

File No. 111012

Committee Item No. _____

Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date September 20, 2011

Cmte Board

- | | | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <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 checked="" type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Correspondence |

OTHER

(Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date September 15, 2011

Completed by: _____ Date _____

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

1 [Accept and Expend Grant- Pier 43 Promenade Bay Trail Extension - \$90,000]

2
3 **Resolution authorizing the Port of San Francisco to accept and expend a grant in**
4 **the amount of \$90,000 from the State of California Coastal Conservancy, through**
5 **the Association of Bay Area Governments Bay Trail Program, for the Pier 43**
6 **Promenade Bay Trail Project in Fisherman's Wharf.**

7
8 WHEREAS, the Pier 43 Promenade Bay Trail Project is a two block extension of
9 The Embarcadero Promenade and a heavily traveled segment of the "Bay Trail", which
10 is a continuous 400-mile network of trails intended to provide connections to existing
11 park and recreation facilities, create links to existing and proposed transportation
12 facilities, and be planned in a way as to avoid adverse effects on environmentally
13 sensitive areas; and,

14 WHEREAS, the Project is an identified public access component of the Port's
15 Waterfront Land Use Plan and Waterfront Design & Access Element; and,

16 WHEREAS, the San Francisco Bay Conservation and Development Commission
17 has issued permits for approval of the Project; and,

18 WHEREAS, the San Francisco Bay Trail Project is a program administered by
19 the Association of Bay Area Governments (ABAG), designed to provide funding to
20 accelerate the development of the Bay Trail; and,

21 WHEREAS, the San Francisco Bay Trail Project has found the Pier 43
22 Promenade Bay Trail Project, a spine of the Bay Trail, eligible for grant funds in the
23 amount of \$90,000 from the Proposition 84 program, which it administers to construct
24 segments of the Bay Trail; and,

25 //

1 WHEREAS, on January 11, 2011, through Resolution 11-03, the Port
2 Commission authorized Port staff to accept and expend the Association of Bay Area
3 Governments, Bay Trail Link Program funds; and,

4 WHEREAS, In order to receive the grant funds, the Port is required to enter into
5 an agreement with ABAG to accept and expend the grant funds pursuant to certain
6 terms and conditions including the Port's commitment to indemnify ABAG, the Bay Trail
7 Project, and the State of California from any claims or liabilities arising from the grant
8 agreement; and,

9 WHEREAS, ABAG did not require a cash or 'in kind' match; and,

10 WHEREAS, This grant does not create any new positions, and will not require an
11 amendment to the Annual Salary Ordinance; and,

12 WHEREAS, All ABAG grant funding will go toward the development of Pier 43
13 Promenade Bay Trail Project; and, therefore, be it

14 RESOLVED, That the Board of Supervisors hereby authorizes the San Francisco
15 Port Commission to accept and expend \$90,000 in grant funding from the Proposition
16 84 program to construct segments of the Bay Trail; and be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the
18 Executive Director of the Port or her designee to execute any documents required to
19 enter into this grant, including any amendments, augmentations or extensions thereto
20 and indemnify the Association of Bay Area Governments for liability associated with the
21 activities funded through this grant to the extent approved by the City's Risk Manager, if
22 required by the granting agency.

23 //

24 //

25 //

FILE NO.

RESOLUTION NO.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

//

Recommended:

Monique Moyer

Department Head

Approved:

Paul W.

for Mayor

Approved:

Pat

Controller

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Trisha Prashad, Port of San Francisco

DATE: August 9, 2011

SUBJECT: Accept and Expend Grant Funds

GRANT TITLE: \$90,000 grant from the Association of Bay Area Governments (ABAG), Bay Trail Program.

Attached please find the original and 4 copies of each of the following:

Proposed grant resolution; original signed by Department, Mayor, Controller

Grant information form, including disability checklist

Grant application

Award Letter

Other (Explain): Budget, Construction Grant Agreement and Port Commission resolution

Special Timeline Requirements:

Departmental representative to receive a copy of the adopted resolution:

Name: Trisha Prashad

Phone: 415.274.0421

Interoffice Mail Address: Port of San Francisco, Pier 1

Certified copy required Yes

No

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).

File Number: 111012
 (Provided by Clerk of Board of Supervisors).

Grant Information Form
 (Effective January 2000)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: **Association of Bay Area Governments (ABAG) Bay Trail Program**
2. Department: **Port of San Francisco**
3. Contact Person: **Trisha Prashad** Telephone: **415-274-0421**
4. Grant Approval Status (check one):
 Approved by funding agency Not yet approved
5. Amount of Grant Funding Approved or Applied for: **\$90,000**
- 6a. Matching Funds Required: **none**
- b. Source(s) of matching funds (if applicable):
- 7a. Grant Source Agency: **California Coastal Commission**
- b. Grant Pass-Through Agency (if applicable): **Association of Bay Area Governments**
8. Proposed Grant Project Summary:

The Port was awarded the following for the Pier 43 Promenade Bay Trail Project:

The construction cost of the Project is expected to be about \$6.3 million, which is substantially funded (\$5.41 million) by the City's Neighborhood Parks Bond (Proposition A) that was passed by City voters on February 5, 2008. Other construction funding will come from the Port's Capital Fund for Disability Access improvements (\$500,000 to fund sidewalk, crosswalk and pedestrian improvements), and security grant funding (\$300,000). Together these funding sources are \$90,000 short of the base bid construction estimate for the Project. In August 2010, Port staff applied for a \$90,000 grant from the Association of Bay Area Governments (ABAG) Bay Trail Grant Program, which is funded through the California Coastal Conservancy with State Proposition 84 funds. On August 12, 2010 the ABAG Bay Trail Board Steering Committee approved the Port's application for funding in the amount of \$90,000 to be used to purchase and install public site furnishings on the project such as benches, litter receptacles, lighting and railing and on December 2, 2010, the State Coastal Conservancy Commission did the same.

Prop A	\$5,410,000
Port Capital Funds	\$ 500,000
Security Grant Funds	\$ 300,000
ABAG Grant (Pier 43 site furnishings and construction of public plaza and promenade)	\$ 90,000
TOTAL:	\$6,300,000

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

Start-Date: **September 15, 2011** End-Date: **August 31, 2012**

10. Number of new positions created and funded: **None**

11. If new positions are created, explain the disposition of employees once the grant ends? **n/a**

12a. Amount budgeted for contractual services: **\$90,000**

b. Will contractual services be put out to bid? **Yes**

c. If so, will contract services help to further the goals of the department's MBE/WBE requirements? **Yes**

d. Is this likely to be a one-time or ongoing request for contracting out? **One time**

13a. Does the budget include indirect costs? Yes No

b1. If yes, how much?

b2. How was the amount calculated?

c. If no, why are indirect costs not included?

Not allowed by granting agency

To maximize use of grant funds on direct services

Other (please explain):

14. Any other significant grant requirements or comments:

****Disability Access Checklist****

15. This Grant is intended for activities at (check all that apply):

- Existing Site(s) Existing Structure(s) Existing Program(s) or Service(s)
- Rehabilitated Site(s) Rehabilitated Structure(s) New Program(s) or Service(s)
- New Site(s) New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments: **The exhibits to the grant application consist of award letters for the various projects that are to be installed and created.**

Departmental or Mayor's Office of Disability Reviewer: Wendy Proctor
(Name)

Date Reviewed: 8/5/2011

Department Approval: Monique Moyer, Executive Director
(Name) (Title)

Monique Moyer
(Signature)



September 13, 2010

Mr. Dan Hodapp
Port of San Francisco
Pier One
San Francisco, CA 94111

Subject: Funding decision for Pier 43

Dear Mr. Hodapp:

It is a pleasure to inform you that the Port's Pier 43 project has officially been awarded a grant of \$90,000 under the San Francisco Bay Trail Project's competitive Regional Development Program. The grant awards were made on August 12, 2010 by the Bay Trail Steering Committee.

Because a mitigated negative declaration was prepared for the project to satisfy CEQA requirements, the State Coastal Conservancy must prepare and adopt their own CEQA findings for this project. The document will be considered on October 21, 2010, and once adopted, you will receive a draft contract for the Pier 43 Bay Trail Project from ABAG.

If you have any questions regarding the grant process in the meantime, please feel free to contact me at (510) 464-7909 or maureng@abag.ca.gov.

Thank you for your interest in the Bay Trail grant program. We look forward to working with you on this exciting project.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen Gaffney".

Maureen Gaffney
Bay Trail Planner

cc: Ann Buell, Coastal Conservancy



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Port of San Francisco *M. Meyer*
DATE: August 9, 2011
SUBJECT: Budget Breakdown - \$90,000 grant from the Association of Bay Area Governments (ABAG), Bay Trail Program for the Pier 43 Promenade Bay Trail Project.

The Port's Grant Application

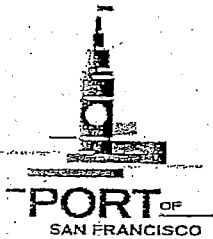
The Port was awarded the following for the Pier 43 Promenade Bay Trail Project:

The construction cost of the Project is expected to be about \$6.3 million, which is substantially funded (\$5.41 million) by the City's Neighborhood Parks Bond (Proposition A) that was passed by City voters on February 5, 2008. Other construction funding will come from the Port's Capital Fund for Disability Access improvements (\$500,000 to fund sidewalk, crosswalk and pedestrian improvements), and security grant funding (\$300,000). Together these funding sources are \$90,000 short of the base bid construction estimate for the Project

In August 2010, Port staff applied for a \$90,000 grant from the Association of Bay Area Governments (ABAG) Bay Trail Grant Program, which is funded through the California Coastal Conservancy with State Proposition 84 funds. On August 12, 2010 the ABAG Bay Trail Board Steering Committee approved the Port's application for funding in the amount of \$90,000 to be used to purchase and install public site furnishings on the project such as benches, litter receptacles, lighting and railing.

As approved on December 2, 2010 by the State Coastal Conservancy Commission and Port Commission on January 11, 2011, funding will be:

Prop A	\$5,410,000
Port Capital Funds	\$ 500,000
Security Grant Funds	\$ 300,000
ABAG Grant (Pier 43 site furnishings and construction of public plaza and promenade)	\$ 90,000
TOTAL:	\$6,300,000



MEMORANDUM

January 6, 2011

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, Vice President
Hon. Francis X. Crowley
Hon. Ann Lazarus

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Request authorization to accept and expend \$90,000 in grant funds from the Association of Bay Area Governments Bay Trail Program for the Pier 43 Promenade Bay Trail Project, adjacent to The Embarcadero Roadway, between Powell and Taylor Streets in Fisherman's Wharf

DIRECTOR'S RECOMMENDATION: Adopt Attached Resolution

Project Description

Port staff has applied for and was awarded a \$90,000 grant to assist in funding the Pier 43 Promenade Bay Trail Project (Project), which is a project to extend The Embarcadero Promenade from Powell Street to Taylor Street, 880 feet into the heart of Fisherman's Wharf. The Pier 43 Promenade will serve as a new pedestrian connection between two intensely programmed areas of Fisherman's Wharf, functioning as the Bay edge link between Pier 39 and the historic Taylor Street crab sellers. The new Promenade will feature views of the Bay, the historic Pier 43 Ferry Arch, and Alcatraz, and provide seating for hundreds. The project will remove most of the existing Pier 43½ (which was most recently used for parking), repair or reconstruct about 400 feet of shoreline at the 110-year old seawall, construct a pedestrian promenade over the water, and will include other sidewalk improvements between Mason and Taylor Streets.

Proposed Funding

The construction cost of the Project is expected to be about \$6.3 million, which is substantially funded (\$5.41 million) by the City's Neighborhood Parks Bond (Proposition A) that was passed by City voters on February 5, 2008. Other construction funding will come from the Port's Capital Fund for Disability Access improvements (\$500,000 to fund sidewalk, crosswalk and pedestrian improvements), and security grant funding

THIS PRINT COVERS CALENDAR ITEM NO. 8C

(\$300,000). Together these funding sources are \$90,000 short of the base bid construction estimate for the Project. In August 2010, Port staff applied for a \$90,000 grant from the Association of Bay Area Governments (ABAG) Bay Trail Grant Program, which is funded through the California Coastal Conservancy with State Proposition 84 funds. On August 12, 2010 the ABAG Bay Trail Board Steering Committee approved the Port's application for funding in the amount of \$90,000, and on December 2, 2010, the State Coastal Conservancy Commission did the same. Upon approval by the Port Commission, funding will be:

Prop A	\$5,410,000
Port Capital Funds	\$ 500,000
Security Grant Funds	\$ 300,000
ABAG Grant	\$ 90,000
TOTAL:	\$6,300,000

Environmental Review and Approvals

The San Francisco Planning Department adopted a Mitigated Negative Declaration on October 30, 2009 for the Pier 43 Promenade Bay Trail Project and three other Proposition A open space projects. The San Francisco Planning Department determined that there is no substantial evidence that the Project could have a significant adverse effect on the environment. A copy of the Mitigated Negative Declaration for this item is on file with the Secretary of the Port Commission.

The Waterfront Design Advisory Committee and the San Francisco Bay Conservation and Development Commission (BCDC) Design Review Board reviewed the project twice in early 2010 and recommended approval, and BCDC granted a permit for the project on December 2, 2010. On December 14, 2010 the Port Commission authorized Port staff to advertise for construction bids, and construction is expected to begin in the spring of 2011. The Pier 43 Promenade is scheduled to be complete and open to the public by the summer of 2012.

Port Commission Action

Through the attached resolution, staff seeks Port Commission authorization for the Port's Executive Director to accept and expend these grant funds. The proposed resolution also authorizes the Executive Director to execute an agreement, subject to approval of the City Risk Manager and City Attorney's Office, for the Port to indemnify and hold ABAG, the Bay Trail Project, and the State harmless against claims, damages and liability, to waive any claims for contribution or indemnity in connection with the grant agreement and to request Board of Supervisors' authorization to accept and expend the funds.

Prepared by: Dan Hodapp, Senior Waterfront Planner

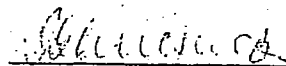
**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 11-03

- WHEREAS, the Pier 43 Promenade Bay Trail Project is a 2 block extension of The Embarcadero Promenade and a heavily traveled segment of the "Bay Trail", which is a continuous 400-mile network of trails intended to provide connections to existing park and recreation facilities, create links to existing and proposed transportation facilities, and be planned in such a way as to avoid adverse effects on environmentally sensitive areas; and
- WHEREAS, the Project is an identified public access component of the Port's Waterfront Land Use Plan and Waterfront Design & Access Element; and
- WHEREAS, the San Francisco Bay Conservation and Development Commission has issued permits for approval of the Project; and
- WHEREAS, the San Francisco Bay Trail Project is a program administered by the Association of Bay Area Governments (ABAG), designed to provide funding to accelerate the development of the Bay Trail; and
- WHEREAS, the San Francisco Bay Trail Project has found the Pier 43 Promenade Bay Trail Project, a spine of the Bay Trail, eligible for grant funds in the amount of \$90,000 from the Proposition 84 program, which it administers to construct segments of the Bay Trail; and
- WHEREAS, to receive the grant funds, the Port is required to enter into an agreement with ABAG to accept and expend the grant funds pursuant to certain terms and conditions including the Port's commitment to indemnify ABAG, the Bay Trail Project, and the State of California from any claims or liabilities arising from the grant agreement; now, therefore be it
- RESOLVED, the Port Commission has reviewed the Final Mitigated Negative Declaration, dated October 30, 2009 and, pursuant to Section 15162 of the CEQA Guidelines, finds that there has been no substantial change in the Project that would involve any new significant environmental effects or substantial increase in previously identified environmental effects; no substantial change in circumstances under which the Project is being developed that require revisions to the Final Mitigated Negative Declaration; and no new information of substantial importance that was not previously known and accounted for in the Final Mitigated Negative Declaration regarding significant effects or mitigation measures; and, be it further

RESOLVED, that the Port Commission hereby authorizes the Executive Director to accept and expend \$90,000 in ABAG grant funds pursuant to the San Francisco Bay Trail Program, and to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, payment requests and other documents, which may be necessary to secure the aforementioned grant funds, including as required by ABAG, an agreement to indemnify ABAG, the State and others for liability associated with the grant funds in such form approved by the City Risk Manager and the City Attorney's Office, and to seek Board of Supervisor's authorization to accept and expend the funds.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 11, 2011.



Secretary

**ASSOCIATION OF BAY AREA GOVERNMENTS
BAY TRAIL PROJECT**

**CONSTRUCTION GRANT AGREEMENT
Port of San Francisco Pier 43 Promenade Bay Trail Project**

Grantee's full, legal name: Port of San Francisco

Address: Pier One, The Embarcadero San Francisco, CA 94111

Phone No.: (415) 274-0625

Name of Contact: Dan Hodapp

Title of Contact: Senior Waterfront Planner

Taxpayer ID Number _____

I. SCOPE OF AGREEMENT

Pursuant to Chapter 9 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") awarded grant funds to be administered by the Association of Bay Area Governments (ABAG) for development of the Bay Trail Project. ABAG grants **The Port of San Francisco** ("the Grantee") a sum not to exceed **seventy thousand dollars \$70,000**, Proposition 84 funds, the "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006", subject to the terms and conditions of this Agreement, to complete the **Pier 43 Promenade Bay Trail Project** ("the Project"), as shown on Exhibit A, which is incorporated by reference and attached. The Project description is attached as Exhibit B, which is incorporated by reference.

The Grantee shall carry out the Project in accordance with this Agreement and a work program to be approved by ABAG pursuant to this Agreement. The Grantee shall provide any funds beyond those granted under this Agreement which are needed to complete the Project.

II. CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT

The Grantee shall not commence construction of the Project and ABAG shall not be obligated to disburse any funds under this Agreement unless and until the following conditions precedent have been met:

- A. A resolution has been adopted by the Port of San Francisco of the Grantee authorizing the execution of this Agreement and approving its terms and conditions.
- B. ABAG has approved in writing:
 1. The work program for the Project; and
 2. All contractors that the grantee intends to employ in connection with the project.

C. Written evidence has been provided to ABAG:

1. That all permits and approvals necessary to the completion of the Project under applicable local, state and federal laws and regulations have been obtained;
2. That the Grantee has acquired and recorded all easements and other interests in real property necessary to the construction, use and/or maintenance of the Project;
3. That notices of non-responsibility are recorded for all private property improved by the Project (see Exhibits C-1 and C-2);
4. That the Grantee has provided for liability insurance and an endorsement, or is self-insured, as described in the "LIABILITY" section of this Agreement; and
5. That the Grantee has provided for fire and other loss insurance as described in the "LOSS INSURANCE" section of this Agreement.

Notwithstanding the above, the Grantee may commence preparation of plans, specifications and engineering work upon meeting conditions set forth in subsections A and B.1 of this section, and upon ABAG's review and approval of a separate work program (tasks, budget and timeline) and approval of any contractors that the Grantee will retain to perform the work.

III. TERM OF AGREEMENT

This Agreement shall be deemed executed and effective when signed by both parties and received in the offices of ABAG together with the resolution described in the "CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT" section of this Agreement.

Grantee shall complete grant tasks by August 1, 2012 ("the completion date") and shall submit a final Request for Disbursement no later than thirty (30) days after the completion date. This Agreement shall run from its effective date through December 31, 2035 ("the termination date") to ensure compliance with the requirements of Article VIII unless otherwise terminated or amended as provided in this Agreement.

STANDARD PROVISIONS

I. WORK PROGRAM

- A. If any portion of the construction to be funded under this Agreement will be performed by third parties ("contractors") under contract with the Grantee, prior to initiating any request for contractor bids, the Grantee shall submit for review and written approval by ABAG the bid package including construction plans and specifications which have been certified or approved as described above. Upon approval by ABAG, the Grantee shall proceed with the bidding process.
- B. Prior to final selection, the Grantee shall submit to ABAG for written approval the names, addresses and licenses of all contractors that the Grantee intends to hire and any change or clarification to the bid package.
- C. Prior to beginning construction, the Grantee shall submit a detailed work program to ABAG for review and written approval of its consistency with this Agreement. The work program shall include:
1. Construction plans and specifications which have been certified by a registered architect or engineer, or approved by the Grantee's Public Works Director.
 2. For projects not exempt from CEQA, plans for implementing and for documenting implementation of all actions and mitigation measures identified in the project's environmental document as needed to avoid significant environmental effects or reduce them to a level of insignificance (e.g, as contained in a Mitigation Monitoring and Reporting Program).
 3. A schedule of completion for the Project specifically listing the completion date for each Project component and a final Project completion date, including all mitigation measures and actions, if any.
 4. A detailed Project budget (the "Project Budget"). The Project Budget shall describe all labor and materials costs to be incurred to complete each component of the Project. For each Project component, the Project Budget shall list all intended funding sources, including grant funds, the Grantee's required contribution and all other sources of monies, materials, or labor. The Grantee shall review the plans on-site with ABAG staff.
 5. A list of all permits required to complete the Project, including but not limited to environmental documentation. For each such permit, Grantee shall identify the attendant conditions, mitigation measures, fees and the like. The Grantee shall indicate how each attendant condition, mitigation measure, fee and the like is treated in the documents provided under paragraphs I.C.1, 2 and 3 of these Standard Provisions.
- D. The work program shall have the same force and effect as if included in the text of this Agreement. However, the work program may be modified without amendment of this Agreement upon the Grantee's submission of a modified work program and ABAG's written approval of it. If this Agreement and the work program are inconsistent, the Agreement shall control.

- E. The Grantee shall construct the Project in accordance with the approved work program.
- F. The Grantee shall comply with, fulfill, accomplish or pay each condition, mitigation measure, fee (or the like) identified in paragraph I.C.4 of these Standard Provisions which are applicable at the completion of the Project. For each condition, mitigation measure, fee (or the like) identified in paragraph I.C.4 of these Standard Provisions which, by its terms, cannot be, or is not required to be, complied with, fulfilled, accomplished or paid by the time the Project is completed, the Grantee shall state in a narrative format, the plan for future compliance or payment.
- G. If any portion of the construction to be funded under this Agreement will be performed by contractors, the Grantee shall implement, or cause to be implemented, a labor compliance program that meets the requirements of California Labor Code Section 1771.5(b).

II. SIGNS

The Grantee shall erect and maintain signs visible from the nearest public roadway directing the public to the Project. In addition, the Grantee shall erect signs acknowledging ABAG and Conservancy assistance and displaying the Bay Trail and Conservancy logos, unless the Grantee incorporates this acknowledgement into other signage in a manner approved by ABAG. ABAG shall provide specifications for the Conservancy and Bay Trail signs and logo to the Grantee for this purpose. Pursuant to paragraph II.B.2 of the Construction Grant Agreement and paragraph I.A of these Standard Provisions, plans describing the number, design, placement and wording of the signs shall be submitted to ABAG for review and written approval prior to the installation of signs. Final reimbursement may be withheld by ABAG pending placement of the signs in the manner approved by ABAG.

III. BONDING

If the Grantee intends to use any contractor(s) on any portion of the Project to be funded under this Agreement, construction shall not begin until each such contractor has furnished a performance bond in favor of ABAG and the Grantee, in the following amounts: for faithful performance, one hundred percent (100%) of the contract value; and for labor and materials, one hundred percent (100%) of the contract value. The requirement shall not apply to any contract for less than \$20,000.

IV. COSTS AND DISBURSEMENTS

- A. Upon determination by ABAG that all "CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT" have been fully met, ABAG shall disburse to the Grantee, in accordance with the approved Project Budget, a total amount not to exceed the amount of this grant, as follows:

The provision of this section with a check mark, "x" or equivalent mark opposite it will apply at the commencement of the Agreement.

PROGRESS PAYMENTS

Disbursements shall be made on the basis of costs incurred to date, less ten percent (10%), upon satisfactory progress in accordance with the approved work program and upon the Grantee's submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. Disbursement of the ten percent (10%) withheld shall be made upon the Grantee's satisfactory completion of construction of the Project and compliance with the "PROJECT COMPLETION" section of this Agreement, and upon ABAG's acceptance of the Project.

TASK COMPLETION

Disbursements shall be made on the basis of costs incurred to date, less ten percent (10%), upon the Grantee's satisfactory completion of each Project task identified in the approved work program. The final disbursement, together with amounts earlier withheld, shall be made upon the Grantee's satisfactory completion of construction of the Project and compliance with the "PROJECT COMPLETION" section of this Agreement, and upon ABAG's acceptance of the Project.

PROJECT COMPLETION

Disbursement shall be made on the basis of costs incurred, upon the Grantee's satisfactory completion of construction of the Project and compliance with the "PROJECT COMPLETION" section of this Agreement, and upon ABAG's acceptance of the Project.

- B. The Grantee shall request disbursements by filing with ABAG fully executed "Request for Disbursement" forms (available from ABAG). The Grantee shall include on the forms its name and address, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description of all work done for which disbursement is requested. The forms shall be signed by an authorized official of the Grantee. Each form shall be accompanied by any supporting invoices or other source documents from contractor(s) that the Grantee engaged to complete any portion of the Project funded under this Agreement, and/or by written substantiation of completion of the portion of the Project for which disbursement is requested. With each form, the Grantee shall also submit a supporting progress report summarizing the current status of the Project and comparing it to the status required by the work program (budget, timeline, tasks, etc.). Failure to fully execute and submit a "Request for Disbursement" form, including attachment of supporting documents, will relieve ABAG of its obligation to disburse funds to the Grantee unless and until all deficiencies in the form are rectified.

V. EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

The Grantee shall expend funds in the manner described in the approved Project Budget. The allocation of ABAG's total grant among the items in the Project Budget may vary by as much as

ten percent (10%) without approval by ABAG. Any difference of more than ten percent (10%) must be approved in writing by ABAG. ABAG may withhold payment for changes in particular budget items which exceed the amount allocated in the Project Budget by more than ten percent (10%) and which have not received the approval required above. The total amount of this grant may not be increased except by amendment to this Agreement. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items.

VI. PROJECT COMPLETION

- A. Within ninety (90) days of completion of construction of the Project, the Grantee shall supply ABAG with two copies of evidence of completion by submitting a final report which includes:
1. An inspection report by a registered architect or engineer or the Grantee's Public Works Director certifying completion of the Project according to the approved work program.
 2. A fully executed final "Request for Disbursement" form.
 3. "As built" drawings of the completed Project, and "before" and "after" photos in at least electronic form.
 4. If the Project is built by third parties, a copy of a recorded Notice of Completion covering the Project.
 5. For projects not exempt from CEQA, any items required to demonstrate compliance with the Conservancy's authorization with respect to CEQA (e.g., evidence of compliance with a Mitigation Monitoring and Reporting Program) as specified in the project work program.
- B. Within forty-five (45) days of Grantee's compliance with this section, ABAG shall determine whether the Project has been satisfactorily completed. If ABAG determines that the Project has been satisfactorily completed, ABAG shall issue to the Grantee a letter of acceptance of the Project. The Project shall be deemed complete as of the date of the letter of acceptance.

VII. EARLY TERMINATION AND FAILURE TO PERFORM

If the Grantee fails to complete the Project in accordance with this Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the Grantee shall be liable for immediate repayment to ABAG of all amounts disbursed by ABAG under this Agreement. ABAG may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies ABAG may have for breach of this Agreement.

VIII. OPERATION AND MAINTENANCE

- A. The Grantee or its successor in interest shall maintain the facilities and structures constructed as part of the Project, including all applicable post-construction mitigation measures identified in the environmental document to avoid significant environmental effects or reduce them to a level of insignificance, and shall operate these facilities and structures throughout the term of this Agreement consistent with the purposes for which ABAG's grant was made. The Grantee assumes all operation and maintenance costs of these facilities and structures. Neither ABAG nor the Conservancy shall be liable for any cost of such maintenance, management or operation. The Grantee may be excused from its obligations for operation and maintenance during the term of this Agreement only upon the written approval of ABAG.
- B. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance and expenses necessary to produce gross revenues. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

IX. INSPECTION

Throughout the term of this Agreement, ABAG shall have the right to inspect the Project area to ascertain compliance with this Agreement.

X. MITIGATION

The Grantee shall not use of any portion of the grant funds for mitigation. All funds generated in connection with any authorized or allowable mitigation with respect to a project shall be remitted promptly to ABAG until ABAG has been paid for all of its past, present, and future costs with respect to the project, including, without limitation, staff, planning, development, restoration, operation and maintenance, and monitoring costs, and any acquisition costs at fair market value as of the time mitigation is to begin.

XI. LIABILITY

- A. The Grantee shall be responsible for, indemnify and save harmless ABAG, the Bay Trail Project and State of California (the "State"), and their respective members, directors, officers, agents and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this Agreement, except for active negligence of ABAG, its directors, officers, agents or employees. The duty of the Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

PUBLIC ENTITY GRANTEE: This Agreement supersedes the Grantee's right as a public entity to indemnity (see Gov. Code Section 895.2) and contribution (see Gov. Code Section 895.6) as set forth in Gov. Code Section 895.4.

- B. The Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from ABAG, the Bay Trail Project, the State, and their respective members, directors, officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.
- C. The provision of this section with a check mark, "x" or equivalent mark opposite it will apply at the commencement of the Agreement.
 - Throughout the term of this Agreement, the Grantee shall provide and maintain public-liability and property-damage insurance for liability assumed by the Grantee under this Agreement with minimum limits of liability as follows: a single limit for bodily injury (including death) and property damage liability combined of \$2,000,000 each occurrence and \$2,000,000 in the aggregate.

This insurance shall be issued by a company or companies admitted to transact business in the State. The liability insurance policy shall contain an endorsement specifying that ABAG, the Bay Trail Project and the State, and their respective members, officers, directors, agents and employees are included as additional insureds for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. The policy will not be cancelled or reduced in coverage without thirty (30) days' prior written notice to ABAG.

ABAG is not responsible for premiums and assessments on any insurance policy.

If at the commencement of this Agreement, the Grantee self-insures for bodily injury, personal injury and property damage liability, the Grantee shall submit written evidence of such self-insurance for approval by ABAG, at its sole discretion. If at any time during the term of the Agreement, the Grantee ceases to be self-insured, the Grantee shall comply with insurance requirements set forth in the preceding section.

- D. Nothing in this Agreement is intended to create in the public or in any member of it rights as a third party beneficiary under this Agreement.

XII. LOSS INSURANCE

The provision of this section with a check mark, "x" or equivalent mark opposite it will apply at the commencement of the Agreement.

- Throughout the term of this Agreement, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement. This insurance shall be issued by a company or

companies admitted to transact business in the State. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days' prior written notice to ABAG.

If at the commencement of this Agreement, the Grantee self-insures against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, the Grantee shall submit written evidence of such self-insurance for approval by ABAG, at its sole discretion. If at any time during the term of the Agreement, the Grantee ceases to be self-insured, the Grantee shall comply with insurance requirements set forth in the preceding section.

ABAG is not responsible for premiums and assessments on any insurance policy.

XIII. AUDITS/ACCOUNTING/RECORDS

The Grantee shall maintain standard financial accounts, documents, and records relating to the construction of the Project. The Grantee shall retain these documents for three (3) years following the date of final disbursement by ABAG under this Agreement, regardless of the termination date. The documents shall be subject to examination and audit by ABAG and the Bureau of State Audits during this period. The Grantee may use any accounting system which follows the guidelines of "Generally Accepted Accounting Practices" published by the American Institute of Certified Public Accountants.

XIV. NONDISCRIMINATION

During the performance of this Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy disability leave. The Grantee and its contractor(s) shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Grantee and its contractor(s) shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Section 12900 *et seq.*) and the applicable regulations (California Code of Regulations Title 2, Section 7285.0 *et seq.*). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this Agreement. The Grantee and its contractor(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this Agreement.

XV. ASSIGNMENT

Without the written consent of ABAG, this Agreement is not assignable by the Grantee in whole or in part.

XVI. TIMELINESS

Time is of the essence in this Agreement.

XVII. ABAG'S DESIGNEE

Laura Thompson is ABAG's Project Manager who shall have authority to act on behalf of ABAG with respect to this Agreement.

XVIII. AMENDMENT

Except as expressly provided in this Agreement, no changes in this Agreement shall be valid unless made in writing and signed by the parties to the Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties.

XIX. LOCUS

This Agreement is deemed to be entered into in the County of Alameda.

The parties have caused this Agreement to be executed by their respective officers, duly authorized, the provisions of which Agreement are effective as of the ____ day of _____, 20__.

ASSOCIATION OF BAY AREA GOVERNMENTS

GRANTEE

By _____
Ezra Rapport, Executive Director

By _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By _____
Kenneth K. Moy, Legal Counsel

By _____

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:

- | | |
|---|--|
| <input type="checkbox"/> Small Business Commission | <input type="checkbox"/> Youth Commission |
| <input type="checkbox"/> Ethics Commission | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Building Inspection Commission | |

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

Sponsor(s): Supervisor Chiu

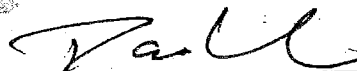
Subject:

Port Grant for Pier 43 Promenade Bay Trail

The text is listed below or attached:

Resolution authorizing the Port of San Francisco to accept and expend a grant in the amount of \$90,000 from the State of California Coastal Conservancy through the Association of Bay Area Governments, Bay Trail Program for the Pier 43 Promenade Bay Trail Project in Fisherman's Wharf.

Signature of Sponsoring Supervisor: _____



For Clerk's Use Only:

Common/Supervisors Form

Revised 05/19/11