

File No. 110799

Committee Item No. _____

Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date: July 12, 2011

Cmte Board

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| <input type="checkbox"/> | | Motion |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

Completed by: Annette Lonich

Date: July 1, 2011

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

INTRODUCTION FORM

By a member of the Board of Supervisors or the Mayor

Time Stamp or
Meeting Date

I hereby submit the following item for introduction:

- 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment
- 2. Request for next printed agenda without reference to Committee
- 3. Request for Committee hearing on a subject matter
- 4. Request for letter beginning "Supervisor _____ inquires..."
- 5. City Attorney request
- 6. Call file from Committee
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File Nos.
- 9. Request for Closed Session
- 10. Board to Sit as A Committee of the Whole
- 11. Question(s) submitted for Mayoral Appearance before the BOS on _____

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Ethics Commission
- Building Inspection Commission
- Youth Commission
- Planning Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]

Sponsor(s): Cohen

SUBJECT: Accept and Expend \$400,000 Grant – Bayview Opera House

The text is listed below or attached:

(Please note the request to place on the "Adoption Without Committee Reference" calendar. The matter was the subject of a Committee of the Whole hearing on 4/26/11)

Signature of Sponsoring Supervisor: _____

Malva Cohen

For Clerk's Use Only:

110709

1 [Accept and Expend Grant - Bayview Opera House -\$400,000]

2
3 **Resolution authorizing the Arts Commission to accept and expend a grant in the**
4 **amount of \$400,000 from the San Francisco Redevelopment Agency to make structural**
5 **upgrades and install accessibility improvements at the Bayview Opera House.**

6
7 WHEREAS, The City and County of San Francisco (the "City") owns the real property
8 located at 4705 Third Street in San Francisco, California, which is under the jurisdiction of the
9 City's Arts Commission and improved with a building commonly known as the Bayview Opera
10 House (the "Building"); and

11 WHEREAS, The Arts Commission wishes to have the Building structurally upgraded
12 and to install accessibility improvements that comply with the Americans with Disability Act
13 (the "Project"); and

14 WHEREAS, The Bureau of Architecture of the City's Department of Public Works
15 ("DPW") has agreed to manage the construction of the Project and has estimated that the
16 total cost of the Project will be \$748,000; and

17 WHEREAS, The Arts Commission previously allocated \$248,000 from its capital
18 improvement budget to develop a scope of work and produce preliminary design drawings for
19 the Project and the Mayor's Office of Community Investment has agreed to fund \$100,000 of
20 the Project costs; and

21 WHEREAS, The San Francisco Redevelopment Agency ("Agency") is willing to make a
22 grant of \$400,000 (the "Grant") to the City for the Project pursuant to a Grant Agreement
23 between the Agency and the City, acting by and through the Arts Commission (the "Grant
24 Agreement"), a copy of which is on file with the Clerk of the Board of Supervisors in File No.
25 _____, and is hereby declared to be a part of this Resolution as if set forth fully herein; and

1 WHEREAS, The Grant Agreement requires that the Grant funds be used solely to pay
2 for the necessary and relevant construction costs related to the Project work described in
3 Exhibit A to the Grant Agreement and City will be obligated to repay the Grant funds if there is
4 any uncured default by City of its obligations under the Grant Agreement; and

5 WHEREAS, On March 7, 2011, the Arts Commission adopted Resolution No. 0307-11-
6 067, a copy of which is on file with the Clerk of the Board of Supervisors in File No. _____,
7 and is hereby declared to be a part of this Resolution as if set forth fully herein, to approve the
8 proposed Grant and Grant Agreement and urge the Board of Supervisors to approve the
9 proposed Grant to help make needed facility improvements to the Building for the benefit of
10 the public; now, therefore, be it

11 RESOLVED, That the Arts Commission is authorized to accept and expend the
12 proposed Grant to perform the necessary and relevant construction costs related to the
13 Project work described in Exhibit A to the Grant Agreement and the Director of Cultural Affairs
14 of the Arts Commission is authorized to execute and deliver the Grant Agreement and take
15 any and all actions which the Director of Cultural Affairs, in consultation with the City Attorney,
16 determines are in the best interest of the City, do not materially increase the obligations of the
17 City or materially decrease the benefits to the City, are necessary or advisable to
18 consummate the performance of the purposes and intent of this Resolution, and comply with
19 all applicable laws, including the City's Charter, including any modifications or amendments to
20 the Grant Agreement.
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22
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24
25

DUPLICATE

GRANT AGREEMENT

by and between

The Redevelopment Agency of the City and County of San Francisco

And

The City and County of San Francisco
acting through the
SAN FRANCISCO ARTS COMMISSION

for

Bayview Opera House Balcony Structural Stabilization/Disabled Access Project

Assessor's Block 5311, Lot 36

Dated and executed as of March 15, 2011

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GRANT AGREEMENT

THIS Grant Agreement ("Grant Agreement") is entered into as of March 15, 2011 (the "Agreement Date") between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "Agency") and the City and County of San Francisco, a municipal corporation, ("City") acting by and through the San Francisco Arts Commission ("SFAC") to fund a portion of the cost of seismic upgrades and accessibility improvements for the Bayview Opera House at 4705 Third Street, in the Bayview Hunters Point Redevelopment Project Area (the "Project Area").

RECITALS

- A. The Agency is authorized, pursuant to California Community Redevelopment Law ("CRL") (Health and Safety Code, Section 33000 *et seq.*) to provide assistance and advance funds for the making of improvements necessary for the redevelopment of blighted areas and the implementation of a project area redevelopment plan.
- B. On June 1, 2006, the Agency adopted the Bayview Hunters Point Redevelopment Plan (the "Plan"). One of the key goals of the Plan is physical/economic revitalization of certain activity nodes of the Project Area. One of the activity nodes is the Town Center where the Bayview Opera House is located. The Bayview Opera House (the "Opera House") is owned by the City, acting by and through SFAC.
- C. The Opera House, built in 1888, is located 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 project area covered by the Plan (the "Project Area"). 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 landmark status by the City.
- D. Between 1973 and 2001, SFAC undertook physical assessments of the Opera House. The assessments revealed structural, seismic, and disabled-accessibility deficiencies. Since then, SFAC has been looking for funds to address these deficiencies. In 2008, SFAC allocated \$248,000 from its capital improvement budget to develop a scope of work and produce preliminary design drawings for improvements to correct the most critical deficiencies. At that time, the City was hoping that this predevelopment work would attract federal stimulus funds to correct the deficiencies, but the funds never materialized.
- E. Recently, SFAC has proposed a scope of work that includes structural upgrades and accessibility improvements to comply with the Americans with Disability Act ("ADA"). More specifically, it includes the following tasks: (1) building 1 unisex ADA compliant restroom at building's main level and 1 unisex ADA-compliant at the building's lower level; (2) adding a new interior wall under the existing balcony in the main auditorium space; (3) installing steel columns

under the existing balcony for structural stabilization; and (4) if there are sufficient sufficient funds after completing tasks (1) – (3), removing non-original concrete stairs at the front entrance of the building, constructing a new concrete ramp and stairs, and adding a new accessible glass entry door system behind existing historical doors (the "Project").

F. The Bureau of Architecture of the City's Department of Public Works ("DPW") is assisting SFAC with the development of preliminary design drawings for the Project, has estimated the total cost of the Project at \$748,000 (the "Project Cost") as of January 2010, and has agreed to develop permit drawings and construction/bid documents and provide project management if there is sufficient funding for the Project Cost. SFAC recently received an additional \$100,000 for the Project from the Mayor's Office of Community Investment ("MOCI"), bringing the total current funding for the Project to \$348,000 and leaving a funding gap of \$400,000. SFAC has requested that the Agency cover the gap because no alternative funding is available.

G. The Agency has reviewed the request and agreed to cover the gap using tax increment funds subject to certain terms and conditions that are incorporated into this Grant Agreement, including, among other things, seeking the consent and approval of the Board of Supervisors of the City and County of San Francisco (the "Board").

H. Because the Agency will be using \$400,000 of its funds to pay a part of the cost of the proposed repairs and upgrades to the Opera House, a City-owned property, CRL Section 33445 requires the Agency to seek approval of the Board before providing the funding. As such, the Agency will request the Board's approval of the proposed Agency funding based on the following findings: (1) the improvements are of benefit to the Project Area by helping to eliminate blight within the Project Area; (2) no other reasonable means of financing is available; and (3) the Agency funding is consistent with the implementation plan adopted for the Project Area pursuant to CRL Section 33490.

I. To facilitate moving forward on the Project, the City and the Agency have now agreed to execute the proposed Grant Agreement to provide the remaining funding required for the Project. The City and the Agency are the parties (the "Parties") to this Grant Agreement.

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

ARTICLE I

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 Agency agrees to grant to the City, Four Hundred Thousand Dollars (\$400,000) (the "Grant" or "Grant Amount") for the completion of the Project (to supplement the \$348,000 the City has received for 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 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 if the Project is satisfactorily completed.

1.2 Use of Grant Funds. The City shall use disbursed Grant funds to pay for the necessary and relevant construction costs related to the Project Costs, which are described in Exhibit "A," Scope of Work, in accordance with the attached Exhibit "B," Approved Disbursement Budget for the Project.

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) thirty (30) months from the Commencement Date, except if extended in writing by the Agency, or (b) the date the City receives an Agency-issued written notice 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 Agency and/or under any law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against any Agency's interest 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 Agency's breach of this Grant Agreement. The 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, as herein defined, 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 Conditions Precedent to Disbursement. The Agency shall not disburse the Grant funds under this Grant Agreement unless and until the City, through SFAC or DPW, has provided the following to the Agency:

(a) **Draft Advertisement for Bids.** A copy of the advertisement for bids the City will issue to find a qualified contractor to construct the Project; and

(b) **Draw Request.** A written draw request from the City for the disbursement of the Grant funds, submitted to the Agency at least ten (10) business days prior to the anticipated date that the City will post the advertisement for bids for the Project.

1.7 Condition Precedent to City Disbursement of Grant Funds. City shall not use any of the Grant funds to pay for the Project Costs unless and until the City, through SFAC, has provided the following to the Agency:

(a) **Insurance and Performance Bonds.** Evidence of the insurance and performance and payment bonds described in Article 6 of this Grant Agreement;

(b) **Approved Construction Documents.** A copy of the Project construction documents approved by Agency, which shall not unreasonably withhold such consent (the "Final Construction Documents");

(c) **Construction Contract.** A copy of the executed contract for the Project (the "Construction Contract") between the City and its general contractor or contractor for the construction of the Project (the "Project Contractor"). If the cost of the Construction Contract exceeds the Project Costs, then the City must provide written documentation, to the Agency's satisfaction, identifying the funding sources to be used to cover any amounts over the Project Costs; and

(d) **Permits.** Evidence that all building permits, licenses, and other government approvals and authorizations that are required for the performance of the Project have been applied for or have been issued.

ARTICLE 2

DISBURSEMENT AND ACCOUNTING

2.1 **City Disbursement Procedures, Requirements, and Retention.** The City may use the Grant proceeds to make payments pursuant to the Construction Contract, which shall require the Project Contractor to submit payment requests to City, together with supporting evidence for all amounts requested, to pay the approved hard costs directly related to the Construction Contract and incurred by Project Contractor prior to such payment request date.

2.2 **Approved Payment Requests.** The City shall deliver a copy of all Project Contractor payment requests delivered to City under the Construction Contract to Agency at Agency's request.

ARTICLE 3

CONSTRUCTION AND COMPLETION OF THE PROJECT

3.1 **Construction Standards.** The City shall complete the Project in accordance with requirements specified in this Grant Agreement and the requirements applicable to the MOCI funds for the Project. 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.

3.2 **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.

3.3 Conditions Precedent to Commencement of Construction. The City's commencement of construction of the Project is conditioned as follows:

(a) **Construction Contract and Final Construction Documents.** The City shall have delivered to the Agency the Construction Contract and a complete set of the Final Construction Documents;

(b) **Designated Contract Administrator.** The City will designate a contract administration manager to oversee the construction related to the Project ("Contract Administration Manager"). The Contract Administration Manager will be Rommel Taylor, unless the SFAC notifies the Agency in writing that another Contract Administration Manager has been designated; and

(c) **Performance and Labor and Material Payment Bonds.** The City shall have delivered to the Agency the Project Contractor's original dual obligee performance and contractor's labor and material payment bonds in the form, substance and amount specified under **Section 6.4** of this Grant Agreement.

3.4 Commencement and Completion of Construction. The City shall cause the commencement and completion of the construction of the Project and receive an Agency-issued written notice acknowledging the completion of the Project in a timely manner subject to the attached **Schedule of Performance, Exhibit "C,"** unless otherwise extended pursuant to **Sections 3.5** and **3.6.**

3.5 Extension of Time by the Agency Commission. The Agency Commission may extend the time for City's performance of any term, covenant or condition of this Grant Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the parties; provided, however, that any such extension or permission to cure any particular default shall not operate to release the City from any of its other obligations or constitute a waiver of the Agency's rights with respect to any other terms, covenant or conditions of this Grant Agreement or any other default or breach of this Grant Agreement.

3.6 Extension of Time by the Executive Director. At the discretion of the Agency's Executive Director, Agency staff may extend the date for City's performance of any item set forth in the **Schedule of Performance, Exhibit "C,"** from time to time, without the necessity for further Agency Commission action, so long as such extensions do not exceed a total of one-hundred and eighty (180) days from the date being extended in the **Schedule of Performance, Exhibit "C,"** 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.

ARTICLE 4

CITY REPRESENTATIONS AND WARRANTIES

4.1 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.

4.2 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.

ARTICLE 5

CITY COVENANTS

5.1 Permits. The City shall, or shall cause the Project Contractor to, diligently apply to all regulatory and applicable agencies whose approvals are necessary for the completion of the Project. The City shall, or shall cause the Project Contractor to, 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.

5.2 Authorization to Execute the Grant Agreement. By its execution of this Grant Agreement, the City covenants that the execution of this Grant Agreement has been duly authorized.

5.3 Insurance. The City will cause the Project Contractor to procure and maintain the insurance required under Article 6 of this Grant Agreement during the period that the Project Contractor performs any of the Project work.

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

5.5 Contracting Policy. The City has been presented with and has reviewed the Agency's Bayview Hunters Point Employment and Contracting Policy ("ECP") and the related ECP Agreement. In lieu of the ECP, portions of which require actions that City is not authorized to take under law, the SFAC will agree to 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 the Agency's SBE Program and with regulations. The City will also perform small business and employment opportunities outreach and require the Project Contractor to coordinate with its City Build program in order to provide opportunities for qualified residents of the Bayview to apply for any available entry level positions for the Project.

5.6 Notification. Until issuance of the Agency's written notice acknowledging the completion of the Project, the City will promptly notify the 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.

5.7 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 Agency hereunder are public records subject to public disclosure. The City authorizes the Agency to disclose any records, information and materials submitted to the 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.

ARTICLE 6

INSURANCE, BONDING AND INDEMNITY REQUIREMENTS

6.1 City's Insurance Coverage. Without limiting City's liability pursuant to Article 6.5, the Parties acknowledge and agree that the City self-insures in the areas of general liability, automobile liability and workers' compensation. The Parties further agree that such self-insurance shall cover any losses, claims or damages incurred by the Agency directly or indirectly arising out of or connected with this Grant Agreement and any of the City's activities under this Grant Agreement.

6.2 Insurance Required for City-hired Consultants, Contractors, and Subcontractors. City shall require the Project Contractor to provide and maintain the following minimum insurance provisions:

(a) **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.

(b) **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.

(c) **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 Agency, the City and their respective officers, agents, employees and commissioners for losses arising from or in connection with the Project.

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

(a) General and Automobile Liability Policy Endorsements:

(i) Additional Insured: Policies shall name as "Additional Insured" the "San Francisco Redevelopment Agency, the City and County of San Francisco, and their respective officers, agents and employees."

(ii) Primary, Non-Contributory Insurance: For any claims related to this Project, 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 Agency, the City and their respective commissioners, members, officers, agents, and employees shall be in excess of Project Contractor's insurance and shall not contribute with it.

(b) 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.

(c) Written Notice Required to Effect Changes. All policies shall be endorsed to provide at least ten (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.

(d) 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.

(e) Acceptability of Insurers. Before commencing any operations under this Agreement, the City shall cause the Project Contractor 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.

6.4 Performance and Labor and Material Payment Bonds. The City agrees to cause the Project Contractor to provide to the Agency dual obligee performance, and labor and material payment bonds (which must be acceptable to the Agency) in a sum not less than one hundred percent (100%) of the sum of the amount of the Construction Contract to guarantee:

(a) Contractor's Performance. The faithful performance of the Project Contractor; and

(b) **Payment of Wages and Materials.** The payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used by the Project Contractor in the performance of the scope of work for the construction of the Project.

6.5 General Indemnity. The City shall defend, hold harmless and indemnify the 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.

ARTICLE 7

DEFAULT AND REMEDIES

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

(a) **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.

(b) **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.

7.2 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 Agency thereof in writing, and of the cause or causes thereof and requested an extension for the period of the enforced delay.

7.3 Declaring Default. Upon discovery that an Event of Default has occurred, the Agency shall give written notice of default to the City. If the default is not cured within thirty

(30) business days after receipt of the notice of default or, any extension approved in writing by the Agency, the Agency may enforce its rights and remedies under Section 7.4 below.

7.4 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 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.

ARTICLE 8

MISCELLANEOUS

8.1 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 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.

8.2 No Third Party Claims. Nothing contained in this Grant Agreement shall create or justify any claim against the 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 Agency to disburse payments pursuant to this Grant Agreement.

8.3 Conflict of Interest.

(a) Interest of Employees, Agents, Consultants, Officers and Officials of the Agency or the City. Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the 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.

(b) 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 Agency if the City shall at any time obtain knowledge of facts constituting such violation.

8.4 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: The San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102
Attention: Executive Director

If to the Agency: San Francisco Redevelopment 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.

8.5 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 Agency and the City, respectively, and all persons claiming under or through them.

8.6 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.

8.7 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.

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

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

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

8.11 Agency's Rights and Consent. No forbearance, failure or delay by the Agency in exercising any right, power or remedy, nor any single or partial exercise by the 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 Agency's consent to any other or subsequent act or omission or as a waiver of the requirement to obtain the Agency's consent in any other instance. All of the Agency's rights, powers and remedies are cumulative and shall continue in full force and effect unless specifically waived in writing by the Agency.

8.12 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.

8.13 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 (5) business days thereafter.

8.14 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 Agency which may be granted or denied in the Agency's sole discretion.

ARTICLE 9

LIST OF EXHIBITS

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

Exhibits:

"A" Scope of Work

"B" Approved Disbursement Budget for the Project

"C" Schedule of Performance

[The remainder of this page is intentionally left blank]

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

AGENCY

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

CITY

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the SAN FRANCISCO ARTS COMMISSION ✓

By: _____
Amy Lee
Deputy Executive Director
Finance and Administration

By: _____
Luis R. Cancel
Director of Cultural Affairs

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
James B. Morales
Agency General Counsel

By: _____
Carol Wong
Deputy City Attorney

Authorized by Agency Resolution No. _____, 2011, adopted _____, 2011.

Authorized by Board of Supervisors Resolution No. _____, adopted _____, 2011.

Exhibit "A"

Scope of Work

The proposed scope of work includes the following four tasks:

1. All necessary predevelopment work, including (i) architecture and engineering review of existing conditions and preparation of studies and designs, (ii) development of project manager scope of work, (iii) cost estimation, and (iv) preparation and production of construction documents.
2. Building 1 unisex ADA-compliant restroom at building's main level and 1 unisex ADA-compliant restroom at the building's lower level.
3. Building a new interior wall under the existing balcony in the main auditorium space.
4. Installing steel columns under the existing balcony for structural stabilization.

Alternative Additional Task:

City may, at its sole election, expand the proposed scope of work described above to perform the following alternate task(s) if there are sufficient Grant funds to pay for the proposed scope of work and such alternate task:

Removing non-original concrete stairs at front entrance of the building, constructing a new concrete ramp and stairs, and installing a new accessible glass entry door system behind existing historical doors. (Additive Alternate 1)

Exhibit "B"

Approved Disbursement Budget for Project

Major Budget Line item	SFAC Capital Fund	MOCI	Agency Grant	Total
Architecture & Engineering design services (DPW BOA and BOE); contract preparation services (DPW Contracts and Quality Assurance)	\$123,200	\$0	\$0	\$123,200
Permits (DPW BOA) & Construction:	\$0	\$100,000	\$400,00	\$500,000
Construction Management and Administration (DPW BCM and DPW BOA)(10%):	\$50,000	\$0	\$0	\$50,000
Project Contingency (10%):	\$74,800	\$0	\$0	\$74,800
Total:	\$248,000	\$100,000	\$400,000	\$748,000

Exhibit "C"

Schedule of Performance

Submission – Schematic Drawings. The City shall prepare and submit Schematic Drawings and related documents to Agency staff.

Received and approved by Agency.

Submission – Final Construction Documents. The City shall submit Final Construction Documents to Agency staff.

Within sixty (60) days after full execution of Construction Contract.

Commencement of Construction. The City shall commence construction of the Project.

Within thirty (30) days after issuance of the Building Permit or the applicable permit by the City, but no later than 12 months from the Commencement Date.