



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: _____

TOPIC: GRAND AVENUE CYCLE TRACK GRANT FUNDING AGREEMENT

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FUNDING AGREEMENT WITH ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”) IN AN AMOUNT NOT TO EXCEED \$240,000

RECOMMENDATION: Staff recommends that the City Council adopt the attached Resolution, authorizing the City Manager to sign a Funding Agreement with the Association of Bay Area Governments (“ABAG”).

BACKGROUND:

The Grand Avenue protected two-way cycle track is ranked third in Group F, Canal Connections of the City’s Bicycle and Pedestrian Master Plan (BPMP). The City has been proactive and successful in applying for and receiving grant funding to improve the multimodal connections between the Canal neighborhood and Central San Rafael. The Francisco Boulevard East Sidewalk Widening, funded by the Active Transportation Program (ATP), resulted in widening the sidewalk to eight feet to allow for more room for pedestrians and bicyclists. North of the sidewalk widening, the Grand Avenue Bicycle and Pedestrian bridge was completed in 2019. The protected two-way cycle track and sidewalk improvements on Grand Avenue up to Fourth Street will meet the goal of the San Francisco Bay Trail of connecting to Third Street and also get bicyclists and pedestrians to Fourth Street, where they may go west to the downtown or east to San Rafael High School. Construction for this project is expected to be coordinated with the Third Street Rehabilitation project.

ANALYSIS:

This project would add a bicycle facility on the east side of Grand Avenue between Fourth Street and Second Street. The vehicle travel lanes and turn pockets would remain, but there would be an impact to on-street parking and one existing driveway.

Currently, Grand Avenue between Fourth Street and Third Street is one travel lane in each direction with some driveways and on-street parking on both sides. The on-street parking would remain in the southbound direction, but six on-street spaces would be eliminated in the northbound direction.

Grand Avenue between Third Street and Second Street is one travel lane with a turn pocket and on-street parking southbound and two travel lanes northbound, separated by a concrete median. There is also a driveway just north of Second Street that provides access to the gas station on

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

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the northeast corner of Second Street/Grand Avenue. The gas station currently has five driveways: one on Grand Avenue, two on Second Street, and two on Third Street. The existing median would be removed, and the travel lanes would all be shifted to the west. The gas station driveway access on Grand Avenue would be modified to minimize vehicular and bicycle conflicts.

PUBLIC OUTREACH: Public Works reviewed this project with the Bicycle and Pedestrian Advisory Committee at the August 8, 2021 regular meeting.

FISCAL IMPACT:

The total project cost is expected to be around \$1,100,000 for construction. The City requested \$240,000 through San Francisco Bay Trail Funding (Prop 68) and \$335,000 through Transportation Authority of Marin (TAM) Transportation for Clean Air (TFCA) funding. The City has set aside the remaining amount of \$575,000 in the Capital Improvement Program (CIP) using a combination of Traffic Mitigation Fund 246 and Gas Tax Fund 206. The City will continue to apply for grant funding if there are any other relevant sources.

OPTIONS:

The City Council has the following options to consider regarding this matter:

1. Adopt the resolution authorizing the City Manager to execute a Funding Agreement with ABAG (*staff recommendation*); or
2. Reject the grant funding; or
3. Continue the matter and request additional information.

RECOMMENDED ACTION:

Staff recommends that the City Council adopt the attached Resolution authorizing the City manager to sign the Funding Agreement with ABAG.

ATTACHMENT:

1. Resolution
2. Exhibit A to the Resolution - Funding Agreement with ABAG

RESOLUTION NO.

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FUNDING AGREEMENT WITH ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”) FOR THE CONSTRUCTION OF GRAND AVEUNE BICYCLE TRACK, IN AN AMOUNT NOT TO EXCEED \$240,000

WHEREAS, the City of San Rafael has been proactive and successful in applying for and receiving grant funding to improve the multimodal connections between the Canal neighborhood and Central San Rafael; and

WHEREAS, a protected two-way cycle track and sidewalk improvements on Grand Avenue up to Fourth Street and north of the recently completed Grand Avenue Bridge will meet the goal of the [San Francisco Bay Trail](#) of connecting to Third Street and also get bicyclists and pedestrians to Fourth Street, where they may go west to the downtown or east to San Rafael High School; and

WHEREAS, the Grand Avenue Bay Trail Extension Construction Project (“Project”) would add a bicycle facility on the east side of Grand Avenue between Fourth Street and Second Street; and

WHEREAS, the Association of Bay Area Governments (“ABAG”) approved a grant application by the City of San Rafael to receive funds to augment the construction of the Project; and

WHEREAS, the grant funds in an amount not to exceed \$240,000 from the ABAG would augment the local funds set aside for the completion of the Project; and

WHEREAS, ABAG requires the City Council to adopt a resolution authorizing the execution of the grant funding agreement between ABAG and the City of San Rafael and approving the agreement’s terms and conditions to ensure the receipt of the funds.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Rafael that the City Manager is hereby authorized to execute the Construction Grant Agreement for the Grand Avenue Bay Trail Extension Construction Project with ABAG, attached hereto as Exhibit A, and that the City Council approves, at the meeting of Monday, the 6th day of June 2022, of its terms and conditions.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk

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

CONSTRUCTION GRANT AGREEMENT
Grand Avenue Bay Trail Extension Construction Project

Grantee's full, legal name: City of San Rafael

Address: 111 Morphew St. San Rafael, CA 94901

Phone No.: (415) 485-3355

Name of Contact: Lauren Davini

Title of Contact: Traffic Engineer

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 **City of San Rafael** ("the Grantee") a sum not to exceed **Two Hundred Forty Thousand Dollars (\$240,000)**, Proposition 68 funds, the "California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018", subject to the terms and conditions of this Agreement, to complete the **Grand Avenue Bay Trail Extension Construction 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 **City Council** 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;
 - 2. All contractors that the grantee intends to employ in connection with the project; and
 - 3. A rendering, with dimensions and proposed placement, of the acknowledgment sign and a plan for the dimensions and placement of San Francisco Bay Trail emblem all as described in section II of the Standard Provisions.

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, including the additional insured endorsement, or is self-insured, as described in Exhibit D of this Agreement; and
5. That the Grantee has provided for fire and other loss insurance as described in Exhibit D 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 **December 31, 2023**, ("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, 2044**, ("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: (a) 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) and (b) provisions for compliance with any conditions of Conservancy authorization to fund the Project.
 - 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.
 - 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.
 - 6. A meeting with ABAG at the Project site to review the Project plans.
- 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.2 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.2 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).
- H. ABAG will not approve the work program or any amendments thereto without first obtaining the Conservancy's written approval.

II. SIGNS

The Grantee shall erect and maintain signs visible from the nearest public roadway directing the public to the Project and acknowledging ABAG and Conservancy assistance and displaying the San Francisco Bay Trail and Conservancy logos. In addition to signs acknowledging Conservancy assistance, the Grantee shall install and maintain San Francisco Bay Trail emblems on the real property and, where appropriate on all other real property interests controlled, maintained or managed by the Grantee that are deemed by ABAG to be existing segments of the San Francisco Bay Trail. Emblem locations shall be determined by the Grantee in consultation with ABAG. ABAG shall provide specifications for the Conservancy and Bay Trail signs, emblems and logo to the Grantee for this purpose. 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 the Conservancy, 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.

Any bond furnished under this section shall be executed by an admitted corporate surety insurer licensed in the State of California.

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. Hourly rates identified in invoices shall be consistent with the approved Project Budget and equal to the actual compensation paid by the Grantee to employees, which may include employee benefits. 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.

ABAG will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations ("CCR"), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the project grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. ABAG will disburse funds for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the Project, its location, and other relevant factors.

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, other than overhead and indirect costs, may vary by as much as ten percent (10%) without approval by ABAG, provided that Grantee first submits a revised Project Budget to ABAG and requests disbursement based on the revised budget. Grantee shall obtain the advance written approval of ABAG for any difference of more than ten percent (10%) and any deviation that shifts funds from approved budget items into an overhead or indirect costs category. ABAG will not provide such approval without first obtaining written approval of the Conservancy. 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 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.

6. Documentation that the acknowledgement signs and San Francisco Bay Trail emblems required under section II have been erected and installed in compliance with that section.
- 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. ABAG will not determine that the Project has been satisfactorily completed without first obtaining a letter of acceptance of the Project from the Conservancy.

VII. EARLY TERMINATION AND FAILURE TO PERFORM

ABAG may terminate or suspend this agreement for any reason, by providing Grantee with seven days notice in writing. In either case, Grantee shall immediately take all reasonable measures to prevent further costs to ABAG and the Conservancy, which measures shall include terminating or suspending any project agreements if necessary to prevent further costs. ABAG shall be responsible for any reasonable and non-cancelable obligations incurred by Grantee in the performance of this Agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this Agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from ABAG authorizes work to resume.

Grantee shall include suspension and termination provisions in their agreements with contractors for the Project.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this Agreement under this section.

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 and in a manner that complies with the nondiscrimination requirements of section XV. 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.
- C. The parties to this Agreement expressly agree and acknowledge that the Conservancy is a third party beneficiary of the provisions of this section

IX. INSPECTION

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

X. MITIGATION

The Grantee shall not use, or allow the use of, any portion of the Project or Project site for mitigation (in other words, to compensate for adverse changes to the environment elsewhere) without the written permission of the Executive Officer of the Conservancy. The Conservancy may require that all funds generated in connection with any authorized or allowable use of the Project or Project site as mitigation be remitted promptly to the Conservancy. As used in this section, mitigation includes, but is not limited to, any use of the property in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation.

XI. LIABILITY

- A. The Grantee shall be responsible for, indemnify and save harmless ABAG, the Bay Trail Project, the Conservancy 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 to the fullest extent permitted by law. 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 GRANTEES: 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 Conservancy, 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. 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. INSURANCE

See Exhibit D.

XIII. AUDITS/ACCOUNTING/RECORDS

Grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this Agreement in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the Project, and the implementation, operation and maintenance of the Project. Time and effort reports are also required. Grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, ABAG, the Conservancy or their respective agents may review, obtain, and copy all records relating to performance of this Agreement. Grantee shall provide ABAG, the Conservancy or their respective agents with any relevant information requested and shall permit ABAG, the Conservancy or their respective agents access to Grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement and any applicable laws and regulations.

Grantee shall retain the required records for a minimum of three years following the later of final disbursement by ABAG, and the final year to which the particular records pertain. The records shall be subject to examination and audit by ABAG, the Conservancy and the Bureau of State Audits during the retention periods.

If Grantee retains any contractors to accomplish any of the work of this Agreement, the Grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

ABAG or the Conservancy may disallow all or part of the cost of any activity or action that either determines to be not in compliance with the requirements of this Agreement.

XIV. COMPUTER SOFTWARE

Grantee certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this Agreement, funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

XV. NONDISCRIMINATION

During the performance of this agreement, Grantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40) or sexual orientation (Government Code section 12940). Grantee shall not unlawfully deny a request for, or take unlawful action against, any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). Grantee shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Consistent with Government Code section 11135, Grantee shall ensure that no one, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, is unlawfully denied full and equal access to the benefits of, or is unlawfully subjected to discrimination under, the Project funded under this Agreement.

Pursuant to Government Code section 12990, Grantee shall comply with the provisions of the Fair Employment and Housing Act (Government 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 by this reference.

This nondiscrimination clause shall be included in all contracts and subcontracts for the Project.

XVI. PREVAILING WAGE

Work done under this Agreement may be subject to the prevailing wage and other related requirements of the California Labor Code (see Labor Code sections 1720 et seq.). Grantee shall pay prevailing wage to all persons employed in the performance of any part of the Project and otherwise comply with all associated requirements and obligations, if required by law to do so.

XVII. ASSIGNMENT

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

XVIII. TIMELINESS

Time is of the essence in this Agreement.

XIX. ABAG'S DESIGNEE

Toshi Shepard-Oha is ABAG's Project Manager who shall have authority to act on behalf of ABAG with respect to this Agreement.

XX. 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.

XXI. LOCUS

This Agreement is deemed to be entered into in the City and County of San Francisco.

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

Therese W. McMillan, Metropolitan
Transportation Executive Director
Acting pursuant to the Contract for Services
dated May 30, 2017

Jim Schutz
City Manager
City of San Rafael

EXHIBIT A

Project Location

EXHIBIT B

Project Description

This project involves the construction of approximately 0.04 mile of Class IV Bikeways and sidewalk improvements along Grand Avenue between 2nd Street and 3rd Street in the City of San Rafael. These facilities will be a part of the Bay Trail spine when completed.

EXHIBIT C-1

Notice of Nonresponsibility

(version 1 – use if property site has a street address)

EXHIBIT C-2

Notice of Nonresponsibility

(version 2 – use if property site does not have a street address)

EXHIBIT D
Insurance Requirements

Throughout the term of this agreement, the Grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the Grantee or its agents, representatives, employees, or contractors associated with the project undertaken pursuant to this agreement. As an alternative, with the written approval of ABAG and the Executive Officer of the Conservancy, the Grantee may satisfy the coverage required by this section in whole or in part through: (a) its contractor's procurement and maintenance of insurance for work under this contract, if the coverage otherwise fully satisfies the requirements of this section; or (b) the Grantee's participation in a "risk management" plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section. Any required errors and omissions liability insurance shall be maintained from the effective date through two calendar years after the completion date. The Grantee shall maintain all other required insurance from the effective date through the completion date.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - a. Insurance Services Office ("ISO") Commercial General Liability coverage, occurrence basis (Form CG 0001) or comparable.
 - b. Automobile Liability coverage: ISO Form Number CA 0001, Code 1 (any auto).
 - c. Workers' Compensation insurance as required by the Labor Code of the State of California.

If facilities or structures are to be constructed and if they will be designed by a professional architect or engineer and constructed by a licensed contractor, then the coverage should also include:

- d. Course-of-Construction (also known as "Builder's Risk") insurance covering all risks of loss. (Any proceeds of loss payable under this coverage shall be used to replace, rebuild or repair the damaged portions of the facilities and structures constructed under this agreement.)
 - e. Property Insurance covering the loss, damage, or destruction of the facilities or structures constructed under this agreement against fire and extended coverage perils. (Any proceeds of loss payable under this coverage shall be used to replace, rebuild or repair the damaged portions of the facilities and structures constructed under this agreement.)
2. Minimum Limits of Insurance. The Grantee shall maintain coverage limits no less than:
 - a. General Liability:
(Including operations, products and completed operations, as applicable) \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this

agreement or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

c. Course of Construction: Completed value of the project with no coinsurance penalty provisions.

d. Property Insurance: Ninety percent of full replacement cost of the facilities or structures.

3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG and the Conservancy.

4. Required Provisions.

a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to ABAG and the Conservancy; or in the event of cancellation of coverage due to nonpayment, after ten days prior written notice to ABAG and the Conservancy. The project grantee shall notify ABAG and the Conservancy within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses or is cancelled, the grantee shall provide ABAG and the Conservancy with evidence of renewal or replacement of the policy.

b. Grantee shall obtain from each of its insurers a waiver of any right of subrogation which such insurer may otherwise acquire against ABAG or the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance.

c. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

i. ABAG and the State of California, their officers, agents and employees are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the Grantee including materials, parts or equipment furnished in connection with such work or operations.

ii. For any claims related to this agreement, the Grantee's insurance coverage shall be primary insurance as respects ABAG and the State of California, their officers, agents and employees.

iii. The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by the project agreement.

5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. Verification of Coverage. The Grantee shall furnish ABAG and the Conservancy with original certificates, on an ACORD form, and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG and the Conservancy before work commences. ABAG and/or the Conservancy may, at any time, require complete, certified copies of all required insurance policies, including endorsements affecting the coverage.
7. Contractors. The Grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, Grantee shall also require each professional contractor to provide and maintain Errors and Omissions Liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project with a minimum limit of liability of \$1,000,000.
8. Premiums and Assessments. ABAG and the Conservancy are not responsible for premiums and assessments on any insurance policy.