

File No. 210686

Committee Item No. 5

Board Item No. 35

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: July 1, 2021

Board of Supervisors Meeting:

Date: July 13, 2021

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Information Form                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

- |                                     |                                     |   |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <u>Port Presentation – July 1, 2021</u>                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Port Commission Reso No. 21-04 – February 9, 2021*</u> |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |

Prepared by: John Carroll

Date: June 25, 2021

Prepared by: John Carroll

Date: July 9, 2021

Prepared by: John Carroll

Date: \_\_\_\_\_

1 [Accept and Expend Gift - Hanson Aggregates Mid-Pacific, Inc. - Heron's Head Park  
2 Shoreline Resilience Project - Beach Materials - Estimated Market Value \$417,000]

3 **Resolution authorizing the Port of San Francisco to accept a gift of donated beach**  
4 **materials with an estimated market value of \$417,000 from Hanson Aggregates Mid-**  
5 **Pacific, Inc. to support implementation of the Heron's Head Park Shoreline Resilience**  
6 **Project for the period of August 1, 2021, through January 31, 2023.**

7  
8 WHEREAS, The Port manages the San Francisco waterfront within its jurisdictional  
9 boundaries as the gateway to a world-class city, and advances environmentally and financially  
10 sustainable maritime, recreational and economic opportunities to serve the City, Bay Area,  
11 and California; and

12 WHEREAS, The Port delivers vibrant and diverse waterfront experiences that enrich  
13 the City and San Francisco Bay Area; and

14 WHEREAS, Heron's Head Park is a 22-acre open space and thriving wildlife habitat  
15 located on Port property in the City's southeast sector; and

16 WHEREAS, Since its creation over 20 years ago the park has evolved, with the  
17 addition of the EcoCenter in 2010 and additional expansion and improvements of the park  
18 in 2012; and

19 WHEREAS, Heron's Head Park has also experienced significant erosion and invasion  
20 by non-native plants, resulting in decreased acreage and ecological value of the tidal wetland;  
21 and

22 WHEREAS, The Port has developed the Heron's Head Park Shoreline Resilience  
23 Project to construct a living shoreline and restore wetland habitat in order to mitigate negative  
24 impacts to the tidal wetland; and

1           WHEREAS, Hanson Aggregates Mid-Pacific, Inc., a port tenant, extracts material from  
2 the San Francisco Bay floor, processes the material at its leased facility at the Port's Seawall  
3 Lot 352, and generates, as a byproduct of its operations, coarse sand and gravel that does  
4 not have commercial value to Hanson (Beach Materials); and

5           WHEREAS, The Port seeks resources to support implementation of its Heron's Head  
6 Park Shoreline Resilience project, design of which specifies placement of coarse sand and  
7 gravel from a natural source and having the same grain-size profile as the Beach Materials to  
8 stabilize the eroding shoreline; and

9           WHEREAS, Hanson Aggregates and Port have negotiated a Memorandum of  
10 Understanding that specifies terms and conditions under which Hanson would donate and  
11 Port would accept up to approximately 12,000 cubic yards of Beach Materials; and

12           WHEREAS, Under the San Francisco Administrative Code, Section 10.100.305, the  
13 Port must obtain Board of Supervisors' approval to accept a donation with a market value of  
14 more than \$10,000; and

15           WHEREAS, On February 9, 2021, the San Francisco Port Commission through  
16 Resolution No. 21-04 authorized the Port Executive Director or her designee to accept the  
17 donation of the Beach Materials on the terms and conditions described in the Memorandum to  
18 the Port Commission dated February 9, 2021, and authorized the Executive Director to seek  
19 Board of Supervisors' acceptance of such gift; and

20           WHEREAS, The gift terms do not include indirect costs in the gift budget; now,  
21 therefore, be it

22           RESOLVED, That the Board of Supervisors approves the gift and authorizes the Port  
23 of San Francisco to accept the gift of Beach Materials as described in this Resolution; and, be  
24 it

25

1 FURTHER RESOLVED, That the gift by Hanson Aggregates Mid-Pacific, Inc. will be  
2 accepted in a manner consistent with Administrative Code Sections governing the acceptance  
3 of gifts to the City and County of San Francisco, including Administrative Code,  
4 Section 10.100-201; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors hereby waives inclusion of  
6 indirect costs in the gift budget; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors extends its gratitude to Hanson  
8 Aggregates Mid-Pacific, Inc. for the generous gift to the Port of San Francisco in support of  
9 Heron's Head Park Shoreline Resilience Project.

10

11

12 Recommended:

13

14

15 /s/\_\_\_\_\_

16 Executive Director, Port of San Francisco

17

18

19 Approved:

Approved:

20

21

22

23 /s/\_\_\_\_\_

/s/\_\_\_\_\_

24 Mayor

Controller

25

# Heron's Head Park Shoreline Resilience Project

## Accept & Expend Ocean Protection Council Grant

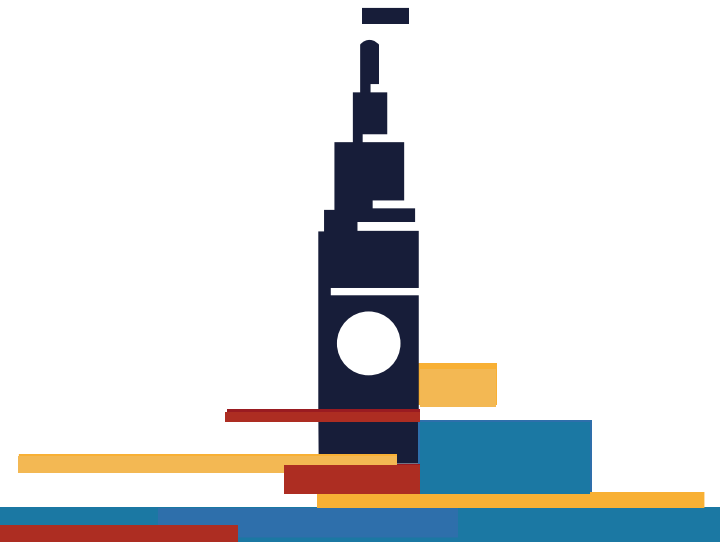
### Accept Donation of Materials

Item 5. Accept and Expend Gift of Material for Beach Construction

Item 6. Accept and Expend Grant from the California Ocean Protection Council.

July 1, 2021

Presented By: Carol Bach  
Environmental Affairs Manager  
Port of San Francisco



# HERON'S HEAD PARK

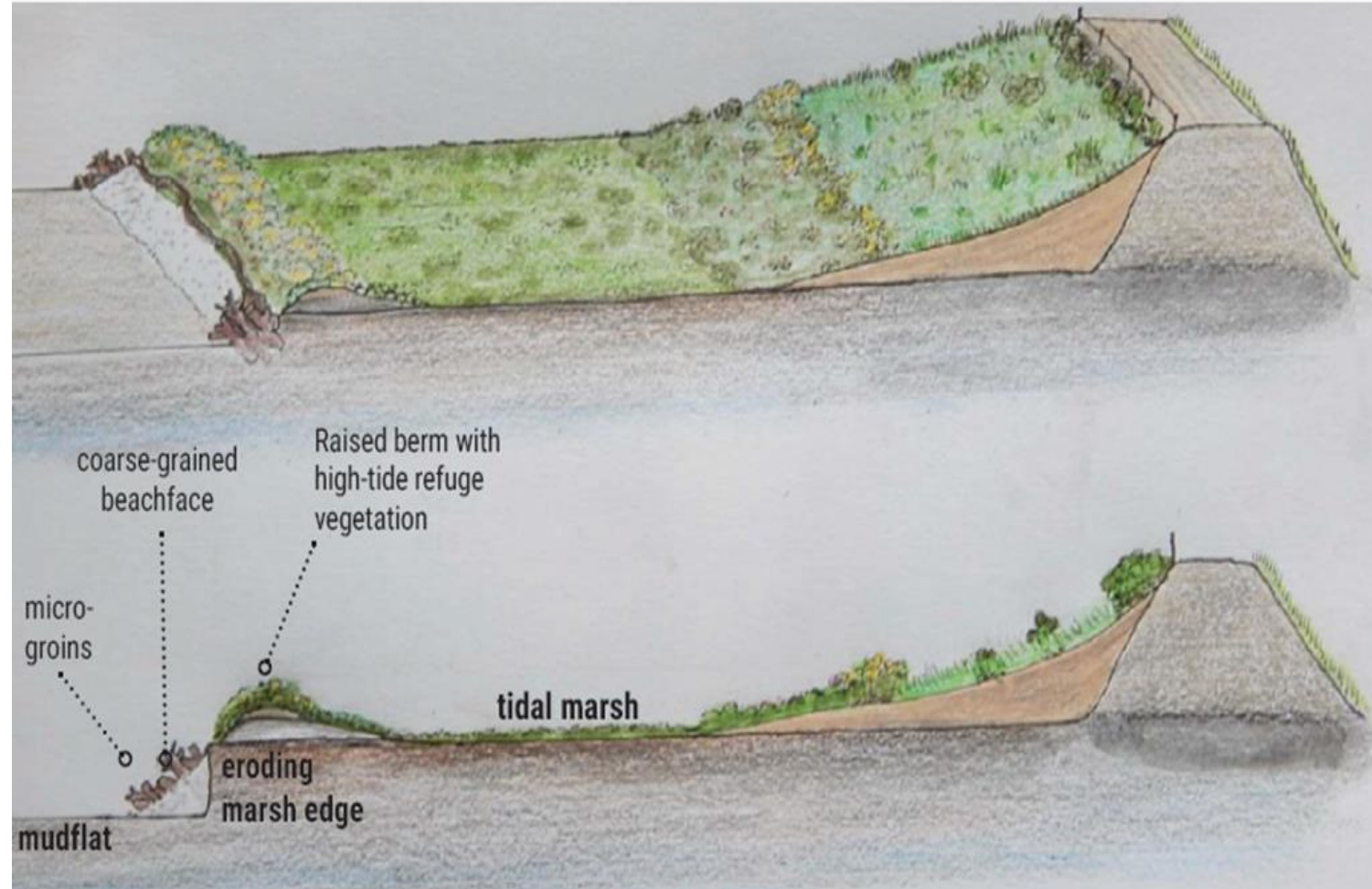
- Constructed 1999, Includes tidal salt marsh and upland open space with trails, picnic and barbeque areas.
- The EcoCenter, created to house public programs, opened in 2015





# Heron's Head Park Shoreline Resilience Project Objectives

1. Protect the southern shoreline from erosion.
2. Restore native wetland plant habitat.
3. Create capacity for adaption to sea level rise.
4. Create youth employment and community engagement opportunities.



# Heron's Head Park Shoreline Resilience Project

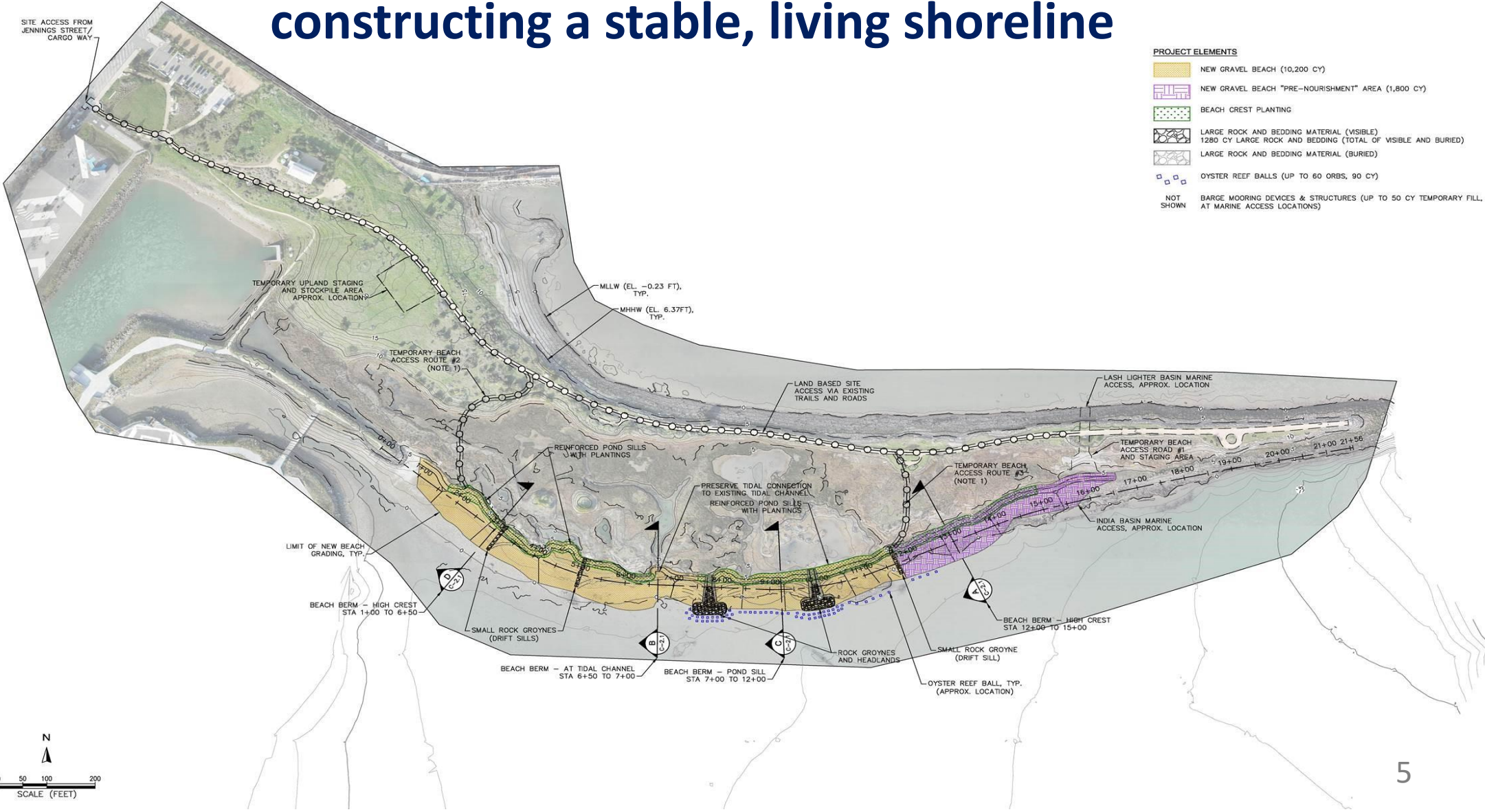
## Project Elements:

- Dynamically stable sand and gravel beach.
- Oyster reef balls.
- Wetland revegetation.
- Youth employment in hands-on habitat restoration and community outreach.
- Post-construction monitoring and habitat stewardship.





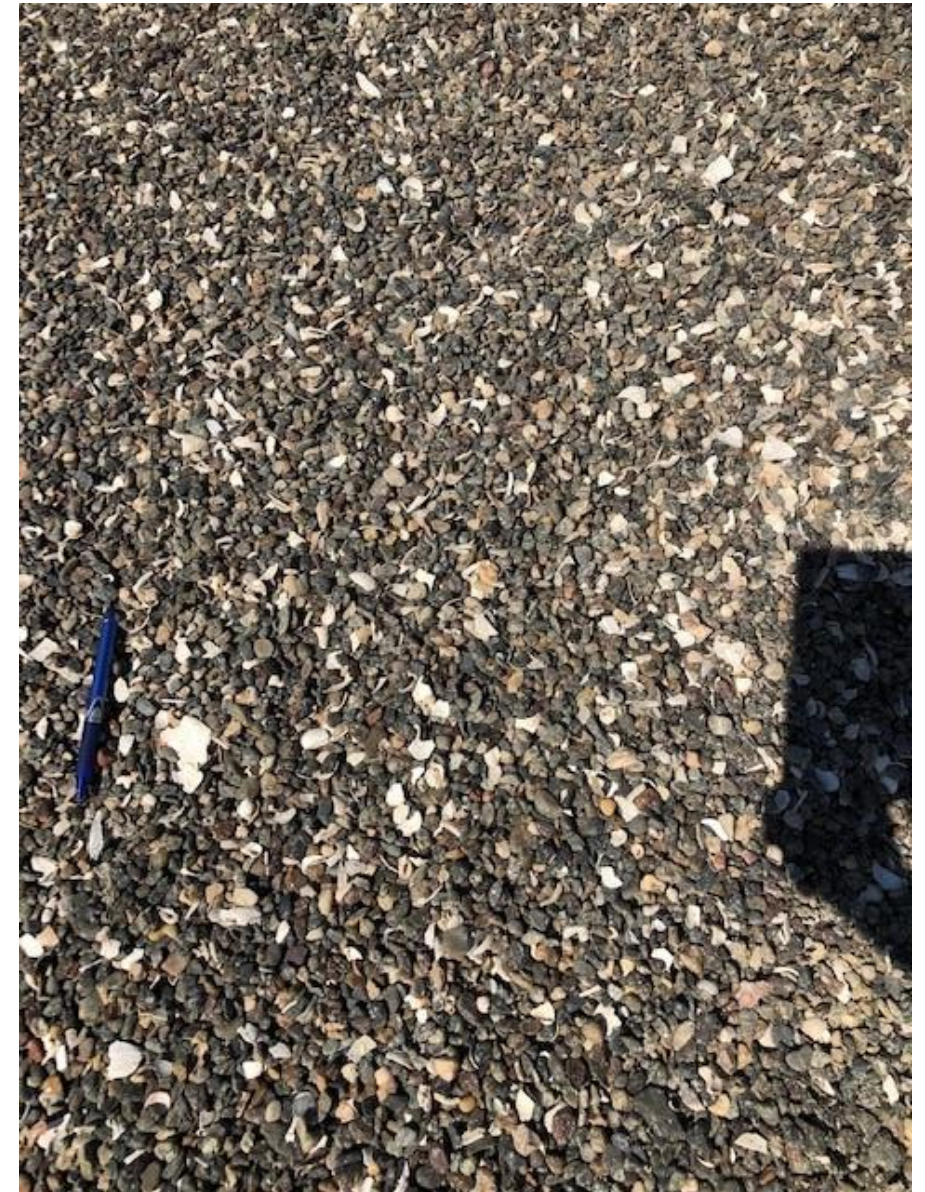
# Protect southern shoreline from erosion by constructing a stable, living shoreline





# Hanson Aggregates Operations

Dredged material is unloaded at the “Pier 92 San Yard”, washed, and sorted.





# OCEAN PROTECTION COUNCIL - COASTAL RESILIENCE PROGRAM

## OPC approved award of \$1,667,000

- For partial funding of shoreline construction
- Subject to Port Commission Approval
- Subject to Board of Supervisors Approval

### Grant Terms and Conditions Include:

- Obligation to monitor maintain through Grant Term of 4 years
- Indemnification and Insurance
- Acknowledgement



# Project Phases, Funding and Next Steps

Scope	Schedule	Budget	Funding Status
Wetland habitat restoration Phase 1	Fall 2020 through Fall 2022.	\$297,000	Funded by San Francisco Bay Restoration Authority
<b>Shoreline Construction</b>	<b>August 2022 - January 2023</b>	<b>\$3,160,000</b>	<b>\$1,667,000 award approved by Ocean Protection Council, subject to Board of Supervisors approval.</b>
			\$1,493,000 recommended for award by the California Dept. of Fish & Wildlife, subject to Port Commission and Board of Supervisors approval.
Wetland habitat restoration Phase 2	After shoreline construction	\$493,000	Recommended for funding, subject to SFBRA Board, Port Commission, Board of Supervisors approval.
Post-Construction Monitoring: five years	Start at completion of shoreline construction, continue for five years.	\$310,000	Recommended SFBRA funding, subject to SFBRA Board, Port Commission and Board of Supervisors approval.
<b>Total Estimated Project Budget</b>		<b>\$4,260,000</b>	



**File Number:** \_\_\_\_\_  
(Provided by Clerk of Board of Supervisors)

**Grant Information Form**  
(Effective March 2005)

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: Gift of Beach Materials – Hanson Aggregates Mid-Pacific
2. Department: Port of San Francisco
3. Contact Person: Carol Bach Telephone: 415-274-0568
4. Grant Approval Status (check one):  
 Approved by funding agency  Not yet approved
5. Amount of Grant Funding Approved or Applied for: \$417,000 estimated market value.
- 6a. Matching Funds Required: \$0
- b. Source(s) of matching funds (if applicable):
- 7a. Grant Source Agency: Hanson Aggregates Mid-Pacific
- b. Grant Pass-Through Agency (if applicable):
8. Proposed Grant Project Summary:

The Port is implementing the Heron's Head Park Shoreline Resilience project, which includes construction of a living shoreline and wetland habitat restoration, to mitigate these impacts. The Heron's Head Park Shoreline Resilience project requires placement of coarse sand, gravel, cobble, and rock to protect the shoreline from erosion. During the Port's community outreach regarding the project, staff of the Port and Hanson Aggregates Mid-Pacific Inc., a Port tenant, recognized an opportunity to use a Hanson byproduct as Port's construction material, thereby reducing project construction cost by an estimated \$417,000 and reducing truck travel and related emissions associated with importing an alternative construction material.

9. Grant Project Schedule, as allowed in approval documents, or as proposed:  
Start-Date: August 1, 2021 End-Date: January 31, 20223

- 10a. Amount budgeted for contractual services:
  - b. Will contractual services be put out to bid? No.
  - c. If so, will contract services help to further the goals of the department's MBE/WBE requirements?

d. Is this likely to be a one-time or ongoing request for contracting out? Yes, this is a one-time gift of beach materials

11a. 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):

c2. If no indirect costs are included, what would have been the indirect costs?  
This a one-time gift of beach materials to stabilize the shoreline at Heron's Head Park.

12. Any other significant grant requirements or comments:

**\*\*Disability Access Checklist\*\***

13. 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)

14. 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:

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

Date Reviewed: May 5, 2021

Department Approval: Elaine Forbes Executive Director  
(Name) (Title)  
  
(Signature)



## MEMORANDUM

February 5, 2021

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. John Burton  
Hon. Gail Gilman  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request authorization, subject to Board of Supervisors' approval, to accept a donation of material valued at approximately \$417,000 to be used in construction of the Heron's Head Park Shoreline Resilience Project from Hanson Aggregates, a Port tenant

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution No. 21-04

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### **EXECUTIVE SUMMARY**

The Port of San Francisco created Heron's Head Park over 20 years ago. Over the past two decades, the park has evolved with the addition of the EcoCenter in 2010 and expansion and improvement of the park in 2012. Over time, the tidal wetlands in the park have experienced significant erosion and invasion by non-native plants, resulting in decreased size and ecological value. The Port is implementing the Heron's Head Park Shoreline Resilience project, which includes construction of a living shoreline and wetland habitat restoration, to mitigate these impacts.

The Heron's Head Park Shoreline Resilience project requires placement of coarse sand, gravel, cobble, and rock to protect the shoreline from erosion. During the Port's community outreach regarding the project, staff of the Port and Hanson Aggregates Mid-Pacific Inc., a Port tenant (Hanson), recognized an opportunity to use a Hanson byproduct as Port's construction material, thereby reducing project construction cost by an estimated \$417,000 and reducing truck travel and related emissions associated with importing an alternative construction material. Hanson has offered to donate and Port staff seeks Port Commission authorization to accept such material in accordance with

**THIS PRINT COVERS CALENDAR ITEM NO. 13A**

the terms of a Memorandum of Understanding (MOU), a draft of which is attached as Exhibit B to this report.

### **Strategic Objectives**

The MOU with Hanson supports the Heron's Head Park Shoreline Resilience project, which advances the Port's strategic objectives as follows:

**Goal #4 Equity:** *Ensure Port activities advance equity and public benefit and attract a diversity of people to the Waterfront.* Protecting and enhancing the wetland habitat at Heron's Head Park will preserve a valuable public asset that is used by a diversity of users seeking healthy activities and connection to nature in an area of the City where there is less access to such benefits.

**Goal #5 Sustainability, Objective #2:** *Enact measures to protect the Bay and its ecosystems:*

- a) *Explore natural infrastructure alternatives (e.g. wetlands, horizontal levees, and "living shorelines") in all shoreline stabilization and improvement projects.*
- b) *Implement City Biodiversity Goals and best sustainable practices in all open space improvement projects.*

The Heron's Head Park Shoreline Resilience project is a natural infrastructure solution for shoreline stabilization and will protect and improve biodiversity.

**Goal #7 Stability, Objective #3:** *Expediently deliver capital projects.*

Receiving donated material from a local source will also reduce project cost and impacts on traffic and air quality.

### **Background**

In the 1970s, the Port began placing fill in San Francisco Bay (the Bay) to construct a proposed "Pier 98" cargo terminal. The construction was discontinued, and fill was left unimproved for decades. In the late 1990s, the Port worked with the San Francisco Bay Conservation and Development Commission (BCDC) to resolve regulatory issues related to the fill by developing a beneficial use, expanding and enhancing tidal wetlands that had naturally established at the site over 20 years since construction ceased, and constructing park amenities including a 1/3-mile spur of the San Francisco Bay Trail, picnic areas, and native plant landscapes. In 1998, the former Pier 98 opened to the public as Heron's Head Park. In 2010, the EcoCenter at Heron's Head Park opened. In 2012, the Port used general obligation bond funds to expand the park to include a new picnic area, paved walking paths, an off-leash dog play area, and improved parking.

Heron's Head Park is an approximately 21-acre peninsula, comprised of seven acres of wetlands and tidal ponds, and 14 acres of public open space. It is a highly valued resource for both wildlife and people: it is home to or visited by over 100 species of migratory and resident birds, two endangered species, and thousands of San Francisco Bay Area residents annually.

The shoreline at Heron's Head Park has experienced subsidence, erosion from wind-waves



and tidal flows, and a low supply of suspended sediment in Bay waters that is needed to replenish the marsh. The wetland plant habitat that is the basis of the site's ecological function has decreased in size and suffers from invasion by non-native plants. To address these impacts, the Port has developed the Heron's Head Park Living Shoreline project to achieve the following objectives:

1. Stabilize the southern shoreline and protect it from continued erosion.
2. Restore native plant vegetation to enhance biodiversity and ecological function.
3. Create a resilient shoreline that can adapt to a moderate amount of sea level rise through 2050.
4. Create youth employment and community engagement opportunities through hands-on involvement in park restoration activities.

Over the past three years, Port staff has presented the Heron's Head Park Shoreline Resilience project on multiple occasions to the Port's Southern Waterfront Advisory Committee, the EcoCenter Advisory Committee, Bayview Residents Improving Their Environment, and the Golden Gate Audubon Society. The most recent of these presentations was provided to the Port's Southern Advisory Committee on August 19, 2020. Committee members and members of the public attending the meeting spoke in support of the project.

At the Port Commission's August 11, 2020 meeting, Port staff presented an overview of the Heron's Head Park Shoreline Resilience project, including shoreline stabilization and wetland habitat enhancement. At its August 25, 2020 meeting, the Port Commission authorized Staff to, subject to Board of Supervisors approval, accept and expend \$297,000 in grant funds from the San Francisco Bay Restoration Authority and enter into a sole-source contract with Literacy for Environmental Justice to use the grant funds for the wetland habitat enhancement element of the project. The Board of Supervisors authorized the Port to accept and expend the San Francisco Bay Restoration Authority grant funds at its September 30, 2020 meeting (Resolution 20-42).

### **Hanson Operation and Proposed Donation**

Hanson leases approximately 127,300 square feet of unimproved land at Pier 92 for its sand processing facility. At this facility Hanson processes sand dredged from central San Francisco Bay and screens it to sort by particle size, producing sand that is used in the manufacture of concrete and asphalt which Hanson sells. The screening process yields a byproduct material comprised of coarse sand, gravel and shell ("Beach Material") that is not suitable for commercial or industrial use under current market conditions. Hanson currently has this Beach Material hauled from its Pier 92 facility to another building materials supplier who uses it for other purposes.

The shoreline stabilization component of the Heron's Head Park Shoreline Resilience project calls for placement of sand, gravel, cobble, and rock of various sizes to be placed along the shoreline in specific configuration and elevations to create a coarse gravel beach stabilized by rock and cobble groynes that extend perpendicular to the shoreline. It will require approximately 12,000 cubic yards of coarse material that has the same physical properties as Beach Material. During the Port's community outreach regarding the Heron's Head Park Shoreline Resilience Project, Port and Hanson staff recognized an opportunity to

use Hanson's byproduct as Port's construction material, thereby reducing project construction cost by an estimated \$417,000 and reducing truck travel and related emissions associated with importing Port's required construction material.

Hanson proposes to donate up to 12,000 cubic yards of Beach Material to the Port by delivering it to an area at Seawall 352 adjacent to Hanson's leased premises ("Storage Site", see EXHIBIT A).

Under the proposed MOU, Hanson would deliver the Beach Material to the Storage Site as it is generated. Hanson estimates that it will take 10 to 12 months to generate the specified volume required for the project, depending upon Hanson's rate of sand production. If the Heron's Head Park Shoreline Resilience Project is not constructed in the upcoming seasonal window of opportunity (August 2021 through January 2022) then the stockpiled Beach Material would remain at the Storage Site until the next seasonal window during which construction is allowed (August 2022 through January 2023).

If the Port determines that it does not need the Beach Material for the shoreline at Heron's Head Park, it may terminate the agreement with Hanson for convenience at any time. The Port may use the Beach Material for other purpose. For example, the Beach Material meets the criteria for cover material over unpaved soil at Pier 70 and could be used to meet the Port's obligation to install such cover in portions of the former Pier 70 Shipyard. The Beach Material is also suitable for re-use in the bay, such as for capping contaminated sediment. The Port purchased and placed similar material over an area of contaminated sediment offshore of Crane Cove Park and may have similar need to cap sediment offshore of the Pier 70 Shipyard.

The Port has tested the Beach Material to confirm that it meets the grain-size profile specified for shoreline construction and that it does not contain potentially hazardous constituents. The San Francisco Bay Regional Water Quality Control Board, Army Corps of Engineers, Bay Conservation and Development Commission, and the natural resource agencies that advise them have authorized use of the Beach Material for shoreline construction at Heron's Head Park.

The Heron's Head Shoreline Resilience Project is categorically exempt from the California Environmental Quality Act under Class #33 for small habitat restoration projects. The Categorical Exemption Case No. 2019-003714ENV was approved by the lead agency, City of San Francisco Planning Department, on August 25, 2020 and the Notice of Exemption was filed with California Department of Fish & Wildlife on November 12, 2020.

### **Agreement Regarding Donation of Material**

Port Staff, in consultation with the City Attorney's Office and City Risk Manager, have drafted an MOU (entitled "Agreement Regarding Donation of Material", Exhibit B) that includes the following key provisions:

1. Hanson will endeavor to donate, and Port intends to accept the entire 12,000 cubic yards of Beach Material needed for shoreline stabilization at Heron's Head Park, but neither is obligated to donate or accept the full amount.
2. The Port has access and right to inspect, sample, and analyze the Beach Material as it deems warranted, and can reject any material that does not meet

- the specified criteria or does not suit Port's purpose.
3. Hanson will deliver Beach Material to the Storage Site and place it in stable stockpiles. From the point of unloading, the Port owns the Beach Material.
  4. Hanson may not bring any material other than Beach Material to the Storage Site or use the Storage Site for any purpose other than unloading Beach Material.
  5. Neither Port nor Hanson indemnifies the other; both parties release and waive claims against the other except for third-party claims. Hanson carries insurance as required for its leased premises (adjacent to the Storage Site), including workers compensation insurance, but no additional coverage will be required. The City Risk Manager has reviewed and supports the MOU provisions regarding liability and insurance.
  6. Either party can terminate for convenience with 30 days' notice.

### **Schedule**

With Port Commission approval, Port staff propose to bring the MOU to the Board of Supervisors in April 2021 and anticipate execution of the MOU upon Board of Supervisors' approval in the April/May timeframe

### **Recommendation**

For the reasons set forth above, Port staff requests Port Commission authorization to accept the donation of the Beach Materials on the terms and conditions described in this Memorandum, subject to Board of Supervisors approval.

Prepared by: Carol Bach  
Environmental Affairs Manager

For: Diane Oshima  
Deputy Director, Planning & Environment Division

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION NO 21-04**

- WHEREAS Hanson Aggregates Mid-Pacific Inc., a Port tenant (Hanson), extracts material from the San Francisco Bay floor, processes the material at its leased facility at the Port's Seawall Lot 352, and generates, as a byproduct of its operations, coarse sand and gravel that does not have commercial value to Hanson (Beach Materials); and
- WHEREAS the Port seeks resources to support implementation of its Heron's Head Park Shoreline Resilience project, design of which specifies placement of coarse sand and gravel from a natural source and having the same grain-size profile as the Beach Materials to stabilize the eroding shoreline; and
- WHEREAS Hanson and Port staff have drafted a Memorandum of Understanding that specifies terms and conditions under which Hanson would donate and Port would accept up to approximately 12,000 cubic yards of Beach Materials; and
- WHEREAS under the SF Administrative Code Section 10.100.305, the Port must obtain Board of Supervisors' approval to accept a donation with a market value of more than \$10,000; and
- WHEREAS the estimated market value of the donated Beach Materials is \$417,000; and
- WHEREAS the Heron's Head Shoreline Resilience Project is categorically exempt from the California Environmental Quality Act; now therefore be it
- RESOLVED, that the Port Commission authorizes the Port to accept the donation of the Beach Materials on the terms and conditions described in the Memorandum to the Port Commission dated February 5, 2021 and set forth in the Memorandum of Understanding with Hanson and authorizes the Executive Director to seek Board of Supervisors' acceptance of such gift; and be it further
- RESOLVED, that, upon Board of Supervisors' approval, the Port Commission authorizes the Executive Director or her designee to negotiate and execute a final Memorandum of Understanding and all other agreements and instruments necessary to effectuate the donation, in such form approved by the City Attorney.



***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 9, 2021.***

DocuSigned by:

*Carl Nicita*

Secretary

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**City and County of San Francisco**  
**London Breed, Mayor**

**MEMORANDUM OF UNDERSTANDING M-XXXX**

BY AND BETWEEN

**THE SAN FRANCISCO PORT COMMISSION**

AND

**HANSON AGGREGATES MID-PACIFIC, INC.**

REGARDING

DONATION OF MATERIAL

**AGREEMENT REGARDING DONATION OF MATERIAL**

**THIS AGREEMENT REGARDING DONATION OF MATERIAL ("Agreement")** is made as of the [ ] day of [ ], 2021, in the City and County of San Francisco, State of California, by and between **HANSON AGGREGATES MID-PACIFIC, INC.**, a Delaware corporation, ("**Donor**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**CITY**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**").

**RECITALS**

**A.** At its leasehold under Lease No. L-12839 with Donor as tenant for Port premises at Pier 92 ("**Port Lease**"), Donor produces marine sand from San Francisco Bay. This sand is primarily used in the manufacture of concrete and asphalt products, and to a lesser extent is also used for drainage, erosion control, base material, backfill, and other uses. As further described in this Agreement, Donor's process of screening the materials produced from central San Francisco Bay to produce these commercially valuable products generates a mixed gravel and shell material ("**Beach Material**") that, due to its physical properties, is not suitable for Donor's commercial or industrial use under current market conditions. This Beach Material byproduct is currently removed by truck for final disposal.

**B.** In order to construct the stabilized shoreline element of the Port's Heron's Head Park Resilience Project, the Port requires approximately 12,000 cubic yards of coarse material that has the same physical characteristics as the Beach Material. During the course of the Port's community outreach regarding the Heron's Head Park Shoreline Resilience Project, Port and Donor recognized an opportunity to use Donor's byproduct as Port's construction material, thereby reducing project construction cost by an estimated \$417,000 and reducing truck travel and related emissions associated with hauling Donor's material off-site and importing Port's required construction material.

**C.** Donor has offered to donate up to 12,000 cubic yards of Beach Material to Port through delivery of the material to a site designated by Port. Port has identified a site on Port property at Seawall 352 as appropriate for stockpiling the Beach Material. The site is located near Donor's leased premises at Pier 92 and is identified on **EXHIBIT A** (the "**Storage Site**").

**D.** On [TBD], 2021, the San Francisco Port Commission adopted Resolution No. [TBD] authorizing the acceptance of the Beach Material from Donor and approving this Agreement.

**E.** On [TBD], 2021, as required by San Francisco Administrative Code Section 10.100-305(b), the San Francisco Board of Supervisors ("**Board of Supervisors**") adopted Resolution No. [TBD] authorizing the acceptance of the Beach Material from Donor and approving this Agreement.

**F.** Port and Donor now desire to enter into this Agreement for the gift by Donor to Port of Beach Material in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

**1. TERM.** This Agreement shall become effective on the date of Port's execution of this Agreement following approval by the Port Commission, the Board of Supervisors and the San Francisco Mayor, each in their respective sole and absolute discretion (the "**Effective Date**") and shall expire upon the earlier of (i) delivery of 12,000 cubic yards of Beach Material to the Storage Site; (ii) the date of termination by either party pursuant to the terms of this Agreement; or (iii) January 31, 2023 ("**Expiration Date**") (the "**Term**"). The parties shall document the actual Expiration Date through a countersigned memorandum, but either party's failure to do so shall not affect the expiration of the Term.

**2. DONATION; WARRANTIES; ACCEPTANCE.**

**2.1. Donation and Acceptance.**

(a) Port is an agency of the City and County of San Francisco, a municipal corporation. It is the intent of the parties that the donation of the Beach Material be made and used in compliance with all applicable federal and state laws governing donations made to municipal organizations. The parties acknowledge that they may be required by law to report information about the Beach Material donated under this Agreement and will do so to comply with legal obligations.

(b) Donor grants Port irrevocable ownership, rights, title, and interest in the Beach Material, upon the terms and conditions set forth in this Agreement, and without any monetary payment to Donor. The Beach Material will be transferred to Port free and clear of any liens, claims, or encumbrances.

(c) Subject to the terms and conditions set forth in this Agreement, Donor agrees to donate and deliver to the Storage Site, at Donor's sole cost and expense and without charge to Port, a total of approximately 12,000 cubic yards of Beach Material that meets the specifications set forth in Section 2.4. Port agrees to accept such Beach Material at the Storage Site with no cost to Donor related to use of the Storage Site for the purpose of this Agreement.

**2.2. Warranties.** Donor represents and warrants to Port that Donor is the lawful owner of the Beach Material, that such Beach Material is free and clear of all encumbrances, and that Donor has good right to donate the same and will warrant and defend the title thereto unto Port, its successors and assigns, against the Claims of all persons whomsoever. The Donor further represents and warrants to the Port that all material delivered by Donor to the Storage Site will meet the specifications set forth in Section 2.4 and that Donor will bring no other material to the Storage Site. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 2.2, THE BEACH MATERIAL IS PROVIDED TO PORT ON AN "AS IS" BASIS, AND DONOR MAKES NO WARRANTY OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTIES OF WHATEVER KIND ARE HEREBY DISCLAIMED BY DONOR AND EXCLUDED. Donor's representations and warranties set forth in this Section shall survive the expiration or earlier termination of this Agreement.

**2.3. Commercial Market.** The parties agree that, if a commercial market for the Beach Material or opportunity to sell the Beach Material arises during the Term, Donor will promptly notify Port and enter into good faith negotiations with Port for the sale of Beach Materials at a negotiated comparable market rate prior to selling the Beach Materials to a third party. Nothing in this Section affects the other rights and obligations of the parties, including a party's right to terminate this Agreement under Section 8; provided, however, that if Donor decides to exercise its right to terminate in order to sell the Beach Materials to a third party, Donor agrees to negotiate in good faith with Port for a minimum period of sixty (60) days to allow Port adequate time to make a competitive offer.

**2.4. Specifications.** Beach Material will be sourced from an approximately one square mile area located between Angel Island and the Golden Gate Bridge where tides and currents deposit sand and gravel. Donor has a lease from the California State Lands Commission and permits from the State Lands

Commission, U.S. Army Corps of Engineers, Regional Water Quality Control Board, and Bay Conservation and Development Commission to extract material from the Bay floor. Donor transports the extracted material by barge to its leased premises under the Port Lease, during which time saltwater and sediment drain from the extracted material. At the Port leased premises, Donor rinses the material with freshwater as it is unloaded by conveyor from barge to land. The material is washed again with freshwater as it is conveyed over a 3/8" screen that separates the sand that comprises Donor's commercial product from larger grain-size/coarse material. During transport and subsequent washing and sorting, salt, fine sediment, and other adhered material is removed from the coarse sand/gravel material. Donor does not market the coarse material (greater than 3/8 inch or 9.5 mm in diameter) that is separated from the commercially valuable sand and manages it as a byproduct of its production process. The Beach Material delivered to the Port will consist primarily of coarse gravel with incidental quantities of larger gravel and shell and will have a median diameter of 10 mm.

**2.5. Access, Use of Storage Site.** Donor shall have access to the Storage Site for the sole purpose of delivering, unloading and stockpiling Beach Material. Donor's use of the Storage Site shall be subject to the terms and conditions set forth in Section 4. Donor shall be responsible for locking the gate to the fenced area that includes the Storage Site when not in active use. During any period that Donor uses the Storage Site under a lease or license agreement with Port, Donor shall have all rights, obligations and liabilities under such lease or license which terms shall govern in the event of any conflict with the terms of this Agreement. Donor agrees to protect its officers, directors, employees, agents, contractors and invitees, and their respective heirs, legal representatives, successors, and assigns (collectively, "Agents") in its operations on the Storage Area from known hazards associated with such activities.

**2.6. Use of Beach Material by Port.** Port shall not use the Beach Material for the benefit of any individual, owner, shareholder, officer, director, or employee of Port.

**2.7. Delivery Schedule.** Donor shall deliver Beach Material to the Storage Site as it is generated by Donor's process and at Donor's convenience.

**2.8. Title.**

(a) Title to and the risk of loss, damage and destruction of the Beach Material shall remain with Donor until the Beach Material is unloaded and placed in a stable stockpile at the Storage Site. Port will acquire title to and the risk of loss, damage and destruction of any Beach Material upon completion of such delivery and placement at the Storage Site.

(b) Port may reject the Beach Material before Donor unloads it at the Storage Site in accordance with Section 3 below.

**2.9. Dust Control.** Donor agrees that Beach Material delivered to the Storage Site will first be screened to remove fine particles capable of creating dust.

**2.10. Stockpile Maintenance.** Donor shall be responsible for placing Beach Material in stable stockpiles at the Storage Site.

**2.11. Recordkeeping.** Donor will maintain books and records relating to this Agreement in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow Port to audit Donor's records regarding the donation and to verify the quantity and value of materials donated under this Agreement. Donor shall make such books and records available to Port (or its representatives) upon commercially reasonable prior written notice.

**2.12. Competent Personnel.** The Permitted Activities shall be performed only by competent personnel under the supervision of and in the employment of Donor.

**3. INSPECTIONS; REJECTION OF MATERIALS.**

Port, at its election and at its sole cost, may conduct inspections at the site of generation, observe loading, unloading and stockpiling of Beach Material, and conduct tests at any location to determine if the Beach Material meets the specifications described in Section 2.4 including without limitation on Donor's leased premises. If Port, in its sole discretion, determines that the Beach Material does not meet the



specifications described in Section 2.4 or is unsuitable for Port's use for any other reason, Port may reject such material before it is unloaded at the Storage Site. Immediately upon notice of rejection by Port, Donor shall not unload the material and shall cease all deliveries to the Storage Site until further notice by Port. Unless Port rejects delivery prior to unloading of any materials at the Storage Site, Port will be deemed to accept such delivered Beach Materials. Port may not reject or return Beach Material that has been unloaded at the Storage Site in accordance with this Agreement to the Donor.

#### **4. USE OF STORAGE SITE.**

**4.1. Permitted Activities.** Subject to the terms and conditions set forth in this Agreement, Port grants to Donor and its Agents a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the Storage Site for the sole purposes of carrying out the activities specified in Section 2 (collectively, the "**Permitted Activity**") only on a temporary basis during the Term. Any other use in, on or around the Storage Site or surrounding or adjacent Port property shall be strictly prohibited, including but not limited to, use of the Storage Site for Donor's own purposes, placement on the Storage Site of any materials other than Beach Material donated to Port, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic).

**4.2. Damage to Storage Site.** Except as to the Permitted Activities or as explicitly provided herein, Donor has no responsibility or liability of any kind with respect to the Storage Site. In the event that Donor or its Agents cause any damage to the Storage Site or any other Port property, Donor shall be responsible, and Port may, at its sole and absolute discretion, elect to repair and restore the same itself or require Donor to repair and restore the same, all at Donor's sole cost and expense. Upon receipt of any invoice from Port for reasonable, actual costs incurred by Port related to any repair performed by Port in accordance with this Section, Donor shall immediately reimburse Port therefor.

**4.3. Disclosures.** Donor acknowledges that Port has made no representations or warranties concerning the Storage Site, including without limitation, the seismological condition thereof. Donor acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials, and shall be deemed to have inspected the Storage Site and accepted it its "**As Is**" condition and as being suitable for the conduct of Donor's activity thereon.

#### **4.4. Hazardous Materials Handling.**

**(a)** For purposes of this Agreement, "**Hazardous Material**" means any substance, waste, or material that is now or in the future designated or defined by any regulatory agency in sufficient quantity to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any applicable law, regulation, governmental order, permit, or approval as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos containing materials, presumed asbestos containing materials and other naturally occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

**(b)** Neither Donor nor its Agents may knowingly introduce, handle, deliver, place, store, or dispose any Hazardous Material in, on, under or about the Storage Site. Donor agrees to immediately notify Port if it learns or has reason to believe that any quantity of Hazardous Materials is present on the Storage Site whether or not such presence is a result of Donor's activities. Donor must promptly provide Port with a copy of any notice, violation or claim by any person or regulatory agency regarding the discovery or presence of Hazardous Materials at the Storage Site.

**4.5. Hazardous Materials Disclosure.** California Law requires landlords to disclose the presence or potential presence of certain Hazardous Materials. Accordingly, Donor is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Storage Site, including, but not limited to vehicle fluids, asbestos, naturally occurring radionuclides, lead and formaldehyde. [Further, the Hazardous Materials described in the reports listed in *Schedule 1* attached hereto, copies of

which have been delivered to or made available to Donor. By execution of this Agreement, Donor acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related laws. Donor must disclose the information contained in this Section to its Agents conducting Permitted Activities. Donor also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

**4.6. Rules and Restrictions.** Donor and its Agents shall comply with all rules, regulations, or restrictions pertaining to the Storage Site that the Port may adopt from time to time.

## **5. COMPLIANCE WITH LAWS.**

**5.1.** Donor, at Donor's sole cost and expense, shall comply with all applicable present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy and regulatory approval relating to or affecting the Permitted Activities and/or the Storage Site whether in effect when this Agreement is executed or at any later time and whether or not within the present contemplation of the parties.

**5.2.** Donor shall keep itself fully informed of Port's Charter, codes, ordinances and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement including without limitation, the requirements of SF Administrative Code §10.100.205 et seq. and Section 67.29-6 of the City's Sunshine Ordinance.

**5.3.** San Francisco Administrative Code Section 67.29-6 requires Port to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all donations received under this Agreement, the disclosure must identify Donor as the contributor, the amounts contributed, and a statement as to any financial interest Donor has involving the City, including any contract, grant, permit, permit application, or other entitlement. Under the Administrative Code, Port must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from Donor in any resolution submitted to the Board of Supervisors for approval.

**5.4.** Donor agrees to comply with San Francisco Administrative Code Section 67.29-6, to file all required reports with the Board of Supervisors and City's Controller and to provide all information requested by Port to enable Port to comply with its obligations regarding the amounts and sources of funding under the Sunshine Ordinance, including but not limited to a statement as to any financial interest Donor has involving the City, including any contract, grant, permit, permit application, or other entitlement. Donor will post this Agreement on its website. Port will provide a link to Donor's website for the public to readily access this information from Port's website.

**6. PAYMENT OF TAXES AND OTHER EXPENSES.** Donor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Donor's or its Agent performing services and work. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Port and Donor or any Agent of Donor. Any terms in this Agreement referring to direction from Port shall be construed as providing for direction as to policy and the result of Donor's work only, and not as to the means by which such a result is obtained. Port does not retain the right to control the means or the method by which Donor performs work under this Agreement.

## **7. MUTUAL WAIVER AND RELEASE.**

In consideration of the relative risks, liabilities and obligations of each party under this agreement, each of Donor and Port hereby waives any and all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific

performance, or any other relief (“Claims”) arising out of or related to this Agreement or the Beach Material donated hereunder whether arising out of the negligence of the Donor or Port or otherwise, but excluding any Claims: (i) caused solely by the willful misconduct or gross negligence of the other party; and (ii) by a third party against the Port or Donor arising out of or related to this Agreement or the Beach Material donated hereunder. Except as provided herein, neither party shall be responsible for or liable to the other, and each party assumes the risk of, and waives and releases the other party from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property from any cause whatsoever. Each party understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, each party waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each party specifically acknowledges and confirms the validity of the release made above and the fact that it was represented by counsel who explained the consequences of the release at the time this Agreement was made, or that Donor had the opportunity to consult with counsel, but declined to do so. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

**8. TERMINATION FOR CONVENIENCE.**

**8.1.** Each party shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. A party shall exercise this option by giving reasonable prior written notice of termination to the other party, provided that such notice shall not be less than thirty (30) days prior to the termination date. The notice shall specify the date on which termination shall become effective.

**8.2.** Upon sending or receipt of a termination notice, Donor shall immediately cease delivery of Beach Materials to the Storage Site and the parties shall commence and perform, with diligence, all other actions necessary to effect the termination of this Agreement on the termination date specified. Donor shall have no obligation to remove any Beach Materials from the Storage Site in the event Port terminates this Agreement for convenience under this Section 8.

**9. CONFLICT OF INTEREST.** Through its execution of this Agreement, Donor acknowledges that it is familiar with the provision of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify Port if it becomes aware of any such fact during the Term.

**10. NOTICE.**

Any notices, demands, consents, approvals, and requests given under this Agreement shall be in writing and given by (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid, to the mailing address listed below or any other address notice of which is given. Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

To Port: The San Francisco Port Commission  
Pier 1  
San Francisco, CA 94111

Attn: Carol Bach  
Phone No.: 415-274-0400  
Email: carol.bach@sport.com

With Copies To: The City Attorney's Office  
Pier 1  
San Francisco, CA 94111  
Attn: General Counsel  
Phone No.: 415-274-0400  
Fax No.: 415-274-0494

To Donor: Hanson Aggregates Mid-Pacific, Inc.  
Attn: Michael Bishop  
300 Executive Pkwy., #240  
San Ramon, CA 94583  
Facsimile: 925-244-6585  
Email: michael.bishop@lehighhanson.com

All notices under this Agreement shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

**11. INDEPENDENT RELATIONSHIP OF THE PARTIES.** Port shall not be liable for any act of the Donor and Donor shall not be liable for any act of Port, and nothing herein contained shall be construed as creating the relationship of employer and employee between Port and Donor or any of their respective agents or employees. Donor has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this Agreement. Donor agrees to be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this Agreement shall be deemed to render the Port a partner in Donor's business, or joint venture or member in any joint enterprise with Donor.

**12. NON-WAIVER OF RIGHTS.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**13. LOCAL BUSINESS ENTERPRISES.** The Port Commission encourages the participation of local business enterprises (LBEs) in Donor's operations. Donor agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

**14. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS.** If this Agreement is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section shall apply. Through its execution of this Agreement, Donor acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Donor

acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Donor further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Donor; each member of Donor's board of directors, and Donor's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Donor; and any subcontractor listed in the Donor's bid or contract. Additionally, Donor certifies that if this Section 21.13 applies, Donor has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

**15. DONOR'S COMPLIANCE WITH CITY BUSINESS AND TAX REGULATIONS CODE.** Donor acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Donor under this Agreement is withheld, then Port will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Donor, without interest, late fees, penalties, or other charges, upon Donor coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**16. MISCELLANEOUS.**

**16.1. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**16.2. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**16.3. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**16.4. Entire Agreement.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written provisions.

**16.5. No Third Party Beneficiaries.** Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against Port or Donor by any third person with respect to the performance of any duties or other projects being undertaken by the parties. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

**16.6. Authority.** If Donor signs as a corporation or a partnership, each of the persons executing this Agreement on behalf of Donor does hereby covenant and warrant that Donor is a duly authorized and existing entity, that Donor has and is qualified to do business in California, that Donor has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Donor are authorized to do so. Upon Port's request, Donor shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

**16.7. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**16.8. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule

that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**16.9. Public Announcements.** Donor and Port each reserve the right to make public announcements and communicate with any news media regarding this Agreement and the donation of the Beach Material with prior consent of the other party, which consent shall not be unreasonably withheld. This Section does not apply to or affect either party's obligation to report information, provide disclosures or take other actions as required by applicable laws or to otherwise comply with their respective legal obligations. This Section shall survive expiration or termination of this Agreement.

**EXHIBIT A      STORAGE SITE**

**SCHEDULE 1    HAZARDOUS MATERIALS DISCLOSURE**

**[SIGNATURES ON FOLLOWING PAGE]**



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day first mentioned above.

**DONOR:**

**HANSON AGGREGATES MID-PACIFIC, INC.**, a Delaware corporation

By: \_\_\_\_  
Name: \_  
Title: \_

**PORT:**

**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By:  
Elaine Forbes\_\_  
Executive Director  
Date: \_

Approved as to Form  
Dennis J. Herrera  
City Attorney

BY: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

Port Commission Resolution No.: xx-xxx

Board of Supervisors Resolution No.:

**EXHIBIT A  
STORAGE SITE**



550 Kearny Street  
Suite 800  
San Francisco, CA 94108  
415.896.5900 [phone](#)  
415.896.0332 [fax](#)

[esassoc.com](http://esassoc.com)

# Memorandum

date April 21, 2021

to Carol Bach (Port of San Francisco)

cc Erica Peterson (Port of San Francisco)

from Eddie Divita, PE (CA Civil Eng. Lic. # 81281)

subject Estimated Cost for Heron's Head Beach Material

This memorandum provides a brief summary of the process to select the aggregate material to be used to construct the proposed beach at the Heron's Head Shoreline Resilience Project. ESA recommends the use of the Hanson Aggregates pea gravel material, which Hanson has proposed to provide to the Port as an in-kind donation.

This memorandum also documents the basis for the estimated value of the proposed in-kind donation. As described in this memo, ESA estimates the value of the donated material to be \$41.70/CY or \$417,000 for approximately 10,000 CY of material.

## Background

The Heron's Head Shoreline Resilience Project ("Project") proposes to install a coarse gravel beach along the southern shoreline of Heron's Head Park in order to address ongoing shoreline erosion which has led to the loss of tidal marsh and tidal pond habitats. ESA has conducted an alternatives analysis which finds that the proposed gravel beach design provides an acceptable level of erosion resistance and that the resulting beach landscape would provide habitat values similar to the existing shoreline and appropriate for the ecological setting of the park shoreline. The Project design has been informed by similar projects constructed at Aramburu Island (in Marin County) and at Pier 94 (in San Francisco, 1/2 mile north of Heron's Head Park). The project design calls for the placement of a large quantity (approximately 12000 cubic yards [CY]) of natural rounded marine sand and gravel with a sufficiently large grain size to resist erosive waves.

## Suppliers

In the fall of 2018, my colleague Joel Darnell and I reached out to local suppliers to identify products that might be used for the construction of the proposed gravel beach at the Heron's Head Park Shoreline.

ESA contacted several local aggregate materials suppliers and identified 3 potential suppliers for the beach material.

### ***Hanson Aggregates Pea Gravel***

**Supplier:** Hanson Aggregates provided pea gravel material used at Pier 94 project).

**Location:** Hanson Facility at Pier 92/94

**Material:** Rounded gravels and shell generated from screening marine sand dredge material. (Note: This material was used for the successful Pier 94 shoreline project).

**Cost:** No quote provided. Material is a byproduct generated by Hanson's process for creating clean sands for concrete and other industrial applications. Hanson has proposed to provide this material to Port of SF as in-kind donation.

### ***Syar Aggregates Rounded Cobble***

**Supplier:** Syar aggregates provided cobble material used for the Aramburu Island beach project in Marin County.

**Location:** Healdsburg, delivered to site by truck.

**Material:** 2" to 4" rounded cobble mined from Russian River cobble deposits. (Note: this material is significantly larger than required for shoreline stability, however Aramburu Island reference site indicates that rounded cobble provides some foraging value for shorebirds)

**Cost:**

Purchase cost: \$37/ton (\$44/CY) based on quote provided by Larrisa Hebbert by phone on January 7, 2020.

Delivery cost: \$100/CY estimated by ESA based on RS Means values for equipment and crew costs for 80 mile (one-way) haul, plus bridge tolls.

Total cost: \$137/CY

### ***Lind Marine/Jericho Products Sand and Gravel***

**Supplier:** Lind Marine was one of the suppliers used to provide sand to the Crown Beach site in Alameda County.

**Location:** Suisun Bay and Sacramento River near Pittsburgh/Collinsville, delivered to site by barge.

**Material:** Mixed sand and gravel

**Cost:** "\$400,000 + Tax" for purchase and delivery of 10,000CY to project site, based on quote provided by Christian Lind by phone in April, 2018, as documented in "Attachment B1 – Heron's Head Shoreline Resiliency Project: Contractor Outreach" memorandum dated May 18, 2020.

Based on an assumed tax rate of 4.25%, total cost for this material is estimated to be \$417,000 (\$41.70/CY).

### ***Additional potential suppliers contacted:***

ESA also reached out to Vulcan Materials, Dutra and Granite Rock quarries but these suppliers did not have natural rounded material available in the desired quantities.

Rounded gravel is also available from landscape supply retailers (typically for ornamental landscaping applications). These materials are sourced from river gravel mines in the Sierra Foothills or in Central California. The cost for purchase of this material at retail prices is approximately \$100/CY, and while costs might be cheaper than retail prices for a bulk purchase, after accounting for expected haul and delivery costs it is apparent that these materials would be significantly more expensive than Hanson or Lind Marine materials and so these suppliers were not pursued further.

## **Estimated Value of Hanson Aggregates In-Kind Donation**

The donated Hanson Aggregates pea gravel is estimated to have a value to the project equal to the lowest quoted value for purchase and delivery of a comparable material from an alternate supplier. The lowest quote received from an alternate material supplier was from Lind Marine/Jericho Products, and that quote supports an estimated value of \$41.70/CY or \$417,000 for 10,000 CY of material.

**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Elaine Forbes, Port of San Francisco  
**DATE:** April 26, 2021  
**SUBJECT:** Accept and Expend Gift Resolution  
**GRANT TITLE:** Hanson Aggregates Mid-Pacific, Inc

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Attached please find the original\* and 1 copy of each of the following:

- Proposed gift resolution; original\* signed by Department, Mayor, Controller
- Grant information form, including disability checklist
- Gift estimated value of in kind donation
- Gift award letter
- Ethics Form 126 (if applicable)
- Contracts, Leases/Agreements (if applicable)
- Other (Explain):

**Special Timeline Requirements:**

**Departmental representative to receive a copy of the adopted resolution:**

Name: Boris Delepine Phone: 415-571-6626

Interoffice Mail Address: Pier 1, The Embarcadero, San Francisco, Ca 94111

Certified copy required Yes  No X

(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).