by Board of Supervisors President Aaron Peskin.

Specifically, the audit aimed to:

1. Determine whether the Museum spent funds and completed project activities for predevelopment and interior improvements in accordance with the terms of its grant agreement with OCII, applicable laws, and guidelines.
2. Assess OCII's management and oversight of its agreements with the Museum.

## SCOPE AND METHODOLOGY

The audit covered the period of the grant agreement so far. That is, we considered relevant conditions and events that occurred from the grant agreement's effective date of December 14, 2010, to the date we completed the fieldwork for this audit in November 2023.

To achieve the objectives, we:

- Assessed the Museum's performance, including its fundraising efforts, financial statements, architectural designs, and board structure.
- Analyzed the Museum's compliance with key requirements regarding its planned new space. To do so, we:
  - Interviewed key staff at OCII, RED, and the Museum.
  - Reviewed the Museum's agreements with OCII and the City and the Museum's performance under them to determine whether the Museum has complied with selected requirements, including documentation requirements. The agreements are the:
    - Grant agreement and grant disbursement agreements with OCII.
    - Purchase and sale agreement between OCII and the Developer; the Museum was a third-party beneficiary.
    - Lease and facilities agreement with RED.
  - Reviewed \$3 million of grant funds spent by the Museum<sup>3</sup> and \$1 million spent by the Developer from January 2012 through June 2022 to verify whether expenses were eligible under the grant and had adequate supporting documentation and proof of payment.

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<sup>2</sup> As the landlord of the cultural component at 706 Mission Street, RED administers the lease and facilities agreement.

<sup>3</sup> OCII reviewed but did not reimburse \$104,894 in addition to the \$3 million of grant funds spent by the Museum because of insufficient remaining grant funds within the third grant disbursement agreement. However, OCII did not specify which expenses were not reimbursed so we included these expenses in our audit test.

# Chapter 1

The Museum lacks the money needed to finish the project and has not demonstrated it has the financial or organizational expertise to meet the objectives stipulated in its agreements with OCII and the City.

## SUMMARY

As of December 2022, the Museum had not raised any readily available funds to start the interior improvements of the premises, estimated to require \$49.8 million, and had no plan or personnel dedicated to raising capital funds. Implementing such a plan and hiring such personnel is complicated by the fact that the Museum has not had a director since 2015. Moreover, the Museum has a history of mismanaging grant funds from other government organizations and a pattern of excessive spending, which the Museum must rein in by improving its spending strategy.

**Finding 1.1. Although \$6.6 million of the grant funds remain unspent, the Museum is an estimated \$49.8 million short of having the funds needed to complete the project and has not shown it can secure this funding, hindering the project's progress.**

The Museum has not demonstrated sufficient fundraising efforts and lacks the money needed to complete the design of the new museum space, build out the space, and open it to the public by 2025. The grant agreement does not specify fundraising goals for the Museum, but the \$10.6 million in grant funds from OCII was intended to fund only a portion of the design and construction of the museum space. Thus, since 2010, when the grant agreement was established, it should have been clear to all involved parties that the Museum would have to identify and secure its own sources of funding to complete the project.

In November 2022 the Museum forecast that it would need \$49.8 million of capital funds, *excluding the grant funds*, to complete the interior improvements but in December 2022 it lacked an estimated \$49.0 million (98 percent) of \$49.8 million needed to complete the project. At that time, according to the Museum's balance sheet, it had approximately \$835,000 in available, unrestricted cash in its bank accounts, or 2 percent of the estimated \$49.8 million needed to complete the project.<sup>4</sup>

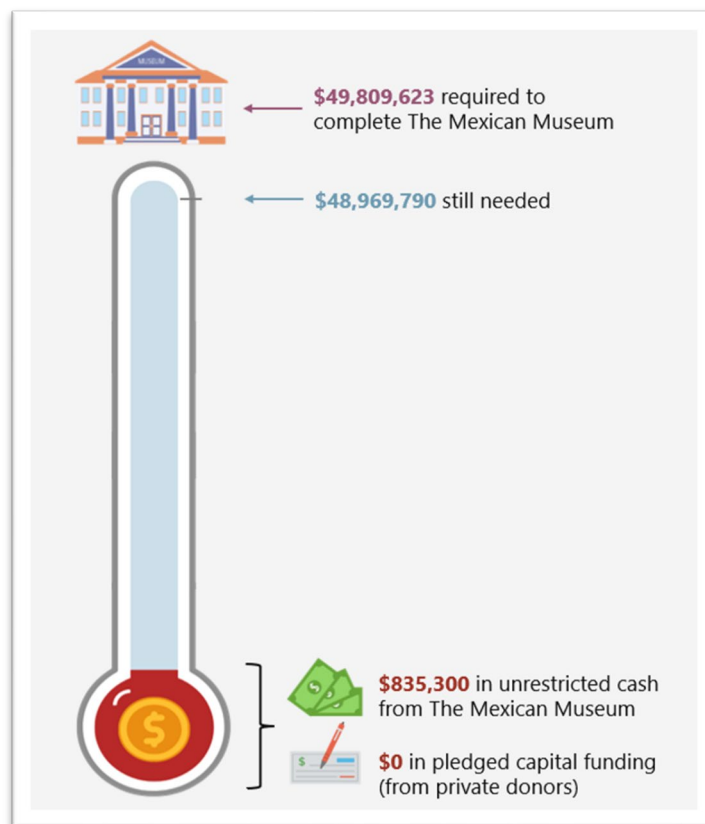
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<sup>4</sup> Because the \$835,000 is unrestricted, thus not reserved for the space build-out or capital improvements in general, the Museum may spend it on operating costs.

From 2018 through 2022, the Museum reported \$1.5 million in donations and grants and secured \$5 million in pledges. However, the \$5 million in pledges is restricted and will not be given to the Museum until 2025 when it projects it will open its new location. Further, although the Museum had \$835,000 in available cash in December 2022, its balance sheet also shows an \$825,000 liability described as "Morgan Stanley Endowment Loan." Despite our repeated requests for supporting documentation from the Museum, its management and legal counsel did not provide any documents or journal entries related to these accounts that would allow us to confirm the sources of the funds. Instead, we were provided with an explanation that the account was created internally and not linked to any loans, an assertion we could not verify.

Exhibit 3 summarizes the estimated amount needed to complete the Museum's space build-out and the Museum's available funds.

### Exhibit 3: The Museum must raise an estimated \$49 million to complete the design and build-out of the space at 706 Mission Street



Source: CSA analysis of the Museum's documentation, including estimated cost to complete project; amounts as of December 2022.

**The Museum has not demonstrated it has a plan beyond the use of the remaining \$6.6 million in grant funds.** Before the Museum can spend any of the grant funds, the grant agreement requires the Museum to enter into a grant disbursement agreement with OCII based on a budget and proposal for all planned uses, subject to OCII approval. The Museum's last approved request for funds was made in 2022 and was for \$2.5 million. Because the Museum had not spent some of the grant before the grant agreement was set to expire, it requested two amendments of the grant agreement to extend its term, in 2020 and 2022, citing the COVID-19 pandemic as a reason for delays in progress and raising capital funds. (The second amendment, for 24 months, makes the agreement effective until June 14, 2024.) In 2022 the Museum requested the remaining balance of the grant of \$6.6 million, possibly because the grant agreement would have no more extensions. As of November 2023, \$6.6 million (62 percent) of the \$10.6 million grant remained unspent and not yet approved for disbursement.

**The Museum has not raised the additional \$49 million needed to complete the project and appears to have no plan how to raise it.** As stated above, the Museum has known since 2010 that it would need to raise money—in addition to the OCII grant—to complete the design and build-out of its new home at 706 Mission Street. Thus, the COVID-19 pandemic, which began affecting San

Francisco in 2020, does not explain the Museum's failure to raise capital improvement funds in the preceding decade. Also, the Museum has not updated its business plan since 2015 but claims it has other identified sources of funding for the project. However, the Museum has not demonstrated this to OCII, RED, or the audit team. We asked the Museum for a current business plan, project funding sources, or any other related information more current than its 2015 business plan, but the Museum could not identify any such document or any specific fundraising activities, except the creation of a sister organization in Mexico, which would be dedicated to raising funds for the completion of the project.

According to the Museum's financial statements, from 2011 through 2022, it received donations and grants in the amount of \$5.6 million,<sup>5</sup> or an average annual amount of approximately \$466,000. The maximum amount received by the Museum in one year was approximately \$911,000. This further demonstrates the Museum's inability to raise sufficient capital funds to support the interior improvements at 706 Mission Street.

**Other museums in San Francisco have raised funds successfully in recent years.** In comparison, according to the Museum of the African Diaspora (MoAD), located in San Francisco, it was able to innovatively fundraise despite difficult times during the pandemic, temporary closure, and significantly reduced foot traffic. Further, MoAD used to host annual galas but learned that it could not continue to rely on them for all its fundraising, so it tried new approaches, such as hosting online auctions, which turned out to be successful. According to MoAD's 2022 annual report, the organization spent \$1.2 million on fundraising and raised \$3.8 million in funds. In contrast, according to the Museum's profit and loss statement for 2020, 2021, and 2022, it spent only \$2,379 on fundraising activities.

**Turnover in the Museum director position since the 2010 grant agreement, having no director since 2015, and having no dedicated fundraising personnel may explain the Museum's lack of progress on the project.** According to the Museum's tax returns, it had two directors in the five years of 2011 through 2015 and had two chief operating officers as paid executives but has had no paid executive director since 2015. As of June 2023, the Museum had six employees: a chief operating officer, a director of education, two assistants, a content creator, and a registrar. Although a fundraising position is included in its organizational chart, the Museum did not employ dedicated fundraising personnel as of June 2023.

**Staff turnover at OCII may also explain the lack of progress.** Another factor that may have contributed to the project's delay is the absence of a consistent OCII project manager and staff turnover, which, according to OCII, has persisted since the inception of the grant agreement in 2010, continued through the closure of Yerba Buena Center Redevelopment project area in 2011, and lasted long after the dissolution of SFRA in 2012. Thus, OCII's efforts to fulfill its responsibilities to monitor the progress of the grantee (the Museum) and hold it accountable were uneven and ineffective at times. This may have contributed to the lack of coordination, communication, and oversight on the project, further delaying its progress.

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<sup>5</sup> The \$5.6 million excludes the \$10.6 million OCII grant, a \$10 million contribution, and a \$2.1 million Public Art Fee from the Developer toward the façade of the premises, and a \$5 million operational endowment also contributed by the Developer.

**We could not assess the role or effectiveness of the Museum's Board of Trustees.** The capacity of grant recipients is a key issue that can affect the implementation of a program and its success. To assess the Museum's organizational capacity and the oversight over the Museum's activities and resources, we invited the Museum's 16-member Board of Trustees (Board) to participate in a short survey, which asked about the Board's structure and the expertise of the Board members. However, instead of responding to our survey, Board members opted to provide their resumes, which reflect a wide range of experiences, mainly in the arts, business and economics, law, government, and some experience with nonprofit organizations other than the Museum. Ultimately, we could not assess the Board's structure or how well the Board leads or oversees the Museum because the Board members chose not to respond to our survey.

### **Finding 1.2. The Museum has a history of mismanaging grant funds.**

The Museum has a history of poorly administering grants received from other sources. In 2012 the California Cultural and Historical Endowment (CCHE) awarded the Museum an \$800,000 grant to be put toward the design and construction of the new museum building.<sup>6</sup> At the end of the two-year grant period, a September 2014 interim audit report by the California Department of Finance found that:

- None of the grant funds disbursed to the Museum were supported or eligible for reimbursement.
- The Museum lacked necessary fiscal controls over grant funds.
- The Museum's accounting records did not separately identify grant-related costs.
- The Museum used grant funds to reimburse costs incurred and paid for by a separate entity and reimbursed costs incurred before the grant term began.
- The Museum did not complete the deliverables required by the grant agreement.

The audit report recommended that the Museum return all disbursed funds, totaling \$123,662,<sup>7</sup> to CCHE.

Going further into the Museum's past, its audited financial statements<sup>8</sup> highlight two additional examples of the Museum misusing grant funds, these from the California Arts Council.

- From July 1999 through June 2002, the Museum drew funds from a California Arts Council educational services grant. In 2003 the California State Controller's Office conducted a desk review of the grant that found the Museum had improperly spent approximately \$295,000 of the grant funds for general operating expenditures and that the Museum had otherwise not fulfilled the grant agreement's terms and conditions. The Museum unsuccessfully appealed this finding.

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<sup>6</sup> We found that the Museum spent funds from its OCII grant for legal and accounting expenses it incurred to address the findings of the audit of the CCHE grant, as described in Finding 3.

<sup>7</sup> The Museum used only \$137,403 of the \$800,000 grant. CCHE withheld a 10 percent retention from the reimbursement claim; therefore, CCHE paid the Museum \$123,662 (\$137,403 - \$13,741 = \$123,662).

<sup>8</sup> The audit team reviewed the Museum's audited financial statements for 2011 through 2019. The audited statements for 2019 were the latest available.

- The California Arts Council awarded a \$500,000 "reimbursement contract" to the Museum for its capital development program, of which \$125,000 was advanced to the Museum in 2002. However, the Museum did not spend the funds for the intended purpose within the time frame required by the contract.

### **Finding 1.3. The Museum may have spent grant funds on excessive expenses.**

Chapter 3 highlights the Museum's ineligible or questionable expenditures of grant funds, but we also found an instance in which the Museum may have spent grant funds excessively, further demonstrating its poor management of grant funds.

**The Museum director's salary in 2012 appears to have been excessive and was paid for entirely with grant funds.** The Museum has not had a paid director or chief executive officer since 2015, but over a decade ago, in 2012, the Museum used OCII grant funds to pay its chief executive officer a salary that was significantly higher than the average paid by other museums in its budget range.

As shown in the first grant disbursement agreement (GDA), in 2012 the Museum spent \$200,000 for the director's salary, for which the Museum used only grant funds. According to a 2012 annual survey of the Association of Art Museum Directors, at that time the average salary of directors of museums in the United States with budgets of \$1 million to \$2.5 million was \$147,279. Thus, the salary of the Museum's director was 36 percent above that average.

The Museum's 2012 financial reports show that the organization had annual revenue of \$1,168,440, which included \$750,000 of income received through grant funds. Without the grant funds, the costs of the director's salary would have been 48 percent of the Museum's annual revenue, likely making the salary an unsustainable cost for the organization. Further, after the director who received this salary left the Museum in January 2013, the subsequent director's annual salary was \$90,000, a decrease of 55 percent, indicating that the preceding director was grossly overpaid.

In comparison, the MoAD executive director's salary, for its fiscal year 2011-12, was \$160,000. The reported revenue of MoAD for that fiscal year was \$2,345,432, which was twice as much as the Museum's. Thus, the Museum director's salary was 17 percent of the Museum's annual revenue, compared to 7 percent of annual revenue for MoAD. Further, MoAD's executive director salary was 9 percent above the average in the 2012 annual survey of the Association of Art Museum Directors, compared to 36 percent above average for the Museum.

In contrast to the first GDA, funds from which the Museum used to pay 100 percent of its director's salary in 2012, the salary of the subsequent director was funded with decreasing allocations of grant funds in subsequent GDAs: 50 percent in the second GDA and 30 percent in the third GDA. This indicates that the Museum recognized the prior director's salary was unsustainably high and that it should not be covered entirely by the grant funds.

## RECOMMENDATIONS

The Office of Community Investment and Infrastructure should:

1. Require The Mexican Museum to provide specific, realistic, and achievable fundraising goals to demonstrate it can fund the project and open to the public without extended delays and work with the Real Estate Division to determine whether fundraising is sufficient to complete the build-out of the premises.
2. Require The Mexican Museum to separately identify grant-related expenses in its accounting system to ensure expenses billed to the grant agreement are not covered by other sources.
3. Require The Mexican Museum to create policies and procedures for tracking the personnel time that is directly connected to improving the premises at 706 Mission Street. OCII should also document such procedures in any subsequent grant disbursement agreements it executes and accurately reimburse these expenses.

## Chapter 2

The Museum has not fulfilled some of its obligations under the lease and facilities agreement or the purchase and sale agreement.

### SUMMARY

As of July 2023, the Museum had failed to comply with several requirements in the purchase and sale agreement and lease and facilities agreement. It has not completed a substantial amount of the planned tenant improvements, has not provided the required annual financial packets or a compliant certificate of insurance for the premises, and did not pay its common area and maintenance dues.

**Finding 2.1. The Museum did not comply with its contractual obligation to substantially complete tenant improvements by September 2022, despite having the opportunity to do so. In fact, the interior improvements have not even begun.**

The purchase and sale agreement and the lease and facilities agreement require tenant improvements to be substantially completed within 24 months of the issuance of the Temporary Certificate of Occupancy for the Core and Shell, which was issued on September 3, 2020. Thus, the Museum should have substantially completed the required improvements by September 3, 2022. However, as of July 2023, the Museum had not even begun the planned interior improvements at 706 Mission Street.

The lease and facilities agreement states that if the Museum does not complete the improvements by the deadline, RED has the right to evaluate the state of the construction of the interior improvements and determine whether to pursue another tenant for the premises.<sup>9</sup> As of December 2023, RED has not notified the Museum that it will pursue another tenant for the space.

**The Museum did not request early access to the premises but took possession in July 2023.**

Although the lease and facilities agreement expressly provides the Museum with an opportunity to request early access to the premises from RED and the Developer to begin interior improvements, the Museum did not use that opportunity. According to RED, the Museum did not request early access to the premises. In July 2023 RED gave the Museum keys to the premises, which constituted the Museum taking full possession of the space.

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<sup>9</sup> Before pursuing another tenant, RED must notify the Museum in writing and use a "cure period" of 30 days. A longer cure period could be used if the Museum requested this in writing and the City agreed to the request.



**The Museum has made no progress on interior improvements.** In July 2023 the audit team visited the premises and saw none of the planned interior improvements—or any visible progress toward them—for which the Museum is responsible. The only major completed milestone we saw is the façade screen on the premises’ exterior, which the Developer completed, as shown in Exhibit 4.

**Exhibit 4: Façade screen outside the cultural space at 706 Mission Street**

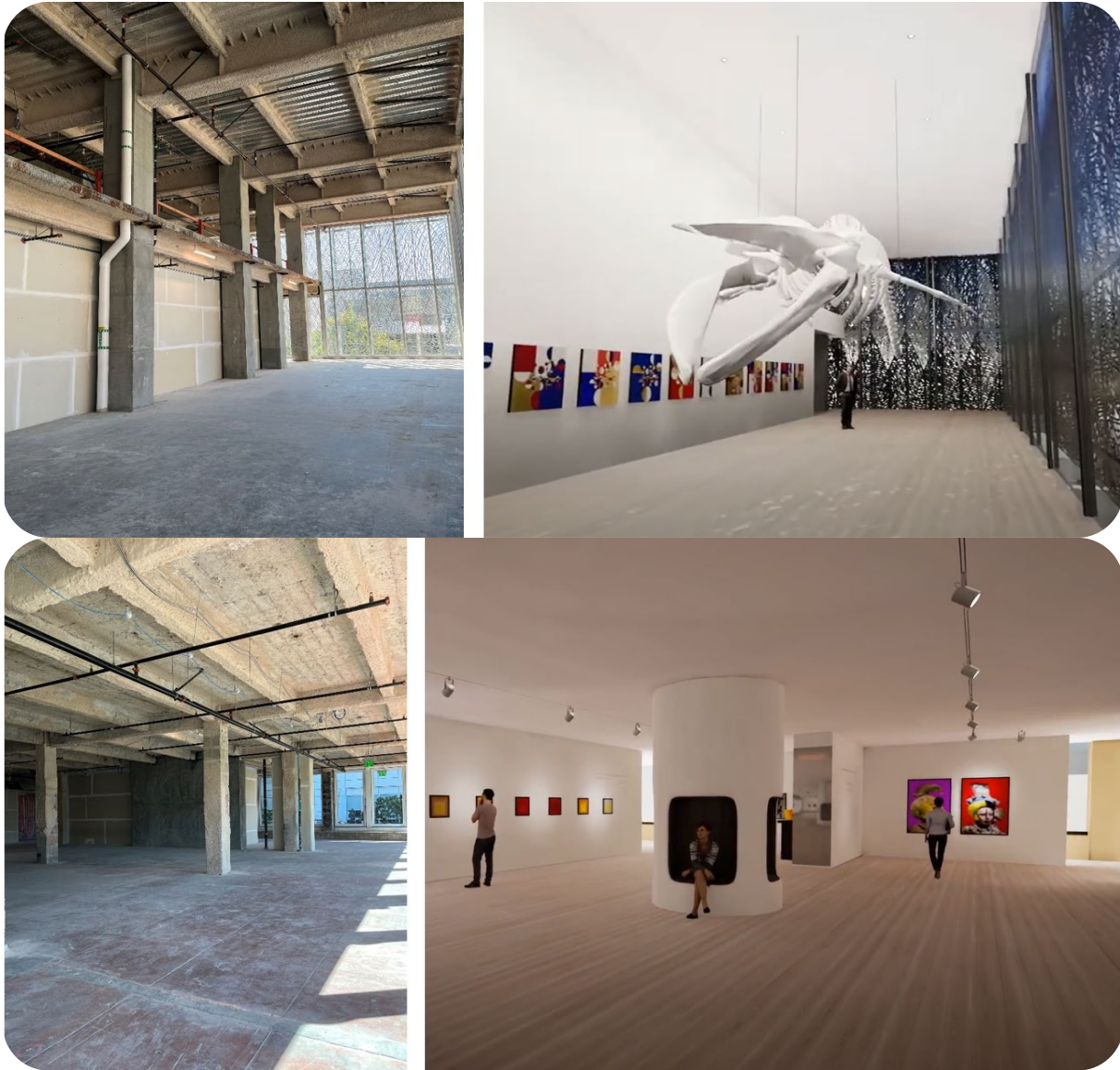


Source: CSA, July 14, 2023

22 | The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and OCII Has Not Effectively Enforced the Museum's Grant Agreement

Exhibit 5 shows two photos reflecting the state of the premises we observed in July 2023 contrasted with the Museum-provided renderings of how the completed exhibition spaces were expected to look.

**Exhibit 5: State of the premises in July 2023 (left) compared to design plans (right)**



Source: CSA, July 14, 2023 (left); the Museum (right)

**The Museum sued the City over an interior access issue, possibly adding to the delays.** According to the Museum, its initial plan was to include a staircase between the second and third floor, as shown in Exhibit 6. However, according to the Museum, this plan had to be dropped when it found that access to the staircase was blocked after the Developer completed the space. Consequently, in May 2022 the Museum filed a lawsuit against the City related to the blocked access to the third and fourth floor of the premises. Instead of fully concentrating on fundraising and planning the build-out,

the Museum spent time and legal fees on the lawsuit, which yielded no results. Also, because it took more than a year for the parties to resolve the lawsuit, it may have further delayed the project. According to RED, it complied with the lease and facilities agreement by providing the Museum with at least nine months' notice regarding the change order to block off the staircase access, but the Museum did not respond and later stated it did not receive the notice. The parties eventually entered into a tolling agreement, suspending the statute of limitations, which was approved by the City's Board of Supervisors in June 2023, and the case was dismissed without prejudice the following month.

#### **Exhibit 6: Blocked-off access to planned staircase**



Source: CSA, July 14, 2023

### **Finding 2.2. The Museum has not fulfilled reporting and insurance requirements in the lease and facilities agreement and has not paid nearly \$80,000 in common area and maintenance dues.**

According to RED, as of August 2023 the Museum had not provided the required annual reporting packets or financial statements since 2018. Also, as of September 2023 the Museum had not provided proof of insurance for the premises, which has been required since July 2023.

As indicated above, these documents have been required since either of two applicable dates: the effective date, which is the date the agreement was signed in March 2015, or since the commencement date, which is July 11, 2023, when the Museum took possession of the premises.

**The Museum has not submitted annual reporting packets or financial statements.** According to the Museum's management, the organization had no obligations under the lease and facilities agreement, including no obligation to provide required documents, until the Museum was in possession of the premises, which the agreement calls the commencement date. However, the lease and facilities agreement states otherwise, except for the proof of insurance, which was due upon the commencement date. Based on the reporting requirements in the lease and facilities agreement that became effective on the agreement's March 2015 effective date, in February 2021 RED notified the Museum that it was not in compliance with these requirements.

**The Museum's proof of insurance falls short of requirements.** On September 5, 2023, RED issued a notice requesting proof of insurance from the Museum. On November 1, 2023, RED issued a notice of default to the Museum for failing to provide proof of insurance for the premises. On November 5, 2023, the Museum provided proof of insurance for the premises. However, the insurance coverage the Museum obtained had commercial general liability limits of \$1 million per occurrence, which falls short of the lease and facilities agreement's requirement of \$5 million. The Museum's legal counsel



stated that as of November 3, 2023, the organization was arranging to increase the insurance policy's liability limit so it will comply with the lease and facilities agreement.

**The Museum has not paid any common area and maintenance dues.** According to RED, as of November 11, 2023, the Museum had not paid any of its monthly common area and maintenance dues for the museum space, which totaled \$79,513 at that time. The first payment was due in August 2023, after the Museum took possession of the premises.

## RECOMMENDATIONS

The Real Estate Division should:

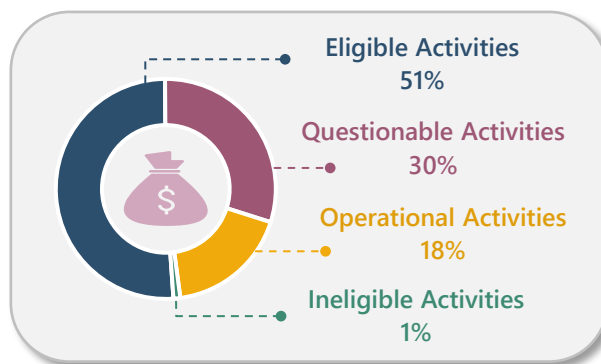
4. Require The Mexican Museum to provide, within 60 days of the issuance of this report, a plan indicating how it will complete the build-out of the premises, including a realistic schedule, with detailed milestones, showing when the space will open to the public. If the Real Estate Division determines that The Mexican Museum is no longer a viable project, the Real Estate Division should develop an alternative use for the space pursuant to the lease and facilities agreement.
5. Require The Mexican Museum to provide proof of insurance that complies with the lease and facilities agreement, Section 20, covering the period after the agreement commenced on July 11, 2023.
6. Require The Mexican Museum to provide for its most recent fiscal year audited financial statements and the annual financial information packet as described in the lease and facilities agreement.
7. Require The Mexican Museum to promptly pay its common area and maintenance dues.

## Chapter 3

The Museum submitted \$43,616 of ineligible costs, \$930,247 of questionable costs, and \$562,579 of operational costs, all of which OCII approved.

### SUMMARY

OCII approved \$43,616 of the Museum's expenses for ineligible activities, \$21,250 of which were for costs approved twice. Also, it approved \$930,247 of questionable expenses, which were not sufficiently supported, and \$562,579 of operational costs related to the Museum's Fort Mason exhibition space and the storage of the Museum's collection.



### The Museum Spent \$43,616 in Costs for Ineligible Activities

The Museum spent \$43,616 for costs that are ineligible for reimbursement under the grant agreement with OCII. Most of the ineligible costs are related to expenses the Museum submitted twice and legal costs related to activities for other Museum grants. Exhibit 7 summarizes the ineligible costs, and Exhibits 8 and 9 show the Museum's supporting documentation for some of these examples.

### Exhibit 7: Summary of ineligible costs for which OCII reimbursed the Museum

Ineligible Cost	Ineligible Amount
Duplicate payments <sup>a</sup>	\$21,250
Legal services not directly connected with grant's purpose. Services described relate to addressing findings of CCHE grant audit, "visa requirements" for the Museum's new director, and Board meetings, among others. <sup>b</sup>	17,200
Workers compensation insurance for a period when no salaries were reimbursed.	1,388
Other miscellaneous costs, such as groceries, parking, bridge tolls, utility cart.	1,353
Working dinner and breakfast with architects. <sup>c</sup>	921
Expense for the Museum director's health insurance for December 2012 was approved twice, once via personal insurance, paid by the Museum (\$766.64) and once through the Museum's group insurance (\$1,012.59).	767
Benefits of an employee whose salary was not reimbursed under the grant agreement	567
Payroll related to the Museum director	170
<b>Total</b>	<b>\$43,616</b>

Notes:

<sup>a</sup> Refer to Exhibit 10, 11, and 12 for details and supporting documents.

<sup>b</sup> Refer to Exhibit 9 for supporting documents.

<sup>c</sup> Refer to Exhibit 8 for supporting documents.

Source: CSA analysis

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**Exhibit 8: Support for \$921 working dinner and breakfast incurred by the Museum.**

**THE MARQUEZ LAW GROUP**

**INVOICE FOR REIMBURSEMENT**

August 28, 2013

David de la Torre  
Director  
The Mexican Museum  
Fort Mason Center  
Building D  
San Francisco, CA 9412

**Description:**

August 21 - Working meeting with Design Architect for The Mexican Museum Project. \$699.52

August 22 - Working breakfast meeting with Design Architect and Architect of Record for The Mexican Museum Project. \$221.73

**Total Due:** \$921.25

THE MEXICAN MUSEUM  
BLDG-D FORT MASON  
SAN FRANCISCO, CA 94125-1339

Pay to the Order of The Marquez Law Group \$ 921.25  
nine hundred twenty one and 25/100 Dollars

For [Redacted]

INTERCONTINENTAL SAN FRANCISCO  
888 Howard Street  
San Francisco, CA 94103

Four Seasons Hotel  
San Francisco  
www.fourseasons.com  
8/22/2013 8:23

Check: 3002508 Table: 30  
Server: Jesus Guests: 6  
Terminal: 300

**MKT Restaurant**

1 FRESH JUICE LG	8.50
1 FRESH JUICE LG	8.50
1 FRESH JUICE LG	8.50
6 COFFEE	36.00
0 5.00	
1 PASTRY	5.00
1 BAY OMELET	23.00
1 MIXED BERRIES SD	5.00
1 TWO EGGS	18.00
1 SIDE FRUIT	3.00
1 TWO EGGS	18.00
1 EGG WHITE OMELET	18.00
1 SMOKED SALMON	20.00
1 SIDE BREAKFAST	7.00
1 FRESH JUICE SM	7.00

Subtotal 185.50  
Tax 15.23  
Total 201.73

Gratuity 22.00  
Total 221.73

Signature \_\_\_\_\_  
Gratuity Not Included

*Paul Cash*

Source: OCII

**Exhibit 9: Support for legal services related to CCHE grant (discussed in Finding 1.2) and employment labor visa incurred by the Museum, totaling \$5,000.**

Received and reviewed draft audit from the Department of Finance related to the CCHE Planning Grant; telephonic conversation with Museum's Director and CPA regarding the same; telephonic conversation with auditor to discuss the audit findings. Began drafting a response for the draft audit, including undertaking further factual background on some of the invoices submitted for the design work by the project architects.		
3.5	\$400.00	\$1,400.00
Drafted letter for Mayor Lee asking for his support in advocating for the Museum to retain the CCHE grant funds; followed up with meeting with the Mayor to request his support. Prepared a letter of Support for former Assemblywoman Fiona Ma to ask for her support for the retention of the CCHE grant funds and to assist with strategizing in Sacramento. Met with a Sacramento representative to ask for assistance in meeting with the Governor for the retention of the CCHE grant funds. Coordinated substantive issues related to the CCHE grant with Sacramento legislatures.		
7.0	\$400.00	\$2,800.00
Coordinated finding special immigration legal counsel for the CEO to have her employment labor visa process which included interviewing several immigration attorneys and selecting the best choice for expediting the visa process with the goal of having the CEO start prior to the end of the year; coordinated obtaining the best rate possible and helping to negotiate a reduced attorneys fee retainer agreement; coordinated with the CEO candidate to ensure prompt follow up on all aspects of the process.		
2.0	\$400.00	\$800.00

Source: OCII

The audit also found four instances in which the Museum submitted—and OCII approved and reimbursed—the same expenses twice. These duplicate reimbursements total \$21,250. Details are shown in Exhibits 10, 11, and 12.

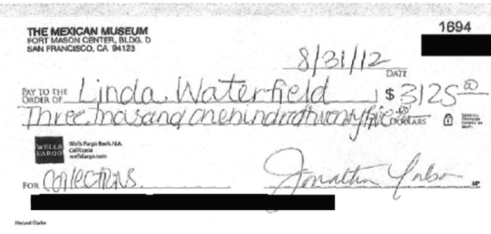
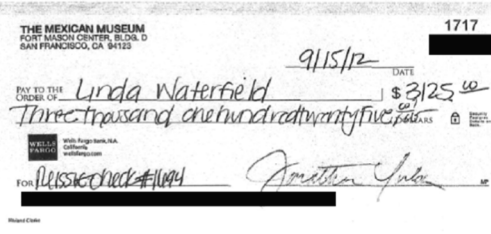
**Exhibit 10: Summary of OCII’s duplicate reimbursements to the Museum.**

Description	Ineligible Amount
Same invoice from Linda Waterfield for space planning was attached to check 1694, dated 8/31/2012, and check 1717, dated 9/15/2012. Expense was approved in same GDA.	\$3,125
Same invoice from Linda Waterfield for space planning was attached to check 1782, dated 11/30/2012, and check 1794, dated 12/11/2012. Expense was approved in same GDA.	3,125
Same invoice from The Marquez Law Group for legal services was attached to check 1812, dated 12/27/2012, and check 1843, dated 1/15/2013. Expense was approved in same GDA.	7,500
Check 1873, dated 3/1/2013, to The Marquez Law Group for legal services was approved once in first GDA with only a copy of the check as support and then again in second GDA with both an invoice and the check as support.	7,500
<b>Total</b>	<b>\$21,250</b>

Source: CSA analysis

## Exhibit 11: Duplicate reimbursement to the Museum for Linda Waterfield invoice.

### Supporting Documents:

Invoice for The Mexican Museum Attention: Jonathan Yorba, CEO	Invoice for The Mexican Museum Attention: Jonathan Yorba, CEO
The Mexican Museum Fort Mason Center, Building D San Francisco CA 94123	The Mexican Museum Fort Mason Center, Building D San Francisco CA 94123
Contractor: Linda Waterfield [REDACTED]	Contractor: Linda Waterfield [REDACTED]
Services Provided August 1 - 31, 2012 Space Planning \$3,125.00	Services Provided August 1 - 31, 2012 Space Planning \$3,125.00
Thank you	Thank you
Signed: Linda Waterfield	Signed: Linda Waterfield
Date: August 20, 2012	Date: August 20, 2012 resubmitted September 11, 2012
	

### Issues Identified:

- The Museum submitted the same invoice twice. The second time, a note was added: "resubmitted September 11, 2012."
- OCII reimbursed the Museum for both, thus potentially paying for the same expense twice.
- We cannot determine whether both checks were cashed because the Museum provided copies of checks instead of cancelled checks.

Source: OCII; CSA analysis



## Exhibit 12: Duplicate reimbursement to the Museum for The Marquez Law Group invoice.

### Supporting Documents:

**THE MARQUEZ LAW GROUP**  
[Redacted]  
**INVOICE FOR LEGAL SERVICES**

December 24, 2012

Jonathan Yorba  
Chief Executive Officer  
The Mexican Museum  
Fort Mason Center  
Building D  
San Francisco, CA 9412

**Billing Activity & Time**

Description of Service	Time	Hourly Rate	Total
Legal Services, Government Relation Services and Community Outreach Services relating to the development of the new Mexican Museum facility at 706 Mission Street. Services included participating in team meetings during the months of September through December 2012, including but not limited to, meetings with the Development Team Museum & Millennium Partners representatives. Ongoing meetings with city officials and elected officials.			
Finalization of RFQ for Project Manager position for posting online; Receipt and Review of Resumes responsive to the Project Manager RFQ.			
Interviews of Project Manager candidates and selection of final candidate.			
Dealing with the extension of the ENA for the Museum component of the Mixed-Use Project.			
Interaction with members of the newly appointed Commission that will be overseeing key components of the Museum Development Project.			
Flat fee.....			\$7,500.00
<b>Total Due:</b>			<b>\$7,500.00</b>

Please make check payable to: The Marquez Law Group

**THE MEXICAN MUSEUM**  
FORT MASON CENTER BUILDING D  
SAN FRANCISCO, CA 94125  
1812

DATE: 12/27/12

PAY TO THE ORDER OF: Marquez Law Group, Inc. \$7,500.00

Six thousand five hundred and no/100 DOLLARS

FOR legal services Jonathan Yorba

**THE MEXICAN MUSEUM**  
FORT MASON CENTER BUILDING D  
SAN FRANCISCO, CA 94125  
1843

DATE: 11/15/13

PAY TO THE ORDER OF: The Marquez Law Group, Inc. \$7,500.00

Six thousand five hundred and no/100 DOLLARS

FOR legal services Jonathan Yorba

### Issues Identified:

- The Museum submitted the same invoice twice.
- OCII reimbursed the Museum for both expenses, thus potentially paying for the same expense twice.
- We cannot determine whether both checks were cashed because the Museum provided copies of checks instead of cancelled checks.

Source: OCII; CSA analysis

## The Museum Requested \$930,247 in Grant Money for Questionable Costs, Which OCII Approved

The Museum spent \$930,247 on questionable costs, most of which were for goods or services that we could not confirm were directly tied to the grant's purposes, as stated in the grant agreement. For example, it is not always clear from the documentation whether an expense relates to the 706 Mission Street space or the Museum's former space at Fort Mason, which was still operational during the periods covered by some of the GDAs. The questionable costs, all of which OCII approved, were mainly of the following types:

- Salaries of the Museum’s administration staff and director, sometimes fully reimbursed from the grant, were not supported by timesheets to show that the work performed by these employees was directly related to predevelopment of the 706 Mission Street space or another purpose covered by the grant agreement.
- Phone and internet costs were reimbursed at 75 and 90 percent without evidence to confirm that they were related to predevelopment activities.
- Accounting services were not itemized, so it is unclear if they were related to predevelopment activities. Further, we found five invoices for accounting and consulting services that list activities connected to the CCHE grant discussed in Finding 1.2. We could not verify the exact amount of the ineligible portion of these expenses because the expenses were not itemized, so we categorized these expenses as questionable.
- Miscellaneous expenses were reimbursed without sufficient documentary evidence to determine whether they were related to predevelopment activities or activities related to the 706 Mission Street space or the Museum’s former space at Fort Mason.

Exhibit 13 summarizes the most recognizable categories of questionable expenses. Exhibit 14 is an example of the accounting and consulting invoices related to the CCHE grant discussed in Finding 1.2. Exhibit 15 is an example of insufficient documentary evidence submitted by the Museum.

### Exhibit 13: Summary of questionable costs incurred by the Museum

Questionable Costs	Amount
Salaries of administrative employees and director	\$383,419
Accounting/Auditing Fees	177,072
Salary of fund development director	110,000
Architects	84,315
Employee benefits	40,768
Phone/Internet	10,292
Other	124,381
<b>Total</b>	<b>\$930,247</b>

Source: CSA analysis

## Exhibit 14: The Museum's accounting and consulting expenses regarding CCHE grant, discussed in Finding 1.2

### Descriptions Taken From Reimbursed Invoices:

#### Invoice 2014-2808

Description	Amount
Consulting - For Professional Services Rendered in the Month of September including but not Limited to: Cash Disbursements Review, Review of QuickBooks Accounting, <b>CCHE Matters</b> , Financials, Cash Flows, Budget Reports, Gifting Coordination with Yuki. Fin Cmte Mtg	4,550.00

#### Invoice 2014-2851

Description	Amount
Tax Return	2,500.00
Consulting - For Professional Services Rendered in the Month of October including but Not Limited to the Secretary of State information, <b>Review of CCHE Report and Responses</b> , Phone Conferences, Email Responses	1,700.00

#### Invoice 2015-2936

Description	Amount
Consulting - For Professional Services Rendered During the Month of January 2015 including but not limited to Review of Check Disbursement, Cash Management, Emails, Review of Financial, Meetings, <b>CCHE Reimbursement Request</b> , Sales Tax Report, Audit Report Adjustments & Insurance Matters	6,300.00

#### Invoice 2015-3102

Description	Amount
Consulting - For Professional Services Rendered During the Month of April 2015 Including but Not Limited to Preparation of Board Financial Statements, Administrative Matters, Meetings with CEO, Finance Committee Meeting and Board Meeting, <b>CCHE Information</b> , Cash Management and Specific Costs Allocations	4,550.00
Consulting - SA review and Allocation of Expenditures	1,100.00
Consulting - Parking	9.00

#### Invoice 2015-3126

Description	Amount
Consulting - For Professional Services Rendered During the Month of May Including but Not Limited to the Following: Cash Management, Finance Committee Meeting, Meeting with MP Representative Cristina Mor, Responses to Emails, Information to Staff and MP, <b>CCHE Funds</b> , Business Registration	1,600.00
Parking	6.00

### Issues Identified:

- Includes ineligible expenses regarding the CCHE grant.
- We cannot determine the exact amount of the ineligible portion of the expenses because the expenses are not itemized and are commingled with other activities.

## Exhibit 15: The Museum's payments for architectural services with inadequate invoice support

### Supporting Documents:

**A+D/PLA, A Joint Venture**

**Invoice**

Date	Invoice #
6/27/2014	13006.11

Approved 7.14.14  
Gregory Johnson

**Bill To**  
David de la Torre  
Mexican Museum  
Fort Mason Center  
San Francisco, CA 94123

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
<b>FOR ARCHITECTURAL SERVICES PROVIDED: June 1st-27th, 2014</b>			
	<b>Professional Fees</b>		0.00
26	Sr. Principal Architect (Sandra Vivanco)	240.00	6,240.00
14	Sr. Principal Architect (Peter Flau)	240.00	3,360.00
37.25	Sr. Project Manager/ Architect (Lourdes Garcia)	210.00	7,822.50
87	Senior Designer (Meghan Strathorn)	165.00	14,355.00
4.5	Clerical	55.00	247.50
	<b>Professional Fees Subtotal</b>		32,025.00
<b>Total Reimbursable Expenses</b>			
1	Printing	477.50	477.50
1	Working lunches	220.30	220.30
1	BOX Online File Storage	15.00	15.00
1	15% Markup on \$712.80	106.92	106.92
	<b>Reimbursable Expenses Subtotal</b>		819.72
<b>Total</b>			<b>\$32,844.72</b>

Make checks payable to A+D/PLA, A Joint Venture

**THE MEXICAN MUSEUM**  
BLDG-D FORT MASON  
SAN FRANCISCO, CA 94123-1338

7.31.14

Pay to the Order of **A+D/PLA, A Joint Venture** \$19,271.88

Nineteen thousand two hundred seventy one and 88/100

For: [Signature]

**THE MEXICAN MUSEUM**  
BLDG-D FORT MASON  
SAN FRANCISCO, CA 94123-1338

7.31.14

Pay to the Order of **A+D/PLA, A Joint Venture** \$19,271.88

Nineteen thousand two hundred seventy one and 88/100

For: [Signature]

**THE MEXICAN MUSEUM**  
BLDG-D FORT MASON  
SAN FRANCISCO, CA 94123-1338

7.31.14

Pay to the Order of **A+D/PLA, A Joint Venture** \$19,271.88

Nineteen thousand two hundred seventy one and 88/100

For: [Signature]

**THE MEXICAN MUSEUM**  
BLDG-D FORT MASON  
SAN FRANCISCO, CA 94123-1338

7.31.14

Pay to the Order of **A+D/PLA, A Joint Venture** \$19,271.88

Nineteen thousand two hundred seventy one and 88/100

For: [Signature]

### Issues Identified:

- The Museum submitted the same invoice four times.
- The Museum attached the same four checks (with consecutive check numbers) to the invoice it submitted four times.
- Check amount (individually or total of four) does not match invoice amount.
- Insufficient proof of payment: the Museum provided copies of checks instead of cancelled checks.

Source: OCII; CSA analysis

We could not determine whether the Museum has additional documentation to explain the questionable expenses because, according to the Museum, it has not retained documents for more than five years, consistent with its record retention policy. Although the grant agreement and grant disbursement agreements require the grantee to have documentation related to expenses available upon request, the language in the agreements does not specify the duration for which the Museum should retain documents related to the grant agreement. Current city guidance requires that recipients of city grants retain documentation related to a grant agreement for the duration of the agreement and up to five years after the conclusion of the grant agreement.

### The Museum Requested \$562,579 for Operational Expenses and Storage of Its Collection, Which OCII approved

The Museum spent \$562,579 on operational expenses related to an active exhibition space, such as rent at its Fort Mason location, and rent for storage of its collection, which we deem as not allowable under the grant agreement. According to OCII, it approved these costs under its broad authority stipulated in the Community Redevelopment Law, allowing it to determine eligible reimbursements for redevelopment activities that primarily benefit a project area. Although we recognize this authority of OCII, the audit focused on the contractual obligations under the grant agreement, and the agreement states that the grantee agrees to use the grant funds to pay for costs associated with “predevelopment activities” and “interior improvements” related to the Museum’s new space, and for no other purpose. The grant agreement goes on to define “predevelopment activities” and “interior improvements,” and these definitions do not include the Museum’s operational expenses.

Exhibit 16 summarizes the types of operational costs OCII approved.

#### Exhibit 16: Summary of the Museum’s operational costs approved by OCII

Operational Costs	Amount
Rent, utilities, and common area maintenance fees at Fort Mason exhibition space	\$285,831
Rent for storage outside Fort Mason exhibition space	247,028
General, fire, and art insurance	14,135
Consultant fees related to space planning at Fort Mason exhibition space	5,516
Web hosting and membership fees	5,082
Pest control and security alarm at Fort Mason exhibition space	2,578
Other	2,409
<b>Total</b>	<b>\$562,579</b>

Source: CSA analysis

## RECOMMENDATIONS

The Office of Community Investment and Infrastructure should:

8. Seek reimbursement from The Mexican Museum for any grant funds spent on ineligible activities.
9. Develop clear and specific criteria for reimbursing expenses directly related to predevelopment activities and interior improvements at the premises and document them in subsequent grant disbursement agreements.

10. No longer approve any reimbursement requests for The Mexican Museum's operational costs, including costs to store The Mexican Museum's collection unless it amends the grant agreement to specifically allow these activities.
11. Follow the City's record retention policy by amending the grant agreement to require The Mexican Museum to retain all reimbursement-related documents under the agreement in a readily accessible location and condition for a period of not less than five years after the final payment under the agreement. Also, include similar language in any subsequent grant disbursement agreements it executes.

## Chapter 4

### OCII has not effectively enforced the Museum's grant agreement or grant disbursement agreements.

#### SUMMARY

OCII approved expenses without adequate proof of payment from the Museum. Also, OCII approved costs that the Museum incurred before the GDA effective dates and used different methods to disburse grant funds.

#### **Finding 4.1. OCII approved \$445,816 in expenditure requests without adequate proof of payment from the Museum.**

OCII approved the Museum's requests for reimbursement for \$445,816<sup>10</sup> of expenses with missing or insufficient proof of payment, such as copies of checks. Of this amount, \$262,709 of expenses have no proof of payment. Further, not until the second payment of the third GDA did OCII receive copies of cancelled checks from the Museum to confirm that it had paid the requested expenses. For the expenses within the fifth GDA, OCII did not provide us with proof of payment, except for the costs reimbursed for the storage of the collection of the Museum from November 2018 to March 2022. It is important that any grantor sees proof of payment by its grantee seeking reimbursement to ensure that the liability—represented by an invoice, for example—was actually paid, not just incurred, by the grantee.

Of the reimbursement requests for expenses with insufficient proof of payment, OCII approved expenses in the amount of \$183,107, which was less than the total cost the Museum incurred. In some cases of insufficient proof of payment, the Museum provided OCII with proof of payment for an amount equal to the amount OCII approved for reimbursement, and not for the total amount of the invoice. For example, Invoice 012157 from Fort Mason Center for the Museum's February 2014 rent, shown in Exhibit 17, is \$7,357, but the proof of payment the Museum provided was \$5,517.75, which equals the amount OCII approved for this expense.

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<sup>10</sup> The audit team did not use missing or insufficient proof of payment as a criterion to determine cost eligibility under the grant.

### Exhibit 17: Invoice and proof of payment for the Museum's February 2014 rent

**Fort Mason Center**  
2 Marina Blvd, Bldg A  
San Francisco, CA 94123  
[REDACTED]

**INVOICE**

**Billed To:**  
Mexican Museum  
Building D, 1st Floor  
Fort Mason Center  
San Francisco, CA 94123

**Invoice #:** 012157  
**Invoice Date:** 2/1/14  
**Account ID:** 00MEX

---

**Terms:** 11TH OF THE MONTH

---

<b>Item</b>	<b>Amount</b>
00MEX - Rent	6,505.00
00MEX - Utilities	679.51
00MEX - CAM	172.49

---


**THE MEXICAN MUSEUM**  
BLDG-D FORT MASON  
SAN FRANCISCO, CA 94123-1339

**1159**  
[REDACTED]

Date: 2/15/14

Pay to the Order of Fort Mason \$ 6517.75

Five thousand five hundred seventeen <sup>75</sup>/<sub>100</sub> — Dollars

 Wells Fargo Bank, N.A.  
California  
wellsfargo.com

For #012157

TWO SIGNATURES REQUIRED  
[Signature]  
[Signature]

\$ 5517.75  
Check # 1159

**Total Due: \$7,357.00**

Source: OCII

### Finding 4.2. OCII approved costs that the Museum incurred before the GDA effective dates.

The Museum spent \$464,316<sup>11</sup> in grant funds for costs it incurred before the effective dates of the respective GDAs<sup>12</sup>. Other than the fifth GDA, which expressly allows reimbursement of costs incurred before the effective date of the grant disbursement agreement, the other agreements did not. Thus, under the first four GDAs, the Museum should have included—and OCII should have approved and

<sup>11</sup> The audit team did not use incurred costs before the GDA effective dates as a criterion to determine cost eligibility under the grant.

<sup>12</sup> All costs were incurred within the term of the grant agreement.



reimbursed—only costs incurred during the periods covered by the GDAs. Costs incurred outside the effective period of the first four GDAs should not have been approved.

**Finding 4.3. OCII did not always promptly review the Museum's expenditures, did not create the required detailed disbursement procedures, and used different methods to disburse the grant funds.**

**OCII reviewed supporting documentation four years after making a payment.** We found one instance in which it took OCII four years after paying grant funds to the Museum to obtain and review the supporting documents. This occurred for the second payment of the third GDA, which OCII made in December 2014 as an advance. The Museum did not provide documents to OCII substantiating the expenses covered by this payment until December 2018. OCII finally completed its review and approval for this payment in March 2019, more than four years after it made the payment. According to OCII, the dissolution of SFRA severely limited OCII's operations, and significantly reduced the staffing levels of the successor agency.

**OCII did not create the detailed disbursement procedures required by the grant agreement.** The grant agreement states that the Museum must use the grant funds only for predevelopment activities and interior improvements related to the Museum's new space and adds that the funds would be disbursed through additional grant disbursement agreements that should describe detailed disbursement procedures. However, the grant disbursement agreements use vague language stating that the Museum must submit a "budget" and a "funding request" or a "reimbursement request" to receive grant funds but do not describe what these budgets and funding requests must include or be supported by.

**OCII used different disbursement procedures.** Over the five GDAs, authorized by resolutions of the SFRA and the Commission on Community Investment and Infrastructure, OCII disbursed funds using three different approaches:

- Before costs were incurred and documentation was submitted by the Museum. OCII used this approach of advancing funds to the Museum for the first, second, and third GDA.
- After costs were incurred and documentation was submitted by the Developer. OCII used this approach for the fourth GDA.
- For costs incurred before approval of the GDA and budget and after documentation was submitted by the Museum. OCII used this approach for the fifth GDA.

Because OCII's disbursement to the Museum for the first and second GDA was made before costs were incurred and the Museum did not provide expenses for the whole disbursed amount, the Museum allocated the remaining balance to activities in the second and third GDA, respectively.

Also, OCII and the Museum used different allocation rates among the grant disbursement agreements for the same types of costs without properly documenting the reasons behind each rate.

The allocation rates used for five types of expenses included in the first three GDAs are shown in Exhibit 18.

#### Exhibit 18: Expenses with different allocation rates

GDA	Expense Type and Allocation Rate				
	Fort Mason Exhibition Space	Insurance Premiums	Accounting and Auditing	Director Salary	Administrative Staff Salaries
First	100%	90%	90%	100%	85%
Second	75%	75%	100%	50%	100%
Third (First Payment)	94%	N/A	100%	30%	75%
Third (Second Payment)	100%	N/A	100%	30%	75%

Source: CSA analysis

OCII consistently proportioned the benefits for the administrative staff and director only within the first GDA. In the second and third GDA, OCII did not proportion the benefits based on the reimbursement allocations of the salaries, but rather assigned a different allocation rate, as shown in Exhibit 19.

#### Exhibit 19: Comparison of allocation rates for salaries and benefits

GDA	Reimbursement Rate for Salaries of Director/Administrative Staff	Reimbursement Rate for Benefits of Director/Administrative Staff
First	100%/85%	100%/85%
Second	50%/100%	75%
Third	30%/75%	20%

Source: CSA analysis

## RECOMMENDATIONS

The Office of Community Investment and Infrastructure should:

12. Require proof of payment, such as bank statements and cancelled checks, for all expenses submitted for reimbursement, and reject any expenses submitted without sufficient evidence to show that payment was made.
13. Only use the reimbursement method when disbursing grant funds to The Mexican Museum, and not before costs are incurred or sufficiently documented. Also, OCII should document these procedures and follow them consistently in any subsequent grant disbursement agreements with The Mexican Museum.
14. Develop and include in any subsequent grant disbursement agreements specific language related to deadlines by which The Mexican Museum must submit documents.

# Appendix A:

## Department Responses

### Office of Community Investment and Infrastructure Response

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101-0042024-290

February 15, 2024

Mark de la Rosa  
Director of Audits  
Office of the Controller  
City Hall, Room 316  
San Francisco, CA 94102-4694

Re: "The Mexican Museum Has Not Demonstrated that It Can Meet the City's Contractual Obligations, and the Office of Community Investment and Infrastructure Has Not Effectively Enforced the Museum's Grant Agreement" (the "Audit")

Dear Mr. de la Rosa:

Thank you for your review of our Grant with the Mexican Museum. We are responding to the above-referenced Audit performed by the Office of the Controller. The Audit reviewed both the Mexican Museum's lease with the City (March 20, 2015) and its Grant Agreement with the Office of Community Investment and Infrastructure ("OCII") (December 14, 2010) (the "Grant"). This response focuses on those sections of the Audit (chapters 3 and 4) relating to OCII's administration of the Grant. In particular, the Audit questions whether certain Mexican Museum costs incurred between 2012 and 2015 were appropriately charged to the Grant. Also, we appreciate the Auditor's recommendations which affirm many of the best practices OCII has already implemented in its operations, but must work to further improve.

**Mexican Museum Inception**  
Given the long history of efforts to develop new space for the Mexican Museum, this response provides some background on the actions of the Former Agency and OCII. In administering the Grant, the Redevelopment Agency of the City and County of San Francisco ("Former Agency") and OCII, as its successor, exercised state authority under the Community Redevelopment Law (as amended by the Redevelopment Dissolution Law) to undertake (and complete) redevelopment activities. The Former Agency and OCII used this authority to implement the long-standing City objective of creating new museum space for the Mexican Museum in the downtown area where other cultural and art institutions are located. In the 1990's, the City asked the Former Agency to facilitate the development of new museum space in the then-existing Yerba Buena Center Redevelopment Project Area and authorized financial commitments for this purpose through approval of the Former Agency's annual budget.

London N. Breed  
MAYOR

Thor Kaslofsky  
EXECUTIVE DIRECTOR

Bivett Brackett  
CHAIR

Dr. Carolyn Ransom-Scott  
Vanessa Aquino  
Tamsen Drew  
Kent Lim  
COMMISSIONERS

One S. Van Ness Ave.  
5th Floor  
San Francisco, CA  
94103

415 749 2400

www.sfocii.org



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Mark de la Rosa, Director of Audits  
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#### Mexican Museum Agreements and Funding

In 1993, the Former Agency entered into a disposition agreement whereby the Mexican Museum would build, on public land, a stand-alone museum on Mission Street between Third and Fourth Streets across from the current Yerba Buena Gardens. In 2001, the Former Agency agreed to fund and construct the foundation and the core and shell of the museum building, but retain ownership of the land and lease it at no cost to the Mexican Museum. The Former Agency's 2001 budget committed \$5.4 million for development of the new museum and subsequent annual budgets added to that amount so that by 2010 the Former Agency had set aside over \$10 million. In 2008, a private developer proposed a mixed-use residential tower project on the site. The Former Agency and Mexican Museum agreed that the inclusion of museum space in the base of the tower would be the best opportunity to develop a new museum facility. The mixed-use project would provide the Mexican Museum with a completed core and shell and the potential to use Former Agency funds for other work related to the new space.

- 1) The 2010 Grant preserved funding for the Mexican Museum's predevelopment work under the broad state authority for redevelopment activities.

#### Community Redevelopment Law

In early 2011, the Yerba Buena Center Redevelopment Plan expired, which limited the Former Agency's role over projects subject to that plan. With expiration of the redevelopment plan, the Former Agency's active project management and additional funding of development in the Yerba Buena Center Project Area also expired. State law did not permit a redevelopment agency to enter into new financial obligations under an expired redevelopment plan. To preserve the Mexican Museum's use of previously allocated funds, the Former Agency entered into the multi-year Grant in December 2010 whereby the Mexican Museum could continue to use Grant Funds for "redevelopment activities" as defined in the Community Redevelopment Law ("CRL"), Health & Safety Code Sections 33678 (b) 33020, and 33021. Section 1.1 of the Grant. The Former Agency did not commonly use grants to accomplish redevelopment purposes, but in this case the grant funding sustained the effort to build a new museum.

The CRL broadly defines redevelopment activities as including, among other things, the planning and provision of structures as may be appropriate or necessary in the interest of the general welfare. Health & Safety Code § 33020 (a). The CRL also states that redevelopment activities must primarily benefit the project area (the "Primary Benefit Standard"). The application of these definitions of redevelopment activities was left to the reasonable discretion of the Former Agency. In the case of the Mexican Museum, which had its offices at Fort Mason Center, some level of funding for its current operations was necessary to "benefit" the proposed project in the former Yerba Buena Center Project Area.

The Grant specifies that the Mexican Museum as the Grantee must use the funds "to pay for costs associated with Predevelopment Activities and Interior Improvements related to the [new] Museum Space, and for no other purpose." Section 1.2 of the Grant. The Grant broadly defines "Predevelopment Activities" in its recitals and includes illustrative (non-exclusive) examples of those activities:

The Museum and the Agency will be responsible for funding predevelopment activities, which include preparation and implementation of the predevelopment plan (as described in Section E of the MOU), operational and organizational planning, design of the Museum Space, hiring museum staff and other consultants, and regulatory approvals ("Predevelopment Activities"). . . . Recital I of the Grant. [emphasis added]



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#### Grant Disbursement Agreements

The Grant was not self-executing, but rather required the disbursement of funds through separate Grant Disbursement Agreements ("GDA") approved by the Redevelopment Agency Commission at public hearings. Ultimately, the Redevelopment Agency Commission and the Successor Agency Commission approved five GDAs between 2012 and 2022: First GDA (\$750,000) (Resolution No. 5-2012 (Jan. 17, 2012)); Second GDA (\$1,000,00) (Resolution No. 11-2013 (April 16, 2013)); Third GDA (\$1,030,881) (Resolution No. 58-2014 (July 15, 2014)); Fourth GDA (\$1,000,000) (Resolution No. 24-2019 (Sep. 17, 2019)); and the Fifth GDA (\$2,509,125) (Resolution No. 5-2022 (March 15, 2022)). As will be described below, the first three GDAs advanced funds in lump sum payments to the Mexican Museum. The Fourth and Fifth GDAs only provide payments for expenses on a reimbursement basis.

- 2) The Audit primarily questions expenditures charged under the First, Second, and Third Grant Disbursement Agreements covering 2012-2015 operational costs.

The Audit questions certain expenditures and concludes that \$43,616 are ineligible costs under the Grant, \$930,247 are questionable costs, and \$562,579 are operational costs. Notably, the Audit's description of the questionable costs suggests that a large portion of them are operational costs, namely "Salaries of the Museum's administration staff and director . . . Phone and internet costs . . . Accounting services [and] Miscellaneous expenses." Audit at pp. 29-30. Based on our review of the Audit's supporting spreadsheets, OCII believes that these expenditures were charged to the First, Second, or Third GDA, which covered 2012 through mid-2015. Each of the first three GDAs had similar provisions and disbursement procedures: a) they disbursed funds in advance before costs were incurred and before reimbursement back-up documentation was submitted; b) they contained the same language regarding the use of funds: "The Grantee shall use the . . . Draw for 'redevelopment activities' that are defined in CRL (Sections 33678 (b), 33020, and 33021 of the California Health and Safety Code." Section 2.c. of the GDAs; c) they describe the purpose of the funding in the same way, i.e. "for the purpose of funding Predevelopment Activities related to the Museum's sustainable operational and fiscal participation in developing the Museum Space associated with the Project." Recitals of the GDAs. The GDAs do not otherwise define Predevelopment Activities; and d) they contain scopes of work for the use of the funds.

Two weeks before its dissolution, the Redevelopment Agency Commission approved, by Resolution No. 5-2012 (January 17, 2012), the First Disbursement Agreement, which provided for an advance payment to the Mexican Museum of funds (\$750,000) that were to be used for a scope of work and budget attached to the GDA. The First GDA defined the scope to include six activities:

- 1) executive and financial administration and oversight of pre-development planning and implementation;
- 2) collections assessment, conservation and cataloguing plan;
- 3) fund development for sustainability and capital campaign for 706 Mission Street Project;
- 4) legal services and government relations for preparing RFQ's and RFP's for Project Manager and Architect;
- 5) creation of five-year Operating Pro-Forma for 2013-2017; and
- 6) project manager, museum planner, program planner.

The Second and Third GDAs used similar categories in their scopes of services. The broad descriptions of the use of funds in the Grant and GDAs support payment for some operational costs.

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Office of the Controller  
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The Successor Agency Commission approved, by Resolution No. 11-2013 (April 16, 2013), the Second GDA and, by Resolution No. 58-2014 (July 15, 2014), the Third GDA, all of which followed the approach of the First GDA in advancing funds to the Mexican Museum. As a result, compliance with the terms of the GDAs and their Scopes of Service was reviewed after expenditures were made.

OCII acknowledges that an advance payment with subsequent reconciliation of expenditures against budget may not be the best practice for government grant funding. Indeed, the standard practice of OCII and the Former Agency has been to provide funding on a reimbursement basis. Nonetheless, the advance payment approach in the aftermath of redevelopment dissolution, staff departures and turnover, and uncertainty of project survival, was a means of sustaining the Mexican Museum's efforts and operations for planning a long-anticipated move to new museum space.

As OCII's post-dissolution operation continued, the advance payment approach was abandoned and replaced by a reimbursement approach in the Fourth GDA (September 17, 2019) and the Fifth GDA (March 15, 2022). Under the Fifth GDA, reimbursements are limited to expenses incurred prior to or on June 14, 2022 and OCII has only reimbursed a small portion of the funding authorized under that GDA.

- 3) The post-dissolution authorization of payments for certain operational costs of the Mexican Museum was a reasonable exercise of OCII's discretion under state law and the broad language of the funding agreements.

As noted above, the Former Agency's objective in approving the Grant was to preserve appropriated funds for the Mexican Museum's effort to complete a new museum space. To some extent, this effort also required the preservation of the Mexican Museum's then-existing assets and operations so that there was an entity able to accomplish this objective and move its operations to the new site. OCII acknowledges that use of the Grant solely for operations would not be appropriate, but considers, in retrospect, the use of some of those funds for some operational costs that were incurred 9 to 12 years ago as a reasonable redevelopment activity. The fact that the construction of new museum space has not proceeded in a timely manner is not a basis for invalidating OCII's discretion to allow those costs under the advance payments of the first three GDAs.

- 4) OCII has already implemented some of the Audit's recommendations.

Perhaps the most significant Audit recommendation is for OCII to only use the reimbursement method when disbursing grant funds to the Mexican Museum after submission of sufficient documentation. As noted above, OCII ended advance payments of lump sum amounts to the Mexican Museum after the Third GDA in 2014. Under the Fourth and Fifth GDAs, OCII approved payments only on a reimbursement basis. This is consistent with OCII's standard practice and policy to use the reimbursement method when authorizing payments under various forms of contracts.

The Audit also recommends that OCII require the recipients of OCII funding to retain payment-related records for five years after final payment under an agreement. Although the Grant only requires retention of records during the term of the Grant, which ends in June 2024, OCII will require in any subsequent Grant Disbursement Agreement that the Mexican Museum use OCII's current standard contract records retention requirements which state that "records shall be maintained for a period of four years from the date of the termination of the Contract; except that records that are the subject of audit findings shall be



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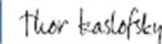
retained for four years or until such audit findings have been resolved, whichever is later." This applies to records relating to "all matters covered by [an OCII agreement]". See OCII Personal Service Template, available on OCII website at [https://sfocii.org/sites/default/files/inline-files/Sample%20Personal%20Service%20Contract\\_1.pdf](https://sfocii.org/sites/default/files/inline-files/Sample%20Personal%20Service%20Contract_1.pdf). OCII will also review City policy and consider additional changes to OCII's practices.

Lastly, OCII has a strong set of fiscal control policies and procedures ("Fiscal Controls"). OCII's Fiscal Controls are in place to ensure that funds are appropriately used, properly accounted for, and that our financial reporting follows U.S. Generally Accepted Accounting Principles. As time passed after dissolution in 2012 and with assistance from the Controller's Office staff, OCII's Fiscal Controls became more robust. The lack of findings in the Fourth and Fifth GDAs is a demonstration of that. Nonetheless, in addition to implementing the Audit's various recommendations OCII is already reviewing its Fiscal Controls for opportunities for improvement.

OCII appreciates the Controller's work and diligence and for identifying different areas for improvement. OCII is committed to ensuring that the public funds that OCII is entrusted with are properly managed and accounted for.

Best Regards,

DocuSigned by:



610962FAB46A0406

Thor Kaslofsky  
Executive Director

Attachment: City Services Auditor Division Recommendation and Response Form



## Real Estate Division

**City & County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator

February 15, 2024

Mark de la Rosa  
Director of Audits  
City Hall, Room 476  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Mexican Museum Audit

Dear Mr. Mark de la Rosa,

I have reviewed the above named audit report and completed the attached Recommendation and Response form. I would like to thank you and your audit team for the work conducted during this important audit. After reviewing the report thoroughly, I am pleased to inform that I have no additional remarks or amendments to the report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrico Penick".

Andrico Penick,  
Director of Property

## Recommendations and Responses

For each recommendation, the responsible agency should indicate in the column labeled Agency Response whether it concurs, does not concur, or partially concurs and provide a brief explanation. If it concurs with the recommendation, it should indicate the expected implementation date and implementation plan. If the responsible agency does not concur or partially concurs, it should provide an explanation and an alternate plan of action to address the identified issue.

Recommendation	Agency Response	CSA Use Only Status Determination*
The Office of Community Investment and Infrastructure should:		
1. Require The Mexican Museum to provide specific, realistic, and achievable fundraising goals to demonstrate it can fund the project and open to the public without extended delays and work with the Real Estate Division to determine whether fundraising is sufficient to complete the build-out of the premises.	<input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur  Subject to approval by the OCII Commission and in consultation with the Real Estate Division, any future grant disbursement agreements will include these goals. Currently, there are no grant disbursement agreements in effect. The Fifth Grant Disbursement Agreement expired June 14, 2022; the Grant Agreement expires on June 14, 2024.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
2. Require The Mexican Museum to separately identify grant-related expenses in its accounting system to ensure expenses billed to the grant agreement are not covered by other sources.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  OCII will direct the Mexican Museum to separately identify grant-related expenses in its accounting system. Subject to OCII Commission approval, any future grant disbursement agreement will require the Mexican Museum to implement these accounting practices.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
3. Require The Mexican Museum to create policies and procedures for tracking the personnel time that is directly connected to improving the premises at 706 Mission Street. OCII should also document such procedures in any subsequent grant disbursement agreements it executes and accurately reimburse these expenses.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  Subject to OCII Commission approval, any future grant disbursement agreement will require the Mexican Museum to create such policies and procedures.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

\* Status Determination based on audit team's review of the agency's response and proposed corrective action.

46 | The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and OCII Has Not Effectively Enforced the Museum's Grant Agreement

Recommendation	Agency Response	CSA Use Only Status Determination*
The Real Estate Division should:		
4. Require The Mexican Museum to provide, within 60 days of the issuance of this report, a plan indicating how it will complete the build-out of the premises, including a realistic schedule, with detailed milestones, showing when the space will open to the public. If the Real Estate Division determines that The Mexican Museum is no longer a viable project, the Real Estate Division should develop an alternative use for the space pursuant to the lease and facilities agreement.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  In addition to determining whether the Museum has issued a realistic plan, Real Estate Division (RED) will work with OCII to determine whether the plan is financially feasible based on the fundraising plan the Mexican Museum submits. RED anticipates completion of this task within 60 days of receipt of the Mexican Museum plan.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
5. Require The Mexican Museum to provide proof of insurance that complies with the lease and facilities agreement, Section 20, covering the period after the agreement commenced on July 11, 2023.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  The Mexican Museum has not cured this default as of the date of this response. Within 5 business days, RED will inform the Mexican Museum in writing again that they have 30 days to meet this requirement.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
6. Require The Mexican Museum to provide for its most recent fiscal year audited financial statements and the annual financial information packet as described in the lease and facilities agreement.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  The Mexican Museum has not cured this default as of the date of this response. Within 5 business days, RED will inform them in writing that they have 30 days to meet this requirement.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
7. Require The Mexican Museum to promptly pay its common area and maintenance dues.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  The Mexican Museum has not cured this default as of the date of this response. Within 5 business days, RED will inform them in writing again that they have 30 days to meet this requirement.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

\* Status Determination based on audit team's review of the agency's response and proposed corrective action.

47 | The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and OCII Has Not Effectively Enforced the Museum's Grant Agreement

Recommendation	Agency Response	CSA Use Only Status Determination*
The Office of Community Investment and Infrastructure should:		
8. Seek reimbursement from The Mexican Museum for any grant funds spent on ineligible activities.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  Within 60 days and subject to consultation with the OCII Commission, OCII will begin the process for seeking reimbursement from the Mexican Museum for any grant funds spent on ineligible activities.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
9. Develop clear and specific criteria for reimbursing expenses directly related to predevelopment activities and interior improvements at the premises and document them in subsequent grant disbursement agreements.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  Subject to OCII Commission approval, any future grant disbursement agreement will include clear and specific criteria for grant reimbursements directly related to predevelopment activities and interior improvements.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
10. No longer approve any reimbursement requests for The Mexican Museum's operational costs, including costs to store The Mexican Museum's collection unless it amends the grant agreement to specifically allow these activities.	<input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur  Subject to OCII Commission approval, any future grant disbursement agreement will identify reasonable operational costs related to predevelopment activities as eligible expenses. Amendment of the grant is not required for this purpose.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

\* Status Determination based on audit team's review of the agency's response and proposed corrective action.

48 | The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and OCII Has Not Effectively Enforced the Museum's Grant Agreement

Recommendation	Agency Response	CSA Use Only Status Determination*
The Office of Community Investment and Infrastructure should:		
11. Follow the City's record retention policy by amending the grant agreement to require The Mexican Museum to retain all reimbursement-related documents under the agreement in a readily accessible location and condition for a period of not less than five years after the final payment under the agreement. Also, include similar language in any subsequent grant disbursement agreements it executes.	<input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur  OCII will direct the Mexican Museum to retain, until further notice, all records required under Section 7.1 of the grant agreement. Subject to approval by the OCII Commission, OCII will insert in any future grant disbursement agreement OCII's current standard contract records retention requirements which states that "records shall be maintained for a period of four years from the date of the termination of the Contract; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later."	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
12. Require proof of payment, such as bank statements and cancelled checks, for all expenses submitted for reimbursement, and reject any expenses submitted without sufficient evidence to show that payment was made.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  In reviewing requests for payment under any grant disbursement agreement, OCII will require the Mexican Museum to provide proof of payment, such as bank statements and cancelled checks, for grant reimbursements and will reject any expenses submitted without sufficient evidence to show that payment was made.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested
13. Only use the reimbursement method when disbursing grant funds to The Mexican Museum, and not before costs are incurred or sufficiently documented. Also, OCII should document these procedures and follow them consistently in any subsequent grant disbursement agreements with The Mexican Museum.	<input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input checked="" type="checkbox"/> Partially Concur  Subject to approval of the OCII Commission, any future grant disbursement agreement will use the reimbursement method when disbursing grant funds. OCII has followed this practice with the Mexican Museum grant disbursement agreements since 2019.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

\* Status Determination based on audit team's review of the agency's response and proposed corrective action.

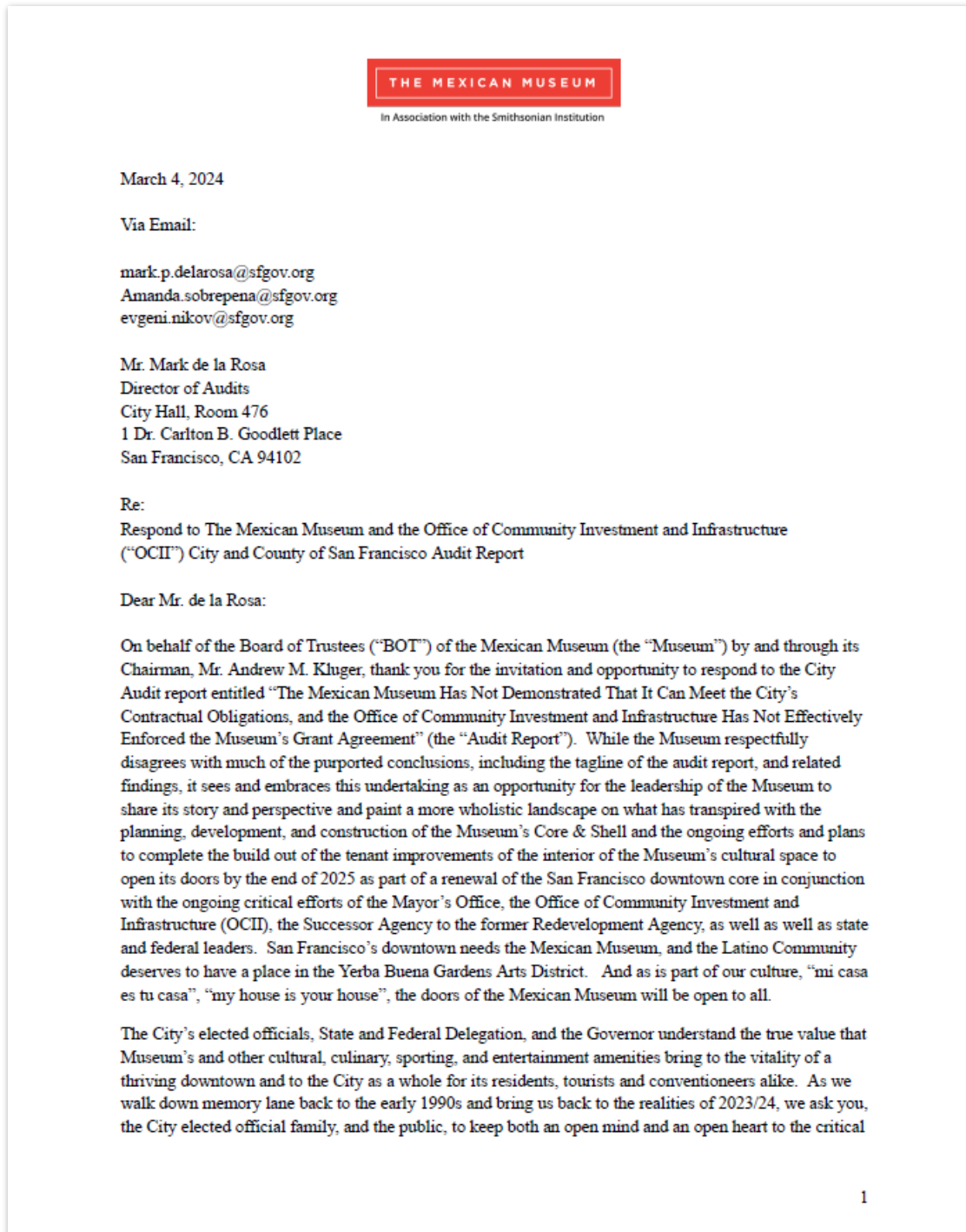
49 | The Mexican Museum Has Not Demonstrated That It Can Meet the City's Contractual Obligations, and OCII Has Not Effectively Enforced the Museum's Grant Agreement

Recommendation	Agency Response	CSA Use Only Status Determination*
The Office of Community Investment and Infrastructure should:		
14. Develop and include in any subsequent grant disbursement agreements specific language related to deadlines by which The Mexican Museum must submit documents.	<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur <input type="checkbox"/> Partially Concur  Subject to approval of the OCII Commission, any future grant agreements will include specific language regarding deadlines for the Mexican Museum to submit documents under the grant disbursement agreements.	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Contested

\* Status Determination based on audit team's review of the agency's response and proposed corrective action.

## Appendix B:

### The Mexican Museum Response\*



\* The Museum's full response includes 184 pages. CSA retains the documentation that the Museum attached to its response, which is available upon request.



importance that the Mexican Museum plays in the fabric of the City's cultural landscape and how it weaves and interweaves through the Latino Community and the other diverse communities of our great City, including with its sister organizations, the Contemporary Jewish Museum and the Museum of African Diaspora, along with Yerba Buena Gardens Center for the Arts, and the Children's Creativity Museum.

The City's audit team first informed the Mexican Museum that it would be undertaking an audit of the Mexican Museum and OCII with the following objectives:

1. Determine whether the Museum spent funds and completed activities for redevelopment and interior improvements in accordance with the terms of its grant agreement; and
2. Assess OCII's management and oversight of its agreements with the Museum.

The audit investigation, however, dove well beyond the purported scope of the Grant Agreement, which was approved on December 14, 2010 by the OCII Commission. Instead, the audit team went back to the 1990s and early 2000's in what appears to have been an effort to find a basis to build a case to reach some of its conclusions. In doing so, it focused only on negative findings but failed to balance its efforts and report on important, pertinent, and crucial information which would have tilted and does tilt the balances of justice towards the Museum's side relative to the audit's findings and the museum's future 706 Mission Street as part of a mixed use high end Four Season residences and the Mexican Museum's Cultural Component on floors 1-4 of the 40 story tower. In turn, the Museum now fills in information gaps not reported in the Audit Report.

The Museum will establish herein that:

1. That the City and OCII have a fiduciary duty to assist the Museum in completing the project based on legislative Agreements dating back to July of 1993, through the Termination of the original Land Development Agreement, and the subsequent Purchase and Sale Agreement between the Developer, Millennium Partners and/or its successors in interest, the Successor Agency and the Mexican Museum as a Third-Party Beneficiary.
2. That the Museum has more than met its matching obligation through its agreement to terminate the LDA for consideration of more than Thirty Million Dollars (\$30 M) to build the core and shell by Millennium Partners ("MP"), and, with the added negotiations with Millennium Partners to provide the Museum with \$2.1 Million for the Museum's facade and the negotiated agreement to provide the Museum with a \$5 Million Dollar endowment – all totaling to over \$37 Million Dollars in value that the Museum negotiated in exchange and in legal consideration for contributing its parcel of land to enable the Four Seasons Residential Tower to be constructed at the behest of the Successor Agency. Under the terms and conditions of the original Land Development agreement, the Museum was to raise \$18 Million Dollars towards the construction of both the core and shell and the tenant improvements. The Museum has more than double the credit for funds raised. As such, the Successor Agency must release the remaining \$6.1 Million Dollars it has in trust for the Museum so that its development team can begin construction of the Tenant Improvements.
3. That the City and OCII collectively support and proceed with the issuance of \$7.5 Million Dollar remaining obligation to complete the build out of the Mexican Museum as obligated

under the LDA's commitment, and legislative record, to issue \$18,209,882.00 to assist with the realization of a Mexican Museum at the Yerba Buena Gardens along with the Childrens' Museum.

4. The Museum is prepared to move forward and complete the construction of the Tenant Improvements of the Museum's Cultural Component through an approved Progressive Design with the team of Guzman Construction Group and Cordoba Corporation, respectively, and a group of experienced top-notch design and construction sub-contractors, coupled with the leadership of the Museum's Board of Trustees.
5. The Museum will also Refute some of the incorrect assumptions and inaccurate findings in the report about accounting concerns.

A.

**The Legislative History for the Development of the Mexican Museum supports the finding that the Museum has raised the requisite matching funds and is entitled to the credit of at least \$30 Million Dollars, and, the City has a fiduciary duty to issue the \$7.5 Million Dollar remaining obligation under the LDA Termination Agreement and Purchase and Sale Agreement**

In 1993, the late Senator Diane Feinstein who at the time was the Mayor of San Francisco worked closely with Board of Supervisors Jim Gonzalez and Terrence Hallinan, respectively, in collaboration with the San Francisco Redevelopment Agency to create a destination for children, youth and their families in the Yerba Buena Gardens Redevelopment Area envisioning initially a Childrens' Museum and the Mexican Museum. Those efforts resulted in an Agreement for Disposition of Land ("LDA") for Private Development by and between the Redevelopment Agency of the City and County of San Francisco and the Mexican Museum, a California nonprofit Corporation which had been established in the Mission District of San Francisco by the late Peter Rodriguez in the early 1970s to collect and exhibit Mexican, Mexican American, Chicano, and Latin-American Art. The LDA was executed on July 30, 1993, and recorded on October 1, 1993, as Document Number F459429 (Reel F976 Image 0426) in the official records ("Official Records") of the City and County of San Francisco, which document has been amended by and through Amendments First through Eight and which collectively are referred to herein in as the "LDA", all in connection with the lease and development of disposition parcel CB-1-MM, a portion of Lot 117 of Assessor's Block 3706 located at the north side of Mission Street between Third and Fourth Streets ("Mexican Museum Site") in the formerly known Yerba Buena Center Redevelopment Project Area now over seen by the Successor Agency. The LDA has been fully incorporated into the Agreement For Purchase And Sale of Real Estate ("PSA") by and between the Successor Agency and 706 Mission Street Co LLC ("Developer"), a Delaware limited liability company, as Transferee, and The Mexican Museum, a California non-profit corporation as Third-Party Beneficiary, which includes the transfer and development of the Mexican Museum Site.

The LDA had to be terminated as it was needed to for the PSA to become effective. However, as part of the LDA Termination the Successor Agency, the Developer and the Mexican Museum as Third-Party Beneficiary with legal standing collectively agreed to support financing of \$7.5 Million Dollars from the

City through the Board of Supervisors and the Mayor's Office. The following was agreed to by the parties, in pertinent part:

*"Successor Agency acknowledges that Developer has requested supplemental funding from the City and County of San Francisco, in lieu of a re-authorization of the Hotel Tax Bonds, in the amount of \$7,500,000.00, through the San Francisco Board of Supervisors and Mayor's Office, to be used for furniture, fixtures and equipment and tenant improvements for a new museum facility contemplated by that certain Agreement for Purchase and Sale of Real Estate, dated as of July 16, 2013, by and between Successor Agency, 706 Mission Street Co LLC, a Delaware limited liability company, and Developer, as third party beneficiary, recorded on April 17, 2014 as Instrument No. 2014-J864850 in the Official Records of the City and County of San Francisco (the "PSA"). Consistent with the terms and conditions of the PSA, the Successor Agency supports the Developer's request of \$7.5 Million Dollars to the City and County of San Francisco". (Emphasis added.) (See Exhibit "A" LDA Termination Document)*

Moreover, in pertinent part, under the Sixth Amendment to the LDA, in recital "T", the following was agreed:

*"In order to accomplish the construction of the Museum Building and the other public purposes that the Agency and Mexican Museum seek to advance in the Project Area in a timely manner, Mexican Museum has requested that the Agency provide to, or for the benefit of, Mexican Museum, financial assistance toward the construction of the Museum Building in the form of a monetary grant not to exceed \$18,209,882 (the "Grant Amount") from (a) funds previously budgeted by the Agency; (b) the Hotel Tax Bonds; and/or (c) funds requested by Agency in its budgetary request to the City and County of San Francisco (the "City") for FY 2001-2002." (Emphasis Added). (See Exhibit "B" Excerpt from Sixth Amendment to the LDA)*

The importance of this language is that the genesis of the \$18,209,882.00 is the amount that was guaranteed to the Mexican Museum under the original LDA and survived with its Eight Amendments and into the PSA. When the Successor Agency through its Commission provided the Museum a grant of \$10.5 Million Dollars on December 14, 2010, there remained a balance of \$7,709,882. This commitment, as illustrated above and in Exhibit "A" carried over to the PSA. As a Third-Party Beneficiary as demonstrated below has repeatedly advocated and requested from OCII and the City through the Real Estate Division for these monies to be allocated to the construction of the Tenant Improvements for the Mexican Museum. Please note that the figure was rounded down to \$7,500,000.00 as will be noted in the documents referenced below.

On February 27, 2014, the Mexican Museum requested from then OCII Director, Ms. Tiffany Bohee, that the Agency request support from the City to fulfill its obligation to the Museum for the \$7.5 Million Dollars. (See Exhibit "C" Bohee Memo). The Museum presented the legislative history justifying the ask. The following are excerpts from the communication with OCII Director Bohee serves as a summary of the events that have demonstrate various stages of the development of the Mexican Museum which are important to acknowledge and understand the impact they have had on the development and construction of the core and shell of the cultural component of the 706 Mission Street Four Seasons and Mexican Museum project.



*The following is a summary of the legislative history to justify the issuance of a hotel tax bond in the sum of \$7.5 Million Dollars to assist with the development and construction of the cultural facility for the Mexican Museum at the Yerba Buena Gardens Arts District at its current and originally designated site. The legislative actions were initiated by the staff of the San Francisco Redevelopment Agency (the "Agency") as part of the overall Yerba Buena Arts District which contemplated the development of the Children's Facilities (eg the Children's Museum, etc), the Jewish Museum, and the Mexican Museum.*

*The legislative actions by the Agency were formally adopted by the Agency's Commission by and through Agency Resolution No. 87-93 (Adopted May 19, 1993) and Agency Resolution 83-94 (Adopted May 17, 1994), and subsequently approved by the San Francisco Board of Supervisors ("BS") on May 23, 1994 (Resolution No. 477-94) and signed by the Mayor on June 2, 1994, and subsequent BOS actions.*

*In the early 2000s, The Mexican Museum retained world renowned architect Ricardo Legoretta to design a beautiful 65,000 square feet Museum facility. After years of attempts by the Museum to raise the requisite funding for the development and construction of the Legoretta building and with the escalating costs of construction and downturns in the economic financial markets, it became unfeasible to raise the approximate \$35,000,000.00 for the Legoretta building.*

*Then on December 4, 2004, the Mexican Museum and the Former Redevelopment Agency agreed to work cooperatively to explore alternatives for the museum facility, including the inclusion of the Museum as a cultural component in a larger development.*

*In 2007, the Museum decided to pursue a joint venture agreement with Millennium Partners and seek to build a smaller scale Museum within a residential tower wherein the Museum would be built in the first few floors of the tower. That project would become the mixed use 706 Mission Street Residential and Mexican Museum Project. At this juncture, the Museum with the assistance of the former Redevelopment Agency staff negotiated a deal wherein Millennium Partners would pay for the construction of the core and shell for the Mexican Museum at a projected value of 18 to 20 Million Dollars. This amount would finally fulfill the fundraising requirement for the Mexican Museum to raise at least \$8 Million Dollars for the construction of the museum facility as required in the Land Development Agreement as amended. The raising of the \$8 Million Dollars was a pre-requisite for the former Redevelopment Agency to contribute a monetary grant not to exceed \$18,209,882 towards the development of the Mexican Museum facility.*

*On May 4, 2010, the former Redevelopment Agency entered into a Memorandum of Understanding with the Mexican Museum and therein allocated the sum of monies not to exceed \$820,000.00 to enable the Museum to gear up for the predevelopment activities for the new facility. Then on December 14, 2010, the Mexican Museum and the former Redevelopment Agency entered into a Grant Agreement in the sum of \$10,500,000.00 for activities related to the predevelopment and construction of the Mexican Museum within the 706 Mission Street Project.*

*After the \$10.5 Million Dollar grant agreement, the only remaining previously committed funding from the former Redevelopment Agency for the construction of the Mexican Museum was the prospective \$7.5 Million Dollar funding which is the delta of the \$18 Million Dollars committed to the Museum.*

*Moreover, on July 16, 2013, the Successor Agency to the Redevelopment Agency of City and County of San Francisco, as Transferor; entered into an Agreement for Purchase and sale of Real Estate ("PSA") with 706 Mission Street Co LLC, as Transferee, and The Mexican Museum, as Third Party Beneficiary.*

*In the PSA, the Successor Agency and the Developer (aka Millennium Partners acknowledge that the Mexican Museum will be requesting additional funding from the City, including Hotel Tax Bonds re-authorization for the sum of \$7.5 Million Dollars and agree to support this request.*

Moreover in the Memo to Director Bohee, the Museum documented important legislative findings to make the case that OCII and the City have a fiduciary duty to continue to work with the museum and that it has an obligation to fulfill providing the Museum with the remaining \$7.5 Million Dollars tied to both the LDA, the LDA Termination and the PSA. We set forth these important points taking from the Memo to Director Bohee because it is important to illustrate the fiduciary obligations that remain to this day.

*On May 19, 1993, by and through San Francisco Redevelopment Agency Resolution No. 7-93, the Redevelopment Commission adopted the Resolution Amending Resolution No. 20-93 Authorizing The Executive Director To Seek Bond Financing For Development of the Children's facilities On Central Block 3 and The Mexican Museum in Yerba Buena Center Project Area. Attached as Exhibit "A" please see a Memorandum dated April 28, 1993 to the Agency Commissioners referencing Commission hearing Agenda Item No. 4(c) and attached Resolution No. 87-93 – adopted may 19, 1993.*

*The basis for the Resolution, included, in part, the following rationale:*

- *The Mexican Museum has long planned to develop a permanent home in the Yerba Buena Center Project Area and the Agency and City have agreed upon a site and the Agency is currently negotiating a land disposition agreement with the museum; and*
- *The Mexican Museum is an important component in the completion of the Yerba Buena Center project and agrees that the first series of bonds will be issued for the children's uses. As series of bonds could be issued for the museum when each facility has demonstrated to the Agency's satisfaction that it can be completely viable and it has raised matching funds in an amount at least equal to the amount of any bond proceeds.*
- *The resolution resolved the following, in part:*
- *ACCORDINGLY, IT IS RESOLVED that the Executive Director is directed to seek legislative approval for the use of bonds secured by future hotel tax receipts in order to provide for the financing first of the children's facilities on Central Block 3 and later to assist the Mexican Museum. (Emphasis added).*
- *FURTHER BE IT RESOLVED that the children's uses have first priority in securing the pledge of hotel tax receipts that will be available after the final maturity of the original*

*Moscone bond financing. After sufficient early years, from 2001 and thereafter, have been pledged to finance the children's facilities on Central Block 3, later can be pledged to assist the Museum. (Emphasis added).*

- *ALSO BE IT RESOLVED that the Museum will raise matching funds in an amount at least equal to the amount of any bond proceeds before bond financing will be authorized and that no bonds will be issued or bond proceeds made available to the Museum until it can demonstrate that such proceeds, together with matching funds will be sufficient to complete construction of and equip the Museum. The Agency may use bond proceeds to allow for initial land subsidies without requiring matching funds, if the Agency receives consideration from another source or retains control through a long-term ground lease and/or the aggregate matching funds requirement is satisfied by more Museum funding of construction. The equity and/or debt characteristics of any public financing by the Agency for the museum, including the market value of any land subsidy, will be determined through a development agreement between the Agency and the Museum. (Emphasis added.) (See Exhibit "C" Bohee Memo).*

In addition to making a compelling case to OCII through its leadership for the Museum to receive the remaining \$7.5 Million Dollars, the Museum also requested support from the then Director of the City's Real Estate Division, Mr. John Updike. The Museum prepared a comprehensive packet to support its request and met with Mr. Updike at least six if not more times to plea for the request beginning in 2014 and into 2016. After years of trying and waiting for the RED department to act, including when funds became available from the sale of the parking garage, the request was denied without explanation. Please see the enclosed March 3, 2014 Memo to Mr. John Updike requesting the \$7.5 Million Dollars. (See Exhibit "D" Updike Memo).

The following are excerpts from the Memo:

*The projected costs for the Core & Shell is in the range of 18 to 20 Million Dollars. The Museum with the assistance of the staff of the former Redevelopment Agency and the Successor Agency successfully negotiated for the Developer to underwrite the costs of the core and shell and thereby the Mexican Museum met its matching fund obligation to secure at least \$8 Million Dollars for the construction of the Superstructure and TI/FF&Es for the cultural facility.*

*Moreover, it is anticipated that the cost for the TI/FF&E predevelopment and construction cost will be in the aggregate approximately \$23 Million Dollars.*

*In this regard, the \$7.5 Million Dollar contemplated contribution from the City and County of San Francisco through Bond financing is a key component to ensure successful completion of the complete built out of the Core and Shell and TI/FF&E of the approximate 48, 000 square feet cultural facility for the Mexican Museum.*

*The Mexican Museum is pleased to have been an integral part in obtaining the approvals of the 706 Mission Street Residential Tower and Mexican Museum Project which culminated with the unanimous support before the San Francisco Board of Supervisors in the summer of 2013.*

In addition, please see a March 22, 2016 Letter to Director of Real Estate Division from the Museum (See Exhibit "E" Letter to John Updike" See also, Exhibit "F" which are the supporting Exhibits A-G to the Updike Letter) requesting that the City set aside \$7.5 Million Dollars from the Sale of the Jesse Square Garage as remuneration to the Museum because the construction of the Museum was halted to build the garage partially on the Museum's land. The following are excerpts from that letter:

The Mexican Museum Board of Trustees formally requests that \$7.5 Million Dollars be identified and allocated for the use of the continuation of the development of the Mexican Museum cultural space which is part of the 706 Mission Street Project.

Specifically, the Museum is requesting that the sum of \$7.5 Million Dollars be held in an escrow and/or in trust from the proceeds of the Jesse Street Garage sale which will be closing in the next couple of weeks as part of the Purchase & Sale Agreement ("PSA") between the 706 Mission Street, L.L.C. and the City & County of San Francisco wherein the Mexican Museum is a bona fide third party Beneficiary.

Under the PSA, Millennium Partners will be making a payment to the City & County of San Francisco in a sum of approximately over \$25,000,000.00 plus ("25 Million") through escrow as part of the closing of the purchase of the Jesse Street Garage sometime in the month of March of 2016.

The Museum herein requests that \$7.5 of these funds be set aside for the ongoing development and construction of the Museum's cultural facility as called for in the Land Development Agreement ("LDA") executed in 1993, and contemplated in Amendments 5, 6 7 and 8 to the LDA; and as set forth in a Memorandum dated April 28, 1993 from then Edward Helfeld, Executive Director of the Agency addressed to the Agency Commissioners; and as further set forth in the PSA and the Lease Agreement. (See Pertinent Section of LDA Attached as Exhibit "A", pages 75 - 76); and Pertinent Section of Amendment 5 Attached hereto as Exhibit "B" at page 4 and Amendment 6 Attached hereto as Exhibit "C" at page 3, respectively.)

Under Section 7.14 of the LDA entitled "Agency Assistance", the Agency and now its Successor Agency ("OCII") has an obligation to reasonably assist the Museum in its efforts to obtain sufficient funds to the Museum to pay the Construction Costs for the Improvements. Moreover, under the same section, the Agency must cooperate with the Museum in good faith to secure appropriations of new funds to enable the Museum with the construction costs for the improvements. (See Exhibit A at pages 75-76.)

The February 28, 1993 Memorandum recommended an Action "To amend Resolution No. 20-93, adopted February 2, 1993, to include financing for a portion of the Mexican Museum and the Jewish Museum amongst other projects. This recommendation identified and allocated the \$7.5 Million Dollars requested herein. (See Memorandum attached hereto as Exhibit "D" at pages 1.)

Then in 2002, the Agency determined the need to build the Jessie Garage which caused the construction of the Museum to be set aside and delayed pending built out of the garage. (See Amendment 7 to the LDA attached hereto as Exhibit "E" at page 2. In the same Amendment the commitment to fund the Museum was re-affirmed and it was stated that the Jessie Garage was intended to benefit the Museum. (See Exhibit "E" at page 2)

Again, on December of 2004, the funding commitment was reaffirmed in the 8<sup>th</sup> Amendment to the LDA Attached hereto as Exhibit "F". (See Exhibit "F" at page 2.)

**CONCLUSION I:** The Audit Report Recommendations should include a recommendation for the Real Estate Division and OCII to allocate the \$7.5 Million Dollars it is obligated to provide to the Museum and which the Museum has been requesting since February of 2014.



**CONCLUSION II:** Moreover, the Museum further requests that the Audit Report also recommends the Real Estate Department and OCII to give credit to the Museum for having raised its matching fund requirement. The Museum agreed to terminate the LDA and enter into a Purchase and Sale Agreement in consideration for the construction of the Core & Shell of the base building which resulted in over \$30 Million Dollars of remuneration which must be credited to the Museum, plus, a \$2.1 Million Dollars public art dedication, and a \$5 Million Dollar endowment gift. The \$37 Million Dollars coming from "another source" is a consideration which was contemplated and expressly set forth in the 1993 Redevelopment Agency.

Hence, the Successor Agency must give credit to the Museum for having received consideration from other sources, namely Millennium Partners, the Developer. Moreover, the Successor Agency also obtained additional consideration from Millennium Partners through the sale of the Jessie Square Parking Garage which was partially built on the Mexican Museum parcel. The Agency received well over \$20 Million Dollars (possibly close to \$30 Million) from the sale of the parking garage. In fact, the Museum at the time of the sale transaction requested that \$7.5 Million Dollars be allocated to the Mexican Museum to fulfill the balance of the funding requirement from the LDA which was then part of the PSA agreement. The Department of Real Estate summarily dismissed the request.

**B.**

The Museum is prepared to move forward and complete the construction of the Tenant Improvements of the Museum's Cultural Component through an approved Progressive Design with the team of Guzman Construction Group and Cordoba Corporation, respectively, and a group of experienced top-notch design and construction sub-contractors, coupled with the leadership of the

**Museum's Board of Trustees**

Under the leadership of the Mexican Museum's Building Committee which is comprised of high level professionals with combined professional experience in the design, design build, finance and construction industry, the committee has developed a plan to implement a Progressive Design and has obtained approvals from OCII to proceed with a Single Source contract for a design build project. It is important to note that the budget for the project is \$38 Million Dollars with the goal of completing the construction by the end of 2025. The Board of Trustees of the Mexican Museum through the guidance of the Building Committee carefully vetted the team of professionals that has been assembled as the Design Build Team and voted unanimously to approve Guzman Construction Group and Cordoba Corporation, respectively. The team has is ready to begin its work effective immediately. Below are some of the Bios of the persons leading the design and build project team as well as bios and two Board Trustee liaisons, Alfredo Pedroza who is the finance industry, and Ray Quesada who has extensive construction experience. Also, please find the Bios of the Executive Committee of the Board of Trustees.

**Miguel Guzman**

Miguel Guzman, Principal at Guzman Construction Group, Inc. manages GCG's daily operations, focusing on business growth, fostering company culture, and meeting client and corporate goals. He has a

strong track record in project operations and client satisfaction, actively engaging with clients and design teams. Outside of work, Miguel is dedicated to community service, particularly in education and supporting at-risk youth. He holds a Bachelor of Science in Engineering from UC Berkeley, is LEED accredited, and has participated in leadership programs. Miguel is involved in various professional organizations and serves on the boards of community-based organizations.

**Rick Vanzini**

Is a Program Director at Cordoba Corporation. Vanzini is a relationship-focused CapEx Program Director with extensive experience coordinating institutional architectural projects' technical and creative aspects. Particular expertise in managing cross-functional relationships and building cooperative participation between owners, architects, engineers, city officials, and other stakeholders to deliver exceptional projects on time and within budget. Outstanding management, critical thinking, and evaluation skills with a focus on sustainability, resiliency, and value engineering. Strong relational intelligence and cohesive team-building skills.

**Raymond G. Quesada**

Over 40 years of experience in Project Management/Construction Management and Architecture, most of which has been in the San Francisco Bay Area with over 20 years devoted to airport design and construction at the San Francisco International Airport. Primary strength in team building and creating an environment where a cooperative/creative team can excel.

As Project Manager for the San Francisco International Airport (SFO) Terminal 2/Boarding Area D Renovations, lead the team that delivered the first LEED Gold certified terminal building in the US and SFO's first design-build terminal project. The project was delivered within budget (\$400 Million) and within 3 years from Notice to Proceed to the design-build team.

**Alfredo Pedroza**

As a Senior Vice President for Wells Fargo Government Relations, Alfredo Pedroza leads Wells Fargo's local legislative and political agenda in Northern California, based out of San Francisco. Day to day, Alfredo works to build strong local relationships between internal leaders and elected officials, monitor legislation, manage enterprise political risk, and work with a diverse stakeholder network to support our team members in helping our customers and communities succeed financially.

Before joining Wells Fargo, Alfredo served in the San Francisco Mayor's Office, the San Francisco Neighborhood Parks Council, and as Senior Program Associate for the Trust for Public Land. Alfredo sits on the Board of the Mexican Museum and in his spare time rides a bike from SF to LA to raise money and awareness to end AIDS. He earned his B.S. in International Business Administration from the University of San Francisco.

**EXECUTIVE COMMITTEE**

**Andrew Kluger, Chair**

Andrew M. Kluger, a Mexico-born entrepreneur and philanthropist, has dedicated his life to revolutionizing healthcare systems, fostering cultural exchange, and leading diverse philanthropic efforts. Through ventures like EasyConnex Systems and Bluegrass Assisted Living, Kluger has transformed

communication and care in assisted living facilities. His leadership extends to medical management firms and academia, where he shares his expertise with future leaders. Kluger's philanthropic contributions, including serving as Honorary Consul of Mexico to Hawaii and leading organizations like The Mexican Museum and Book Bank USA, reflect his commitment to improving lives worldwide. With a strong academic background and unwavering dedication, Kluger's legacy is one of innovation, compassion, and positive impact.

**Nora Wagner, Vice-Chair**

Born in Mexico City, Mexico, and a Bay Area resident for 50 years, Nora Wagner holds an MA degree from George Washington University in D.C., a Junior College Teaching Credential from UCLA and an Honorary Doctorate from John F. Kennedy University, Pleasant Hill, CA, in Museum Studies. She is bilingual in English/Spanish.

Ms. Wagner was Education Director at The Mexican Museum in San Francisco for 16 years then at the Blackhawk Museum, Danville, for 27 years where she developed programs and docent trainings for children and adults related to their many exhibitions of art, culture and history. She has taught museum education at JFK University, Yerba Buena Center for the Arts, S.F., as well as in Peru and Ecuador, and conducted docent training workshops at S.F. Museum of Modern Art and the Fine Arts Museums of San Francisco. Her board experience has been with the American Alliance of Museums, Western Museums Association and The Mexican Museum.

**Carlos Camacho Dávalos - Treasurer**

Mr. Carlos Camacho is the President and CEO of Strategic Affairs Group, LLC, which offers consulting services in areas like Political Consulting, Lobbying, Public Policy, Economics, International Relations, Law, and Communications. He holds degrees in economics and political science from ITAM and UNAM respectively and has pursued specialization courses from Harvard University. With extensive experience in political, diplomatic, and business development, he leads one of Latin America's prominent public affairs consulting groups. Carlos assists both public and private clients in navigating political landscapes and achieving complex economic, political, or social goals, particularly in sectors like energy, infrastructure, transportation, telecommunications, and mining. He has held various positions in the Mexican government and serves as a political commentator on radio and TV. Additionally, he advises significant business groups in Mexico. Apart from his professional pursuits, he is actively engaged in cultural initiatives, being a member of UNESCO's International Council of Museums (ICOM) and involved with the Asociación de Amigos del Museo Nacional de las Culturas. He curates a significant collection of "political art" in Mexico.

**Xochitl M. Castañeda - Secretary & Capital Campaign Chair**

Xochitl Castaneda is a prominent figure in public health, serving as the Founding Director of the Health Initiative of the Americas at UC Berkeley. With extensive training and accolades, including awards from the Mexican Government and the California Latino Legislative Caucus, Castaneda has dedicated her career to improving the health of underserved Latino populations. Through initiatives like Binational Health Week and educational programs like the Health Education for Latinos Program, she has made significant strides in addressing health disparities and providing opportunities for immigrant students in health professions. Her leadership and advocacy have positively impacted countless lives, demonstrating her commitment to advancing health equity and serving marginalized communities.

The following is a highlight of two other trustees, a list of the full board of trustees is attached, and it was submitted as part of the audit process. The audit team chose not to interview the Trustees, but bios were provided.

**Fernanda Partida Ochoa - Trustee**

Fernanda Partida Ochoa is a passionate professional with a rich background in history, art management, and curation. Beginning her journey in Guadalajara, Mexico, she pursued a Bachelor's degree in History before expanding her horizons through academic exchanges in Spain. Fernanda's dedication to cultural heritage led her to pursue a Master's degree in Museum Studies at the University of San Francisco. Her career spans various roles in esteemed cultural institutions, including the Yerba Buena Center for the Arts, De Young Museum, CULT Aimee Friberg, KADIST SF, and Fomento Cultural Banamex, where she excelled as a researcher, curator, and Collection Manager. Fluent in Spanish, English, and French, Fernanda possesses exceptional communication skills that enable her to bridge cultural divides and foster collaborations.

Currently serving as a Collections Project Manager at the San Francisco Museum of Modern Art (SFMOMA), Fernanda drives workflows, supports strategic objectives, and fosters collaboration across departments. With her diverse skill set and unwavering passion for the arts, Fernanda continues to make significant contributions to the cultural landscape, shaping narratives that resonate across borders.

**Gemi Gonzalez**

**- Trustee & Chair of Friends of the Mexican Museum in Mexico**

Experienced Government Affairs professional with a demonstrated history of working in various governmental agencies. Focused on building bridges with different industries of the Bay Area and the LatinX markets (US&LATAM), to help companies permeate in the workforce system of business, government and cultural affairs. Holder of two Master's degrees and a PhD in International Law and International Relationships. Promoter of Mexican and Mexican American art and culture through the production of exhibitions, concerts, film screenings and academic readings.

Attached please find Exhibit "G" which is the bios of the full Board of Trustees.

The above team coupled with the rest of the Board of Trustees is extremely qualified to complete the build out of the tenant improvements of the Cultural Component. The team now needs the support of OCII by releasing the \$6.1 Million Dollars that are in trust with the agency and which are needed to proceed with the design build out. Those funds will go to a progressive design project which has been presented to OCII.



C.

**The Audit Report made conclusions and findings which were made without full information and/or without informing the Museum in a timely fashion to enable the Museum to respond thereby denying the Museum of Due Process. The Museum provides responses to the findings and again takes this opportunity to clarify several items with the goal of working in collaboration with OCII and the Real Estate Division**

**Audit Report: Chapter 1:** The Museum lacks the money needed to finish the project and has not demonstrated it has the financial or organizational expertise to meet the objectives stipulated in its agreements with OCII and the City.

**Museum Response:** This is a strong statement that fails to take into consideration that the Mexican Museum project is a public work for the benefit of the San Francisco community and for the Latino Community of San Francisco, the greater Bay Area and the State of California. The envisioning by the Late Senator & Mayor Diane Feinstein, Supervisors Jim Gonzalez, Terrence Hallinan and the rest of their colleagues on the Board of Supervisors (the "City") at the time, coupled with the Executive Director and the Commission of the then Redevelopment Agency "Agency" and for the City to work in partnership and collaboration with the Mexican Museum to develop and build a Mexican Museum at the Yerba Buena Gardens District. The Museum as the record shows has repeatedly and continuously reached out for help and support of both the City and OCII, with some limited results. The Museum appreciates the past and ongoing support of OCII and acknowledges that their reach is now somewhat limited as the Mexican Museum asset has been transferred to the City and the Real Estate Division is now its overseer. Yet, OCII has still an important role to play to see the project through. The Museum requests that a recommendation be that OCII and the Museum meet on a weekly basis on a date and time certain to work through the various recommendations being made by the audit report and to move the project forward on a timely basis. Similarly, the Museum request that the Audit Report recommend that monthly meetings starting immediately be held with the Real Estate Division as well as a representative of the Four Seasons staff as well as a Board representative.

The Museum respectfully disagrees with the above finding. The finding should rather find that all three entities referenced above come together to make the museum a reality.

In Section "B" above, the Museum has put forth a strong leadership team. The Museum request that the City and OCII embrace the team and work with it for the good of the City and its residents.

**Audit Report: Finding 1.1.** Although \$6.6 million of the grant funds remain unspent, the Museum is an estimated \$49.8 million short of having the funds needed to complete the project and has not shown it can secure this funding, hindering the project's progress.

The \$49.8 Million amount is not correct. The budget for the overall design and construction project which has been approved with the development team set forth in Section "B" above, is \$38 Million Dollars. After subtracting the \$6.6 Million from that amount the delta would be approximately \$31,400,000.00 Million. If the City would fulfill its \$7.5 Million Dollars related to the LDA Termination and subsequent PSA then the amount would be reduced to \$23,900,000.00. The Museum is requesting from Millennium

Partners that the \$5 Million Dollar gift endowment be converted into working capital to be used for the construction project and to pay for CAM charges while the construction proceeds. One Million Dollars of the \$5 Million Endowment would be set aside to pay CAM charges for 3 full years. That would leave \$4 Million dollars to be applied to the construction phase bringing down the financing gap to \$19,900,000.00. With the full attention and support of all stakeholders, the Museum could then finance the remaining amount needed.

Moreover, the Museum currently has pledges of \$5,750,000.00 which are contingent on the museum securing financing to begin construction and complete construction by 2025. While those dollars would come in phase II in 2025, those are dollars that would reduce the financing amount.

In addition, Xochitl Castaneda, a highly respected member of our community joined the Board in the last quarter of 2023 and is taking on Co-Chairing the Museum's Capital Campaign. She has personally already donated \$50,000.00.

Lastly, the Museum has been able to establish a new federally sanctioned entity in Mexico named Friends of the Mexican Museum, a non-profit corporation ("Friends"). Friends can receive contributions of funds from individuals, corporations, or entities for funds that would otherwise be taxed. Entities may deduct up to 7% of taxes owed by contributing to the Mexican Museum.

The Certification was granted to the Museum as the only institution outside of Mexico for the first time. Friends is being managed by a distinct Board of Directors made up of members from the Mexican Museum Board of Trustees, including Gemi Gonzalez, former Consul General in San Francisco, Sergio Alcocer, former undersecretary for Foreign Affairs for North America under then President Peña Nieto, as well as Sergio Alcocer and Andrew M. Kluger, respectively whose Bios are enclosed in this response. Gemi Gonzalez, Former Consul general in San Francisco, and Sergio Alcocer, former undersecretary For Foreign Affairs for North America under President Enrique Peña Nieto. Friends receives legal advice and counsel from Mexican prominent attorney, Mr. Daniel Rosas.

**Audit Report: Finding 1.2. The Museum has a history of mismanaging grant funds.**

**Museum Response:** The auditors dug into activities that occurred under past administrations, some of which occurred over 20 years ago. All of those matters were fully addressed and resolved years ago. Bringing these incidents within the context of the objective of the audit which was to "Determine whether the Museum spent funds and completed activities for redevelopment and interior improvements in accordance with the terms of its grant agreement" is both over reaching, misleading and unfair to the efforts of the current leadership of the Museum.

**Audit Report: Chapter 2: The Museum has not fulfilled some of its obligations under the lease and facilities agreement or the purchase and sale agreement.**

**Audit Report: Finding 2.1. The Museum did not comply with its contractual obligation to substantially complete tenant improvements by September 2022, despite having the opportunity to do so. In fact, the interior improvements have not even begun.**

As more thoroughly explained below, the Mexican Museum was not given possession of the Cultural Component space until July of 2023. The Developer chose to transfer the asset to the Real Estate Division directly and then the Department turned the keys over to the Museum. It was in the power of the Developer to transfer the space to the Museum and not the other way around. That said, the Museum's development and construction team is ready to begin the work immediately.

Finding 2.2. The Museum has not fulfilled reporting and insurance requirements in the lease and facilities agreement and has not paid nearly \$80,000 in common area and maintenance dues.

**Re: CAM CHARGES**

**Museum Response:** On March 20, 2015, the City as Landlord and the Museum as Tenant entered a Lease and Facilities Agreement ("Lease") for the lease of the Cultural Component for a period of effectively 99 years for 2 dollars. On June 21, 2023, the City accepted fee title to the Cultural Component from the Developer, Millennium Partners via Grant Deed. Then on July 11, 2023, the City through the Real Estate Division's Executive Director, Andrico Penick, unceremoniously tendered possession of the Cultural Component via a letter to the Museum with five keys and one key fob to the property. (See Exhibit "H" Letter from Andrico to Museum). Immediately after, the Museum began to receive monthly CAM charges of approximately \$19,000.00 dollars.

Immediately upon learning of the transfer, which happened abruptly and without warning, the Museum immediately sought to meet with the Four Seasons Residence leadership to discuss the transition from the Developer to the City and to the Museum. Initially, the Museum met with Matt Hoffman who was the person in charge of overseeing the relationship for the Cultural Component. Mr. Hoffman indicated that he and his team were also taken aback by how abrupt the transfer happened and that they were trying to figure out what steps to take. There was agreement that the reason the City quickly turned over the space to the Museum was to avoid having to pay CAM charges and for the Museum to start paying them immediately. The Museum indicated that it would take responsibility for the monthly charges and the PGE bill. The total was estimated at about \$22,000.00 per month. The Museum, however, requested assistance from the Four Seasons for clarification of who the ownership of the tower was and for a meeting to be set up immediately in part to discuss the payment of \$1,666,666.66 Million Dollars from the Museum Endowment Fund which was due and payable to the Museum by Millennium Partners and/or its successor in interest in the ownership of the Four Seasons Tower. We indicated that the purpose of those funds was to pay for the operation of the Cultural Component, for CAM charges and utilities. The Four Seasons literally refused to give the Museum names and/or contact information of the new ownership. We explained that for the museum to pay the CAM charges it was essential to obtain the funds. The Museum please fell on deaf ears. To this date, there has been no meeting arranged. Along the same lines, in early August of 2023, the Museum sent Millennium Partners the notice that the \$1,666,666.66 was due and payable by August 11, 2023. (See Exhibit "I" Letter to Millennium Partners). To date, Millennium Partners has failed to make the payment which is now over six (6) months past due. In the meantime, the CAM charges continue to accrue.

In brief, the Museum was given the keys to the Cultural Component space abruptly and without and coordination by either the City and/or the Four Seasons. The Museum immediately made efforts to address the CAM charges.



**CONCLUSION & ACTION REQUESTED:** The Museum requests that the Audit Report recommend that OCII immediately release the \$1,666,666.66 Million Dollars it is holding in an escrow account so that the Museum may access those funds to pay the CAM charges being assessed by the Four Seasons. Similarly, the Museum requests a Recommendation that Millennium Partners pay its second installment of \$1,666,666.00 to the Museum immediately.

**Re: Insurance Coverage Finding**

The Museum has maintained the insurance coverage called for under the OCII Grant Agreement. With the advent of the transfer of the Cultural Component space on July 11, 2023, the Museum was notified that it was necessary to increase the coverage from 3 million to 5 million. Immediately upon receiving the notice, the Museum contacted its insurance broker and requested the increase in coverage. The Four Seasons had to be involved in providing certain information that only they had in their possession. It was eventually provided and shortly thereafter the increase in coverage occurred. A copy of the Insurance Certificate is attached hereto as **Exhibit "J" Insurance Certificate**.

**Chapter 3:** The Museum submitted \$43,616 of ineligible costs, \$930,247 of questionable costs, and \$562,579 of operational costs, all which OCII approved.

**Museum Response:**

The Museum worked with the staff of OCII diligently to put together a Scope of Work and budget tied to each and every single disbursement agreement beginning with the First Grant Disbursement Agreement which is attached hereto as **Exhibit "K"**. The Museum submitted documentation documentation to substantiate all of the expenditures. The Museum does not agree with the description the description of questionable costs as all budgets and scope of work were not only approved by OCII staff but also by the OCII Commission. The auditors found three categories of expenditures where checks were duplicates, including for Ms. Vivanco and Ms. Waterfield. The Museum's CPA has now provided you with a Letter indicating that all payments were substantiated and that none of them were duplicate payments. Similarly, regarding the item with the Marquez Law Group, Mr. Marquez has provided you documentation that demonstrates that the submittal of the same invoice being submitted twice was a clerical error by the Museum staff and that there were no duplicate payments. We acknowledge that out of hundreds of submittals to OCII that there were these clerical errors. As you know, control systems have been put in place both at the Museum and by OCII to ensure this does not happen in the future.

In closing, thank you again for the opportunity for the Mexican Museum to submit this response to the Audit Report that you provided the Museum. The Museum, the Board of Trustees, and the Development Team look forward to working with both OCII and the Real Estate Division to make the reality of the Mexican Museum at 706 Mission Street and to work to have the museum open at the end of 2025.

Respectfully submitted,



Victor Marquez (Mar 7, 2024 13:51 PST)

Victor M. Marquez  
General Counsel  
The Mexican Museum

## Appendix C:

### Auditor's Comments on The Mexican Museum's Response

To provide clarity and perspective, the Controller's Office, City Services Auditor (CSA), Audits Division, is commenting on the written response of The Mexican Museum (the Museum) to the audit report, which the Museum provided to us on March 7, 2024. CSA maintains that the findings in the report are complete and accurate based on the documentation provided by the Office of Community Investment and Infrastructure (OCII), Real Estate Division (RED), and the Museum during the audit.

#### In response to pages 2 and 3 of the Museum's response:

The Museum states that the work of the audit team far overreached the scope and objectives of the audit and that we did not provide a fair and balanced report. We disagree. We maintain that the evidence obtained during the audit provides a reasonable basis for the findings and conclusions based on the audit objectives. Information in the report that refers to the period before December 14, 2010, the effective date of the grant agreement, is based on information in the Museum's audited financial statements of 2011 through 2019 and a corresponding current liability in its balance sheet for that period, which makes the information relevant.

In May 2023, during the entrance meeting, the audit team discussed the preliminary audit objectives with the Museum. In accordance with generally accepted government auditing standards and as discussed during the entrance meeting, audit objectives are preliminary until after the conclusion of the audit survey phase. Consistent with that fact, in July 2023 we provided the Museum with updated audit objectives in writing. The Museum's letter also only refers to parts of the final audit objectives. Page 13 of the audit report states the audit objectives in their entirety.

The Museum states it is prepared to move forward and complete the construction of the tenant improvements of the cultural component. Despite this statement, the Museum does not deny it lacks the funding to move forward with the project. It also has not submitted a design plan to the City. The Museum cannot move forward given its financial situation and lack of an approved and permitted design plan.

#### In response to Section A (pages 3-9) of the Museum's response:

The Museum states that it should be credited with raising matching funds of at least \$30 million and that the City is obligated to provide \$7.5 million toward the project under a now-terminated Land Disposition Agreement (LDA). Despite our multiple efforts to obtain documents from the Museum to support the pledges and amounts it independently raised, the Museum did not provide documents to support the fundraised amounts. We reviewed the Museum's audited financial statements for information on pledged amounts but found none, other than OCII's grant and the endowment fund. Further, the City has no further obligation to pay the Museum \$7.5 million under the terminated LDA.

**In response to Section B (pages 9-12) of the Museum's response:**

The Museum states that the audit team chose not to interview the Board of Trustees (Board). This is correct. Instead of interviewing board members, we asked them to respond to a written survey so we would obtain from each board member responses to the same set of questions asked in the same way. However, as noted on page 17 of the audit report, we could not assess the role or effectiveness of the Museum's Board because Board members declined to respond to our survey questionnaire, which we distributed to them on August 23, 2023. The questionnaire asked about the Board's structure and the members' areas of expertise. Instead, Board members opted to provide their resumes to the audit team.

**In response to Section C (pages 13-16) of the Museum's response:**

The Museum states that we did not give it enough time to provide responsive information and documentation. We disagree. Consistent with generally accepted government auditing standards, we allowed the Museum at least six months, from May through November 2023, to provide the information we requested during the audit's survey and fieldwork phases. During our audit exit meetings with the Museum, in December 2023 and January 2024, we gave the Museum an additional month to provide information. Further, during the audit, the Museum informed us that it could not provide us with many of the documents we had requested because, due to its document retention policy of five years, it no longer had them.

**Finding 1.1:**

The Museum states that the \$49.8 million budget forecast noted in the audit report was incorrect, that the Museum has additional funding in pledges that the audit report does not acknowledge, and that the amount remaining to fund the project could be reduced by: a) \$7.5 million due to a claim that the City is obligated to fund this amount pursuant to the terminated LDA and; b) \$5 million, which is Millennium Partners' endowment contribution, as stipulated in the purchase and sale agreement. We disagree. Specifically:

- As the report notes, the \$49.8 million budget forecast is taken from Museum documents, dated November 2022 and provided to us in June 2023. The Museum did not provide us with a new—and considerably reduced—budget for the design and construction project until March 4, 2024, three days before the Museum provided its response letter to the audit report. Consistent with generally accepted government auditing standards, we cannot include information in our audit report that we did not review as part of the audit. The new budget, which totals \$38 million, is dated February 16, 2024, approximately three months after we completed the audit fieldwork in November 2023 and after our exit meetings of December 2023 and January 2024. The Museum had ample opportunity to provide a new budget to us before the end of fieldwork and did not do so. Further, the new budget refers to three phases of construction but only includes forecasted expenditures for the first phase. (It is unclear whether the Museum would be able to open to the public after only the first phase of construction.) Moreover, the Museum did not provide a detailed basis for its proposed \$38 million budget and the Museum has not submitted design plans to the City for approval, a critical first step in budgeting for the project.

- During the audit's survey phase, the Museum stated that it had \$6.7 million in pledges, so we later asked it for documentation of its confirmed pledges. However, the Museum provided us only one document in response, which supports a \$5 million pledge to be effective after 2025. Due to the timing of this pledge, we could not count it toward the capital funds the Museum secured for the interior improvements.
- The endowment contribution cannot be counted toward the capital funds needed for interior improvements because, according to the purchase and sale agreement, the endowment may only be used toward the Museum's operations once the Museum has opened to the public.

#### Finding 1.2:

The Museum states that the audit team "dug" into activities that occurred over 20 years ago. This statement is misleading as it implies that going back so far in time was unnecessary or excessive. On the contrary, we needed to review information more than a decade old to achieve the audit objective of assessing the Museum's performance outcomes. The information we needed was found in the Museum's audited financial statements of 2011 through 2019, which indicate a current liability that still exists in the Museum's balance sheet.

#### Finding 2.1:

The Museum refutes the audit report's statement that the Museum could have entered the premises before July 11, 2023, (when RED gave keys to the premises to the Museum). Also, the Museum states that the developer could have transferred ownership of the cultural component space to the Museum. We respond as follows:

- Under the lease, Section 5.1, the Museum had the right to request early access to the premises at 706 Mission Street to begin construction. However, according to RED, the Museum never exercised this right.
- The purchase and sale agreement states that the developer was to transfer the cultural component to the City, which in turn would lease the space to the Museum. Stating that the developer had the option to transfer the space to the Museum is false and misleading.
- Our finding compares the terms of the lease and facilities agreement with the state of the premises that we saw and photographed during our visit of July 14, 2023. We verified that the Department of Building Inspection issued a temporary certificate of occupancy for the core and shell of 706 Mission Street in September 2020.

#### Finding 2.2:

The Museum states that it was notified of the need to increase its insurance coverage limit to \$5 million after it received the keys to the premises in July 2023. This may be true, but the lease, Section 20, requires the Museum to have \$5 million of insurance coverage on or before the commencement date of the lease, which was July 11, 2023. The Museum provided the updated insurance documents to us on March 4, 2024, months after we had completed the audit fieldwork and after our exit meetings with the Museum. We agree that, as of December 6, 2023, the Museum's insurance policy appears to comply with the lease and facilities agreement. However, we stand by our finding because the lease requires the Museum to provide proof of the required insurance to RED, which is the Museum's landlord under the lease. As of February 15, 2024, RED had not received proof of the updated insurance from the Museum. Also, the City's risk manager must assess the updated insurance to confirm that it complies with the lease and facilities agreement.

### Chapter 3:

The Museum notes that it disagrees with the audit report's description of questionable costs, as all the budgets were approved by OCII staff and the OCII Commission, and states that the report is incorrect in its characterization of certain expenditures as duplicate payments. We respond as follows:

- Although we agree with the Museum that all expenditures were approved by OCII, as noted in the report, one of the audit objectives was to determine whether the funds spent were in compliance with allowable uses stipulated by the grant agreement. Thus, we assessed all expenditures for which the Museum used grant funds based on supporting documentation provided to us by OCII. (This represents all documentation the Museum gave to OCII at the time of submission and that OCII approved). The expenses we characterize as questionable are largely due to a lack of supporting documentation that would help verify the expenses listed in that category. As noted earlier, due to its five-year record retention policy, the Museum could not provide most of the older documentation we requested. Because we did not have access to older supporting documents, we could not verify whether these expenses were eligible under the grant.
- The instances we report as duplicate payments are examples of the Museum double-billing OCII and receiving reimbursement twice under the grant agreement, not examples of the Museum paying its vendors twice for the same expense.

We look forward to working with OCII and RED to follow up on the status of the recommendations made in this report.