GRANT AGREEMENT

by and between

the Successor Agency to the Redevelopment Agency, also known as
the Office of Community Investment and Infrastructure

and

The City and County of San Francisco,
acting by and through its
Municipal Transportation Agency

for

Bayview Opera House Plaza Renovation Project

Assessor's Block 5311, Lot 036

Dated and Executed as of _____, 2014

TABLE OF CONTENTS

Page

1 GRANT PROVISIONS 2
1.1 Grant Amount 2
1.2 Use of Grant Funds 3
1.3 Term 3
1.4 No Mechanics' Lien 3
1.5 Cost Overruns 3
1.6 Disbursement 3
1.7 Report of Expenditures 3
1.8 Excess Grant Amount 3
2 CONSTRUCTION AND COMPLETION OF THE PROJECT 3
2.1 Construction Standards 3
2.2 Disability Access 4
2.3 Completion of Construction 4
2.4 Extension of Time by the Successor Agency 4
3 CITY REPRESENTATIONS AND WARRANTIES 4
3.1 No Contravening Agreements 4
3.2 No Adverse Action 4
4 CITY COVENANTS 4
4.1 Permits 4
4.2 Authorization to Execute the Grant Agreement 4
4.3 Insurance 4
4.4 Hazardous Substances or Materials 4
4.5 Employment Opportunities 4
4.6 Notification 5
4.7 Public Disclosure 5
5 INSURANCE, BONDING AND INDEMNITY REQUIREMENTS 5
5.1 City's Insurance Coverage 5
5.2 Insurance Required for City-hired Consultants, Contractors, and Subcontractors ... 5
5.2.1 Commercial General Liability 5

5.2.2 Commercial Automobile Liability 5
5.2.3 Workers' Compensation and Employer's Liability 5
5.3 Additional Insurance Requirements Applicable to City-hired Consultants, Contractors and Subcontractors 5
5.3.1 General and Automobile Liability Policy Endorsements 6
(a) Additional Insured 6
(b) Primary, Non-Contributory Insurance 6
5.3.2 Additional Insureds 6
5.3.3 Written Notice Required to Effect Changes 6
5.3.4 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs 6
5.3.5 Acceptability of Insurers 6
5.4 Performance and Labor and Material Payment Bonds 6
5.4.1 Contractor's Performance 6
5.4.2 Payment of Wages and Materials 6
5.5 General Indemnity 6
6 DEFAULT AND REMEDIES 7
6.1 Events of Default 7
6.1.1 Noncompliance with the Grant Agreement 7
6.1.2 Noncompliance with Governmental Requirements 7
6.2 Force Majeure 7
6.3 Declaring Default 7
6.4 Remedies 7
7 MISCELLANEOUS 7
7.1 Relationship of Parties 7
7.2 No Third Party Claims 8
7.3 Conflict of Interest 8
7.3.1 Interest of Employees, Agents, Consultants, Officers and Officials of the Successor Agency or the City 8
7.3.2 State and Local Requirements 8
7.4 Notices 8
7.5 Successors and Assigns 9
7.6 Severability 9

7.7 Amendments 9
7.8 Time 9
7.9 Governing Law 9
7.10 Non-Liability of Agency, Employees and Agents 9
7.11 Agency's Rights and Consent 9
7.12 Headings 10
7.13 Counterparts, Facsimile Copies 10
7.14 Non-Assignability 10
8 LIST OF EXHIBITS 10
8.1 Exhibits 10

GRANT AGREEMENT

This Grant Agreement ("Grant Agreement") is entered into April 1, 2014, between the Successor Agency to the Redevelopment Agency, also known as the Office of Community Investment and Infrastructure, a public body ("Successor Agency"), and the City and County of San Francisco (the "City"), a municipal corporation, acting by and through its Municipal Transportation Agency ("SFMTA"), to provide supplemental funding for the renovation of the public plaza adjacent to the Bayview Opera House. The Successor Agency and the City are the parties to this Grant Agreement (either a "Party," or collectively, the "Parties"). Capitalized terms used herein shall have the meanings as set forth in this Grant Agreement.

RECITALS

A. On March 15, 2011, the City executed a Grant Agreement with the former Redevelopment Agency of the City and County of San Francisco ("SFRA") to provide $785,000 in supplemental funding for the renovation of the public plaza adjacent to the Bayview Opera House (the "2011 Grant Agreement").

B. Under Assembly Bill No. X1 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and the California Supreme Court's decision in California Redevelopment Association v. Matosantos, No. S194861, the SFRA, together with all other redevelopment agencies in the State of California, dissolved by operation of law on February 1, 2012.

C. In June 2012, the California Legislature adopted legislation amending AB 26, known as Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session) ("AB 1484"), and the Governor signed that bill on June 27, 2012. Hereinafter, AB 26, as amended by AB 1484, is referred to as the "Redevelopment Dissolution Law" or the "Law."

D. The Redevelopment Dissolution Law places successor agencies' performance of their duties under the Law under the supervision of newly established oversight boards, which are different from the local legislative bodies and which will oversee the fiscal management of future successor agency activities regarding the enforceable obligations. In performing their functions required under the Redevelopment Dissolution Law, the oversight boards owe fiduciary responsibilities to the holders of enforceable obligations and the taxing entities entitled to the distribution of property tax revenues under the Law. Some actions by the oversight boards and successor agencies are also subject to discretionary review by the State Department of Finance and the State Controller under the Redevelopment Dissolution Law.

E. The Mayor (with confirmation by the Board of Supervisors) and the taxing entities have appointed members to the oversight board of the City and County of San Francisco (the "Oversight Board").

F. The Redevelopment Dissolution Law requires successor agencies to make payments due for enforceable obligations and to perform obligations required pursuant to an enforceable obligation. Cal. Health & Safety Code § 34177 (a) and (c). In addition, the Law authorizes successor agencies to create new enforceable obligations if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal Health & Safety Code § 34177.3 (a). The Law, however, authorizes payments under an enforceable obligation only if the expenditure appears on a Recognized Obligation Payment Schedules ("ROPS") that the

Oversight Board and the Department of Finance have approved for each six-month period (January-June, July-December), beginning January 1, 2012. Each ROPS must state the minimum payment amounts and due dates for payments required by enforceable obligations for each six-month fiscal period. Only those payments listed on the ROPS may be made by the successor agency from funds specified in the ROPS; and,

G. The Successor Agency requested authorization to expend the $785,000 in bond proceeds for the 2011 Grant Agreement through ROPS 13-14A, for the period of July through December 2013. On April 11, 2013 DOF determined that the 2011 Grant Agreement was not an enforceable obligation under Section 34171(d)(2) of the Redevelopment Dissolution Law because it was an agreement between the City and the Redevelopment Agency.

H. Redevelopment Dissolution Law authorizes successor agencies to enter into certain new contracts if the Department of Finance has issued a Finding of Completion. A successor agency may expend bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations if it separately lists the "excess bond proceeds obligations" on the ROPS and uses the excess proceeds in a manner consistent with the original bond covenants. Cal. Health & Safety Code § 34191.4(c)(2)(A). The Successor Agency received a Finding of Completion on May 29, 2013.

I. The Bayview Hunters Point 2009 Series B and F Tax Exempt Bond Issuances require that the bond proceeds be used to finance certain redevelopment activities in the Bayview Hunters Point Redevelopment Project Area. The Successor Agency has determined that there are excess proceeds from these issuances ("BVHP Excess Proceeds") and requested approval from the Oversight Board through ROPS 13-14B to expend $785,000 in BVHP Excess Proceeds to the City through the SFMTA to renovate the Bayview Opera House plaza (Item #368).

J. On September 23, 2013, the Oversight Board authorized the Successor Agency to enter into an agreement with the SFMTA to provide $785,000 in BVHP Excess Bond Proceeds for the renovation of the Bayview Opera House plaza, an expenditure that is consistent with the bond covenants, which require the funds to be used for redevelopment activities in the BVHP Redevelopment Project Area.

K. The SFMTA set aside the construction contract for the Project, both for prime and subcontractors, for Small Business Enterprise (SBE) firms, including local firms, in accordance with its SBE Program and with federal regulations.

L. 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 business The contractor has provided all required evidence of insurance and bonding, and the contract has been executed by the City and the contractor.

M. Consistent with the approval granted by the Oversight Board, the Parties have agreed to the terms and conditions of this Grant Agreement to provide $785,000 in BVHP Excess Bond Proceeds for the renovation of the Bayview Opera House plaza.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants set forth in this Grant Agreement, the Parties agree as follows:

1 GRANT PROVISIONS

1.1 Grant Amount. In consideration of the City's agreement to complete the Project, including all necessary and relevant predevelopment and construction activities directly related to the Project referenced in this Grant Agreement, the Successor Agency agrees to grant to the City Seven Hundred Eighty-Five Thousand Dollars ($785,000) (the "Grant" or "Grant Amount") for the completion of the Project,

subject to the terms and conditions set forth in this Grant Agreement. Disbursed Grant funds shall be secured with work product and materials purchased and/or produced with Grant funds. All funds disbursed under the Grant may be declared by the Successor Agency immediately repayable upon the City's uncured default under this Grant Agreement. Provided the City is in compliance with this Grant Agreement and is not in default under this Grant Agreement, no repayment will be required for the total funds disbursed under the Grant Agreement upon satisfactory completion of the Project.

1.2 **Use of Grant Funds**. The City shall use disbursed Grant funds to pay for the necessary and relevant hard costs related to the Project's scope of work described in **Exhibit A (Scope of Work)** as of the date of the commencement of each construction contract (as evidenced by the Notice to Proceed issued by the SFMTA or the Department of Public Works (DPW)). The Parties agree that the SFMTA will use $210,354 for work under the SFMTA Scope of Work as defined in Exhibit A, and that SFMTA will work order $574,646 to DPW to perform the DPW's Scope of Work as defined in Exhibit A.

1.3 **Term**. The term ("Term") of this Grant Agreement shall commence on the date first written above (the "Commencement Date") and shall end on the earlier of: (a) 24 months from the Commencement Date, except if extended in writing by the Successor Agency, or (b) the date the City receives a written notice from the Successor Agency acknowledging the completion of the Project.

1.4 **No Mechanics' Lien**. The City agrees that at all times when the same may be necessary or desirable, it will take or cause its contractors and subcontractors to take such action as may be required by the Successor Agency and/or under any law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against any interest of the Successor Agency for or on account of labor, services or materials furnished to the City or furnished at the City's request, except to the extent such liens may be caused by the Successor Agency's breach of this Grant Agreement. The Successor Agency from time to time may post a notice of non-responsibility for the Project while it is under construction.

1.5 **Cost Overruns**. The City shall be responsible for any Cost Overruns related to the Project. Construction costs for the Project over the Project Cost shall constitute Cost Overruns hereunder, and the City shall be responsible for paying any and all such Cost Overruns.

1.6 **Disbursement.** The Successor Agency shall disburse the Grant Amount in full to SFMTA upon execution of this Grant Agreement.

1.7 **Report of Expenditures.** SFMTA will provide to the Successor Agency records demonstrating the expenditures of Grant Amount for the SFMTA Scope of Work and DPW Scope of Work within 30 days after the completion of each Scope of Work.

1.8 **Excess Grant Amount.** Any amounts remaining in the Grant Amount that have not been expended pursuant to this Agreement by the completion of the SFMTA Scope of Work and the DPW Scope of Work shall be returned to the Successor Agency within 30 days after the completion of each Scope of Work.

2 CONSTRUCTION AND COMPLETION OF THE PROJECT

2.1 **Construction Standards**. The City shall complete the Project in accordance with requirements specified in this Grant Agreement and the requirements applicable to the Federal Funds. The construction of the Project shall (a) be performed in a

first-class manner, (b) meet all federal, state and local code requirements and licensing requirements, and (c) be done substantially in accordance with the final construction documents reviewed and approved by the Successor Agency for the Project.

2.2 **Disability Access**. With respect to the Project, the City shall comply with all applicable federal, state and local disability access laws, including the Americans with Disabilities Act, and any other applicable disability access laws. The City is responsible for determining those disability access laws applicable to the Project.

2.3 **Completion of Construction**. The City shall substantially complete construction of the Project within one year from the commencement of construction by DPW.

2.4 **Extension of Time by the Successor Agency**. At the discretion of the Successor Agency's Executive Director, Agency staff may extend the date for City's performance of any item set forth in this Agreement from time to time, without the necessity for further Successor Agency Commission action, up to a total of 180 days; provided, however, that any such extension shall not release the City from any of its obligations or constitute a waiver of Agency's rights with respect to any other term, covenant or condition of this Grant Agreement.

3 CITY REPRESENTATIONS AND WARRANTIES

3.1 **No Contravening Agreements**. The City warrants that the execution, delivery, and performance of this Grant Agreement will not contravene, or constitute a default under or result in a lien upon assets of the City pursuant to any applicable law or regulation, any charter document of the City, or any instrument binding upon or affecting the City, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting the City.

3.2 **No Adverse Action**. The City warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect the City in any material respect to complete the Project.

4 CITY COVENANTS

4.1 **Permits**. The City shall require its contractor to diligently apply to all regulatory and applicable agencies whose approvals are necessary for the completion of the Project. The City shall comply with all requirements and conditions imposed by such agencies, provided, however, that receipt of any required or necessary permits, services, or approval shall not release the City from its obligations under this Grant Agreement, except as expressly provided herein.

4.2 **Authorization to Execute the Grant Agreement**. The City covenants that the execution of this Grant Agreement has been duly authorized.

4.3 **Insurance**. The City will cause its contractor to maintain the insurance required under **Article 5** of this Grant Agreement.

4.4 **Hazardous Substances or Materials**. The City will abide by all applicable federal, state and local environmental regulations and will hold the Successor Agency harmless for any issues related to hazardous substances or materials that may arise from the predevelopment and construction activities related to the Project.

4.5 **Employment Opportunities.** The City will also perform small business and employment opportunities outreach and require its contractor to coordinate with the CityBuild program in order to provide opportunities for residents of the Bayview and other disadvantaged communities to apply for any open positions to work on the Project.

4.6 **Notification**. Until issuance of the Successor Agency's written notice acknowledging the completion of the Project, the City will promptly notify the Successor Agency in writing upon becoming aware of the occurrence of any event which might materially and adversely affect its ability to perform its obligations under this Grant Agreement which constitutes, or with the giving of notice or passage of time or both would constitute, an Event of Default under this Grant Agreement. Such occurrences include, but are not limited to, the threat or initiation of lawsuits or administrative proceedings against the City that results in a final judgment, order or decree that has a materially adverse effect on the City and its ability to perform its obligations under the Grant Agreement, or problems with vendors or suppliers that have a materially adverse effect on the City's construction of the Project.

4.7 **Public Disclosure**. The City understands and agrees that under the State Public Records Law (California Government Code Section 6250 et seq.), this Grant Agreement and any and all records, information, and materials submitted to the Successor Agency hereunder are public records subject to public disclosure. The City authorizes the Successor Agency to disclose any records, information and materials submitted to the Successor Agency in connection with this Grant Agreement, except to the extent such records, information or materials are trade secrets or privileged communications and are so marked.

5 INSURANCE, BONDING AND INDEMNITY REQUIREMENTS

5.1 **City's Insurance Coverage**. Without limiting the City's liability pursuant to Article 6.9, the Parties acknowledge and agree that the City self-insures in the areas of general liability, property damage, automobile liability and workers' compensation. The Parties further agree that such self-insurance shall cover any losses, claims or damages incurred by the Successor Agency directly or indirectly arising out of or connected with this Grant Agreement and any of the City's activities under this Grant Agreement.

5.2 **Insurance Required for City-hired Consultants, Contractors, and Subcontractors.** The City shall require any consultants, contractors, and subcontractors used to complete any portion of the work under this Grant Agreement maintain the following minimum insurance provisions:

5.2.1 **Commercial General Liability.** Commercial general liability insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

5.2.2 **Commercial Automobile Liability**. Commercial automobile liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

5.2.3 **Workers' Compensation and Employer's Liability**. Workers' Compensation insurance, in statutory amounts, with Employer's Liability limits not less than $1,000,000 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the Successor Agency, the City and their respective officers, agents, employees and commissioners for losses arising from or in connection with the Project.

5.3 **Additional Insurance Requirements Applicable to City-hired Consultants, Contractors and Subcontractors**.

5.3.1 General and Automobile Liability Policy Endorsements:

(a) Additional Insured: Policies shall name as "Additional Insured" the "Successor Agency, and their respective officers, agents and employees."

(b) Primary, Non-Contributory Insurance: For any claims related to this Project, contractor's insurance coverage must be primary insurance with respect to "the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees". Any insurance or self-insurance maintained by the Successor Agency, the City and their respective commissioners, members, officers, agents, and employees shall be in excess of subcontractor's insurance and shall not contribute with it.

5.3.2 Additional Insureds Not Affected by Failure to Report**.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Additional Insureds.

5.3.3 Written Notice Required to Effect Changes. All policies shall be endorsed to provide at least 10 days' advance written notice to Agency of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to Agency's address for notices pursuant to Article 8.4.

5.3.4 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.3.5 Acceptability of Insurers. Before commencing any operations under this Agreement, the City shall cause its contractors and consultants to furnish to Agency certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Agency, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

5.4 Performance and Labor and Material Payment Bonds. The City agrees to cause its contractors to provide to the Successor Agency performance and labor and material payment bonds in a sum not less than 100 percent of the sum of the amount of the construction contract to guarantee:

5.4.1 Contractor's Performance. The faithful performance of the general contractor selected to construct the Project; and

5.4.2 Payment of Wages and Materials. The payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the scope of work for the construction of the Project.

5.5 General Indemnity. The City shall defend, hold harmless and indemnify the Successor Agency, and its commissioners, members, officers, agents and employees of and from any and all claims, demands, losses, costs, expenses,

obligations, damages, injuries, actions, causes of action and liabilities of every kind, nature and description directly or indirectly, arising out of or connected with this Grant Agreement, and any of City's activities related thereto, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

6 DEFAULT AND REMEDIES

6.1 Events of Default. Each of the following events will constitute an event of default ("Event of Default") under this Grant Agreement:

6.1.1 Noncompliance with the Grant Agreement. The City's failure or refusal to perform any material promise, agreement, covenant or obligation contained in this Grant Agreement, including but not limited to any delay in construction which has a material adverse affect on the City's ability to complete construction of the Project, subject to force majeure in Section 7.2 and the cure provisions in Section 7.3.

6.1.2 Noncompliance with Governmental Requirements. The City's failure to timely comply with any governmental requirements, including but not limited to obtaining required permits and certificates.

6.2 Force Majeure. Notwithstanding anything to the contrary in this Grant Agreement, neither the City or its agent nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the beginning and completion of the Project or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its failure or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delays, the time or times for performance of the City with respect to the Project shall be extended for the period of the enforced delay; provided, however, that the City or its agent shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the Successor Agency thereof in writing, and of the cause or causes thereof and requested an extension for the period of the enforced delay.

6.3 Declaring Default. Upon discovery that an Event of Default has occurred, the Successor Agency shall give written notice of default to the City. If the default is not cured within 30 business days after receipt of the notice of default or, any extension approved in writing by the Successor Agency, the Successor Agency may enforce its rights and remedies under **Section 7.4** below.

6.4 Remedies. Upon the occurrence of an uncured Event of Default, and subject to the provisions of this Grant Agreement, at law, or in equity, the Successor Agency may exercise any or a combination of the following rights and remedies: (a) withhold further disbursements of Grant funds and/or (b) terminate this Grant Agreement.

7 MISCELLANEOUS

7.1 Relationship of Parties. Nothing contained in this Grant Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the Successor Agency and the City or the City's agents or employees, and the City shall at all times be deemed an independent contractor

with respect to the City's construction of the Project hereunder, and the City shall be wholly responsible for the manner in which it or its agents, or both, perform under this Grant Agreement.

7.2 **No Third Party Claims**. Nothing contained in this Grant Agreement shall create or justify any claim against the Successor Agency by any third person whom the City may have employed or contracted or may employ or contract relative to the purchase of any material, supplies or equipment, or the furnishing or the performance of any work or services with respect to any programs or projects being undertaken by the City, except for liens caused by the failure of the Successor Agency to disburse payments pursuant to this Grant Agreement.

7.3 **Conflict of Interest**.

7.3.1 **Interest of Employees, Agents, Consultants, Officers and Officials of the Successor Agency or the City**. Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the Successor Agency or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by the Grant in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Grant Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Grant Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

7.3.2 **State and Local Requirements**. The City acknowledges that it may be subject to the provisions of Sections 1090 through 1097 and 87100 through 87104.5 of the California Government Code, prohibiting public officials' participation in decisions pertaining to government contracts in which the public official has a financial or economic interest. The City certifies that it knows of no facts, which constitute a violation of such sections, or any of them, and agrees to immediately notify the Successor Agency if the City shall at any time obtain knowledge of facts constituting such violation.

7.4 **Notices**. Any notice, request or consent required pursuant to this Grant Agreement shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the City: San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3th Floor
San Francisco, CA 94103
Attention: Kenny Ngan, Project Manager
kenny.ngan@sfmta.com

With a copy to:

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attention: Joel Goldberg, Manager, Grant Procurement
joel.goldberg@sfmta.com

If to the Successor Agency: Successor Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Executive Director

or to such other addresses as the Parties may designate by notice as set forth above.

7.5 **Successors and Assigns**. All of the terms of this Grant Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of the Successor Agency and the City, respectively, and all persons claiming under or through them.

7.6 **Severability**. If one or more provisions of this Grant Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Grant Agreement shall remain in full force and effect.

7.7 **Amendments**. The Agency and the City reserve the right to amend this Grant Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Grant Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties.

7.8 **Time**. Time is of the essence in the performance of the terms and conditions of this Grant Agreement.

7.9 **Governing Law**. The laws of the State of California, including the Charter of the City, shall govern this Grant Agreement.

7.10 **Non-Liability of Agency, Employees and Agents**. No member, official, employee, commissioner or agent of the Successor Agency shall be personally liable to any consultant, contractor or subcontractor with respect to the Project in the event of any default or breach by the Successor Agency or for any amount which may become due to any of the consultants, contractors or subcontractors under this Grant Agreement.

7.11 **Agency's Rights and Consent**. No forbearance, failure or delay by the Successor Agency in exercising any right, power or remedy, nor any single or partial exercise by the Successor Agency of any right or remedy hereunder shall preclude the further exercise of such right, power or remedy. The Agency's consent to any act or omission by the City may not be construed as the Successor Agency's consent to any other or subsequent act or omission or as a waiver of the requirement to obtain the Successor Agency's consent in any other instance. All of the Successor Agency's rights, powers and remedies are cumulative and shall continue in full force and effect unless specifically waived in writing by the Successor Agency.

7.12 **Headings**. The headings within this Grant Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Grant Agreement.

7.13 **Counterparts, Facsimile Copies**. This Grant Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Grant Agreement shall be effective upon transmission by any party to the other party of a fully signed facsimile copy of this Grant Agreement, so long as an original copy of this Grant Agreement signed by the transmitting party is delivered to the other party within five business days thereafter.

7.14 **Non-Assignability**. The rights and obligations of the City under this Grant Agreement are not assignable to any entity or party without the written approval of the Successor Agency which may be granted or denied in the Successor Agency's sole discretion.

8 LIST OF EXHIBITS

8.1 **Exhibits**. The following exhibits are attached and by this reference incorporated into this Grant Agreement as if fully set forth above:

Exhibit A: Scope of Work

IN WITNESS WHEREOF, the Agency and the City have executed this Grant Agreement as of the date first above written.

SUCCESSOR AGENCY

By: _____

APPROVED AS TO FORM:

By: _____
James B. Morales
Successor Agency General Counsel

Authorized by Successor Agency Resolution No. _____, 2014, adopted _____, 2014.

CITY

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Sonali Bose
Chief Financial Officer

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By:_____
Robin M. Reitzes
Deputy City Attorney

EXHIBIT A

Scope of Work

The proposed scope of work for the Project includes the following:

SFMTA SCOPE OF WORK:

1. Removal of existing fencing, brick walls, pavement, and identified landscaping to create contiguous open space around the Opera House.

2. Preservation of existing oak trees.

3. Installation of colored concrete paving, new plaza entry at Third Street and Oakdale Avenue, seat walls and planter walls, new benches and trash receptacles, new lighting, new gate, new bollards at major plaza entries, and a decorative fence and curb at perimeter.

4. Construction of the new bulb out at the Opera House entry at Newcomb, including new ADA curb ramps along the sidewalk.

DPW SCOPE OF WORK:

1. Accessible path from parking, front entry and rear exterior stage
2. New custom fence along 3rd street corridor
3. Public plaza improvements at corner of 3rd Street and Newcomb Ave, including new paving and custom fence
4. New site lighting along paved pathways and theater lighting for rear exterior stage
5. New front stair at main entry (Newcomb Ave.)
6. Replacement of rear exterior stage and installation of new theater seating
7. New planting and landscape features, including rain garden and open lawn, through out site

NOTES:

1. In the event the cost of construction is higher than our engineering estimate, scope will be reduced to maintain project budget. Which element of the scope is reduced will be made in consultation with the Agency, SFAC, and SFMTA

2. SFMTA is not responsible for the upkeep and maintenance of the plaza after is put into service.