MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing a Grant Agreement with the Municipal Transportation Agency of the City and County of San Francisco in an amount not to exceed $785,000 in Excess Bond Proceeds, from Series 2009 B and 2009 F Bonds, to provide funding for the renovation of the Bayview Opera House Plaza, located at 4705 Third Street; Bayview Hunters Point Redevelopment Project Area

EXECUTIVE SUMMARY

On March 15, 2011, the former Redevelopment Agency of the City and County of San Francisco ("SFRA") executed a Grant Agreement with the City, through the Municipal Transportation Agency ("MTA") to provide $785,000 in supplemental funding for the renovation of the public plaza adjacent to the Bayview Opera House (the “Project”), located at 4705 Third Street, using Bayview Hunters Point non-housing bond proceeds (the “2011 Grant Agreement”). Upon dissolution of SFRA pursuant to Assembly Bill 26, and later Assembly Bill 1484 (together “Dissolution Law”), OCII continued to request authority to expend the funds from the 2011 Grant Agreement on each Recognized Obligation Payment Schedule (“ROPS”); however, due to delays in the Project the funds were not disbursed, and thus staff continued to place the expenditure request on the ROPS up until ROPS 13-14A.

During the review of ROPS 13-14A, the State Department of Finance’s (“DOF”) determined that the 2011 Grant Agreement was not an enforceable obligation because it was an agreement between the Redevelopment Agency and its sponsoring City, which were prohibited in most circumstances pursuant to Section 34171(d)(2) of the Dissolution Law. However in the ROPS 13-14A determination letter on April 11, 2013, DOF indicated that the OCII could request authority to use the specified bond proceeds by determining they were “Excess Bond Proceeds” through a subsequent ROPS once DOF had granted OCII a Finding of Completion. DOF granted OCII’s Finding of Completion on May 29, 2013. The $785,000, from the Series 2009 B and F bonds, were then approved by the Oversight Board and DOF as Excess Bond Proceeds on Item No. 368 on ROPS 13-14B. MTA will use approximately $210,000 of the funds to complete work under their own scope, and will then work order the remaining $575,000 to the Department of Public Works which is assisting in the renovation of the Plaza. Staff is now seeking authorization to enter into a new grant agreement with MTA (the “2014 Grant Agreement”, Attachment 1 to the accompanying Resolution) to disburse the funds for the Project, which broke ground in March 2014.

*Staff recommends authorization of a Grant Agreement with MTA for an amount not to exceed $785,000 for renovation of the Bayview Opera House Plaza.*
BACKGROUND

The City owns the Bayview Opera House (the “Opera House”) which is being managed and operated by the City's Arts Commission (“SFAC”). The Opera House, built in 1888, is located on Third Street, between Oakdale and Newcomb Avenues. It is a multi-use, cultural, and recreational center offering programs that promote community arts through entertainment and education for the benefit of residents, visitors, and businesses in the Bayview Hunters Point Redevelopment Project Area (“BVHP”). It provides the BVHP community with a creative outlet through programs offering performance arts, stage technician workshops, an acting academy, a music academy, dance classes, photography, and art. It is a very visible cultural symbol and gateway to the BVHP community, and has been granted a landmark status by the City.

The Opera House is in need of renovation to increase the use of its plaza (“Plaza”) and to fix its seismic and disabled-access deficiencies. The City has long planned to renovate the Plaza with federal funds it received in connection to the Third Street Light Rail Project and improvements to pedestrian gathering spaces near transit stations, along with other City funds. In 2011 the City determined that both the federal and City funds were insufficient to cover the respective estimated cost of the Project, leaving a funding gap. MTA and SFAC then requested SFRA’s help to fund the gap. Both the BVHP community and the BVHP Project Area Committee supported the requested funding. The SFRA Commission approved a Grant Agreement with MTA on March 15, 2011 for an amount not exceed $785,000.

The funds however were never disbursed due to delays in the Project. After dissolution of SFRA, OCII continued to carry the expenditure forward on each ROPS until ROPS 13-14A, when DOF reviewed the item and determined it could not be considered an enforceable obligation under Dissolution Law, which states that certain contracts between redevelopment agencies and their sponsoring cities were not allowed.

Dissolution Law does allow successor agencies to re-enter into new agreements to expend any “excess bond proceeds” once DOF has granted a Finding of Completion. OCII received its Finding of Completion on May 29, 2013. Staff then placed a new request to expend up to $785,000 in BVHP Excess Bond Proceeds, from Bond Series 2009 B & F, on the next ROPS, which was ROPS 13-14B for the period of January to June 2014. The Oversight Board granted authority to OCII to enter into an agreement to provide those funds through the ROPS 13-14B approval resolution, Resolution No. 9-2013.

2014 Grant Agreement

The 2014 Grant Agreement is substantially similar to the 2011 Grant Agreement in that it provides the same amount of funds, $785,000 or the “Grant Amount”, for work related to rehabilitation the plaza outside the Opera House. However there are two major changes in how the 2014 Grant Agreement is structured. First, the SFAC, MTA, and other City partners have adjusted the scope of work for the Project by distributing a portion of what was MTA’s original scope of work to DPW in order to better align their various federal funding sources. (See Exhibit A to the 2014 Grant Agreement, Scope of Work.). Since OCII’s authorization to expend the $785,000 for the Project was for an agreement with MTA, the City has agreed to have MTA accept all of the funds and then will work order the portion needed for its sister City agency’s scope over to DPW. MTA
however remains responsible for implementing the 2014 Grant Agreement and will be the lead on reporting on the use of the funds. MTA will therefore be using $210,354 directly, and will work order $574,646 to DPW. The 2014 Grant Agreement has a term that will expire on the earlier of 24 months from the start of Grant Agreement (which would be April 1, 2016) or when OCII agrees that the Project is completed. Since work needed to begin in March 2014 in order to keep the Project on schedule, the 2014 Grant Agreement allows for the Grant Amount to be used for any relevant hard costs in the Scope of Work as of the date of the commencement of MTA’s or DPW’s construction contracts, as evidenced by each parties’ Notice to Proceed.

The second difference in how the 2014 Grant Agreement is structured is that the funds will be disbursed in one lump sum to MTA. The 2011 Grant Agreement contemplated that SFRA staff would review each draw request and would be involved in overseeing the construction of the Project. Post-dissolution it is more appropriate for the City to manage the expenditures and construction of the Project.

**Contracting Requirements**

On January 7, 2014, the SFMTA Board of Directors approved Resolution No. 14-003, which authorized the Director of Transportation to execute SFMTA Contract No. 1269, Bayview Opera House Plaza Improvements Project, with Con-Quest Contractors, Inc., an SBE firm that is a local Bayview Hunters Point business, in accordance with its SBE Program and with federal regulations. DPW will be conducting its work directly.

**Environmental Review**

On June 23, 2010 the San Francisco Planning Department determined that the Project is categorically exempt from environmental review as a Class 1-Existing Facilities project because of the following circumstances: the improvements are limited to the street and plaza around the Bayview Opera House, the Project involves negligible or no expansion of use, and no work is proposed to be done to the Opera House building through this Project.

**Next Steps**

MTA issued a Notice to Proceed for the Project in March 2014, and work is underway. Upon approval of the 2014 Grant Agreement, the Grant Amount will be fully disbursed to MTA and will be used to pay for the relevant hard costs related to the Project’s Scope of Work as of the date of the start of construction. MTA’s scope will begin first, with DPW’s scope to follow later in the year. The 2014 Grant Agreement requires MTA to provide evidence that the funds have been fully disbursed within 30 days after the completion of MTA’s and DPW’s scopes respectively. The renovation of the Opera House Plaza, as well as improvements to the interior of the Opera House is anticipated to be fully complete by Spring of 2015.

*(Originated by Ally Oerth, Deputy Director)*

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**Executive Director**

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