



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Fred Kelley
Director, Oakland
Department of
Transportation

SUBJECT: SUPPLEMENTAL - Funding and
Reimbursement Agreements for
TOWN Projects

DATE: November 8, 2022

City Administrator Approval 

Date: Nov 8, 2022

RECOMMENDATION

Staff Recommends That City Council

1. **Adopt a Resolution Authorizing The City Administrator To:**
 - 1) **Accept And Appropriate Transit And Intercity Capital Rail Program (TIRCP) Grant Funds In The Amount Of Ten Million Seven Hundred Thirty-Two Thousand Dollars (\$10,732,000) To Implement The Oakland Waterfront Mobility Hub, Administered By The California State Transportation Agency (CalSTA); And**
 - 2) **Accept And Appropriate Community Project Funding/Congressionally Directed Spending (CPFCDs) Grant Funds In The Amount Of Two Million Dollars (\$2,000,000) To Implement The 7th Street Connection Project, Administered By The Federal Highway Administration (FHWA); And**
 - 3) **Amend Resolution No. 89039 C.M.S., Which Accepted And Appropriated United State Department Of Transportation Rebuilding American Infrastructure With Sustainability And Equity (RAISE) Grant Program Funds Totalling Fourteen Million Five Hundred And Seven Thousand Seventy-Five Dollars (\$14,507,075), To Appropriate The RAISE Funds To The Correct Fund Account; And**
 - 4) **Accept And Appropriate Measure BB Funds From The Alameda County Transportation Commission (ACTC) In The Amount Of Ten Million, Two Hundred Thousand Dollars (\$10,200,000), To Implement Improvements On Broadway As Match To The RAISE Grant, Pending Final Approval From ACTC; And**
 - 5) **Adopt Appropriate California Environmental Quality Act (CEQA) Findings; And**
2. **Adopt a Resolution to Authorize The City Administrator To:**
 - 1) **Execute A Memorandum Of Understanding Between The City And The Port To Facilitate The Development Of Transportation Projects Both Within And Outside The Port Area; And**

- 2) **Accept And Appropriate California State Transportation Agency (CalSTA) Grant Funds Totaling Up To Two Hundred Fifty Nine Million Five Hundred Thousand Dollars (\$259,500,000); And**
 - 3) **Take All Steps Necessary To Apply For And Receive Additional Funds Necessary To Complete The Projects As Set Forth In The MOU; And**
 - 4) **Adopting Appropriate California Environmental Quality Act (CEQA) Findings**
3. **Adopt A Resolution Authorizing The City Administrator To Negotiate And Execute An Agreement With Union Pacific Railroad Company (UPRR), In Accordance With California Public Utility Commission (CPUC) Regulations, For The Review Of The Embarcadero Corridor Safety Improvements, Upon Execution Of A Signed Memorandum Of Understanding Between The City And The Port Of Oakland To Facilitate The Development Of Transportation Projects Both Within And Outside The Port Area And An Executed Supplemental Agreement That Includes Costs To Reimburse UPRR Between The Port Of Oakland And The California State Transportation Agency (CalSTA) That Includes Costs To Reimburse UPRR And Adopting Appropriate California Environmental Quality Act (CEQA) Findings.**

REASON FOR SUPPLEMENTAL

The Staff Report dated October 27, 2022, referred to a Memorandum of Understanding (MOU) between the City and Port of Oakland. The MOU is attached as **Attachment A**.

ACTION REQUESTED OF THE CITY COUNCIL

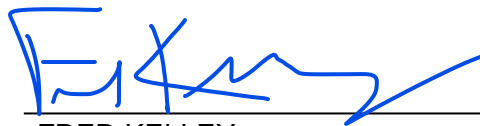
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For questions regarding this report, please contact Nicole Ferrara, Major Projects Division Manager, at 510-238-4720.

Respectfully submitted,



FRED KELLEY
Director, Department of Transportation

Attachments (1):

Attachment A: Memorandum of Understanding Between the City of Oakland and the Port of Oakland Regarding the Implementation of the California State Transportation Agency Baseline Agreement and Other Future Grants

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE PORT OF OAKLAND REGARDING THE IMPLEMENTATION OF THE CALIFORNIA STATE TRANSPORTATION AGENCY BASELINE AGREEMENT AND OTHER FUTURE GRANTS

This Memorandum of Understanding Between the City of Oakland and the Port of Oakland Regarding the Implementation of the California State Transportation Agency Baseline Agreement and Other Future Grants (the “**MOU**”) is entered into as of _____, 2022 (the “**Effective Date**”) by and between the City of Oakland, a California municipal corporation acting by and through its City Council (the “**City**”) and the Port of Oakland, a California municipal corporation, acting by and through its Board of Port Commissioners (the “**Port**”). City and Port may each be referred to herein as a “**Party**” or collectively as the “**Parties**”.

1. OVERVIEW

1.1 City. The City is a municipal corporation, enabled by authority vested through the Charter of the City of Oakland (“**Charter**”).

1.2 Port. The Port is a department of the City, and pursuant to Article VII of the Charter, the Board of Port Commissioners (“**Board**”) is vested with the authority to control and manage certain lands within the City (referred to as the “**Port Area**”) in accordance with the Charter.

1.3 CalSTA Grant. The 2021 Budget Act (A.B. 128; Statutes of 2021, Ch. 21) (the “**Act**”) allocated up to \$279,500,000 to the California State Transportation Agency (“**CalSTA**”) to grant to the Port for improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people (the “**CalSTA Grant**”).

1.4 Future Grants. The City and Port are pursuing various other grant opportunities that may provide funding for the Projects described and defined below (collectively, the “**Future Grants**”).

1.5 Purpose. In anticipation of the various Projects described and defined below, the Parties desire to clarify their respective roles and responsibilities in taking all actions to facilitate the Projects, including pursuing additional funding.

1.6 CalSTA Agreement. The Port previously entered into that certain Baseline Agreement with CalSTA dated July 21, 2022, attached hereto as Exhibit A and incorporated herein by reference, regarding the distribution and use of the CalSTA Grant (the “**CalSTA Agreement**”). Pursuant to the CalSTA Agreement, each project funded by the CalSTA Grant must be authorized by a Port Board-approved project-specific agreement executed between the Port and CalSTA that includes project-specific information, outcomes, and deliverables (each a “**Project Supplement**”). Additionally, within one year of execution of the first Project Supplement, the CalSTA Agreement requires that the Port submit a plan identifying project components and their associated funding (“**CalSTA Overall Funding Plan**”) and provides that the CalSTA Overall Funding Plan may be revised from time to time as additional Project Supplements are approved.

1.7 Alameda CTC Project Supplement. The Port is currently discussing a potential Project Supplement with CalSTA, subject to approval by CalSTA and the Port’s Board, for \$20 million to be used for efforts by the Alameda County Transportation Commission for certain actions related to right of way certification for the 7th Street Grade Separation East project.

1.8 City Projects. The Port is also currently discussing a potential Project Supplement with CalSTA, subject to approval by CalSTA and the Port’s Board, for approximately \$18.7 million to be used for efforts by the City for design of the following project elements related to facilitating enhanced freight and passenger access in and around the seaport and waterfront and promoting the efficient and safe movement of goods and people: (1) West Oakland & Jack London Square Rail Safety Enhancement Project (Design); (2) Designs for Reconstructing Embarcadero West between Clay Street to Market Street; (3) Designs for the Pedestrian and Bicycle Railroad Overcrossing; (4) Designs for the Vehicular Railroad Overcrossing; (5) Designs for the Permitted Heavy Weight Vehicle Route and Emergency Vehicle Access; (6) Designs for the Adeline Street Corridor; (7) Traffic Signal Modification Designs (Brush/17th, Brush/18th, Castro/5th, MLK/17th); (8) Designs for the Market Street Corridor; (9) Designs for the 3rd Street Corridor; (10) Designs for the Martin Luther King, Jr. Way Corridor; (11) Designs for the 2nd Street Transit Hub & Bike Lane Gap Closure; (12) Designs for the 7th Street Corridor; (13) Designs for the Broadway Transit Corridor; (14) Designs for the Washington Street Corridor; (15) Designs for the 8th Street Corridor; and (16) Designs for Parking and Traffic Management (these sixteen project elements are collectively defined as “**Projects**” and individually as a “**Project**”).

1.9 Use of CalSTA Grant for City-Performed Projects. The City and Port desire, consistent with the requirements of the CalSTA Agreement and the Act, to use the CalSTA Grant to pay for various costs related to the Projects, many of which may be designed and delivered by the City (“**City-Performed Projects**”). If and once CalSTA approves the associated Project Supplements for City-Performed Projects, the Parties shall adequately memorialize their intent for the City to perform under such Project Supplements and to be reimbursed accordingly.

1.10 Cooperation. The Parties further agree to cooperate and collaborate to advance the Projects and to use the CalSTA Grant to leverage Future Grants as additional sources of infrastructure funding for the Projects. Additionally, the Parties agree to cooperate and collaborate to develop the CalSTA Overall Funding Plan, and any amendments thereto, all as permitted under the CalSTA Agreement and Project Supplements.

2. PROJECTS UNDER CALSTA GRANT

2.1 CalSTA Overall Funding Plan and City-Performed Project Supplements.

a. CalSTA Overall Funding Plan. Prior to submitting the CalSTA Overall Funding Plan, the Port shall collaborate with the City on the development of the CalSTA Overall Funding Plan. If and once the Overall Funding Plan is approved by the Port and CalSTA and prior to making any amendments to the CalSTA Overall Funding Plan, the Port shall provide at least

sixty (60) days' notice to the City and collaborate and coordinate with the City with respect to any potential amendments to the CalSTA Overall Funding Plan.

b. City-Performed Project Supplements. If and once CalSTA and the Port have approved Project Supplements for City-Performed Projects as provided in the CalSTA Agreement and Overall Funding Plan, the Port shall not amend or terminate such Project Supplements without the prior written approval of the City. This includes Project Supplements for City-Performed Projects used to leverage funding for Future Grants.

2.2 Transfer of CalSTA Grant Funds.

a. The Parties agree that, if allowed by CalSTA, the CalSTA Grant funds authorized by each Project Supplement shall be received by the City, or the City's designated agent, directly from CalSTA. The City shall be responsible for requesting such CalSTA Grant funds in accordance with the requirements of the Project Supplement and CalSTA Agreement without any action or approval from the Port.

b. If City is not permitted to receive the CalSTA Grant funds directly from CalSTA, the Port shall obtain such funds on behalf of the City subject to the procedure set forth herein.

(1) Whenever the City desires to receive CalSTA Grant funds for a use related to a Project authorized by a Project Supplement, the City shall submit a written request to the Port for such funds, on a form mutually agreed to by the Parties. Such request shall be deemed complete only if accompanied by all such information, documentation, and forms as is required by the Project Supplement and CalSTA Agreement for CalSTA Grant funds to be disbursed, including supporting documentation for costs incurred, which pending approval by CalSTA may include direct and indirect City staff costs (such as copies of invoices and project labor cost reports). Any required forms shall be fully completed by the City, except for any information that is explicitly required to be completed by Port. Within ten (10) business days from receipt of a valid written request from the City, the Port shall submit a Progress Payment Invoice for CalSTA Grant funds in accordance with the procedures established by the CalSTA Agreement and Project Supplements.

(2) Port shall have the right, but not the obligation, to review any request for CalSTA Grant funds provided by City for accuracy and completeness prior to Port's submission of a Progress Payment Invoice. Port may request any additional information from City that is required by the Project Supplement or CalSTA Agreement.

(3) Upon Port's receipt of any disbursed CalSTA Grant funds from CalSTA for a Project, Port shall transfer such funds to City within five (5) business days.

(4) The City may submit requests for funds to the Port for a Project not more frequently than monthly, and subject to any other requirements contained in the Project Supplement.

(5) All requests for reimbursement shall be consistent with and subject to the CalSTA Agreement and any applicable Project Supplement.

2.3 Transferred Obligations. The City agrees to, at its sole cost and expense, assume complete and full responsibility for all duties, obligations, and responsibilities of the Port under each Project Supplement for a City-Performed Project. Such duties, obligations, and responsibilities of each party shall include, but not be limited to, performance of the activity authorized by the Project Supplement, implementation of the required contract provisions, required reporting, audit compliance, and completion of any necessary environmental review, as well as all other applicable requirements of the CalSTA Agreement and the Act. The City and Port agree to coordinate and cooperate with each other to assure compliance with all such requirements.

3. PROJECTS UNDER FUTURE GRANTS

3.1 For any Projects to be funded by Future Grants that require transfer of funds or transfer of obligations between the Parties, the Parties shall supplement this MOU as necessary to effectuate such cooperation and ensure that the funds from and responsibilities under the Future Grants are appropriately allocated between the Parties.

4. REQUIRED APPROVALS

4.1 Approvals. The Port’s Executive Director and the City Administrator, or their designees, are authorized to prepare and execute all forms, agreements, and documents necessary to implement this MOU, without any further action required by the City Council or the Port’s Board of Commissioners, unless otherwise required by the CalSTA Agreement.

5. APPLICABLE LAW

5.1 City and Port shall at all times comply with the requirements of the Project Supplements, CalSTA Agreement, the Act, any Future Grants, and any other applicable state, federal or local, law, regulation or rule in the performance of this MOU (collectively, the “**Applicable Laws**”), including the completion of each Project. In the event of any conflict between this MOU and the Applicable Laws, the requirements of the Applicable Laws shall control.

6. INDEMNIFICATION & HOLD HARMLESS

6.1 City Indemnification. City shall (with legal counsel chosen and retained by the Port) indemnify, defend, waive claims against, and hold harmless Port and the Port’s officers, commissioners, officials, employees, representatives, and agents from and against any and all liability, loss, damage, judgments, claims, expenses, and costs (including without limitation, reasonable attorney’s fees and costs and fees of litigation) (collectively, “**Port Liability**”) of every kind and nature arising out of or in connection with any and all third-party claims, challenges, litigations and subpoenas related to, caused by, or arising from: 1) City’s performance of this MOU; 2) City’s use of the CalSTA Grant for Projects; 3) City’s construction of the Projects; 4) City’s failure to comply with the requirements of this MOU, the CalSTA Agreement, a Project Supplement, or Applicable Law; or 5) the review, determination, approval, or execution of this MOU by the Parties. Notwithstanding the foregoing, the City’s obligations under this section shall not include Port Liability caused by the sole gross negligence or willful misconduct of the Port, its officers, officials, employees, and agents.

6.2 Port Indemnification for Failure to Transfer Funds. Port shall (with legal counsel chosen and retained by the City) indemnify, defend, waive claims against, and hold harmless City and the City’s officers, City Council, officials, employees, representatives, and agents from and against any and all liability, loss, damage, judgments, claims, expenses, and costs (including without limitation, reasonable attorney’s fees and costs and fees of litigation) (collectively, “**City Liability**”) of every kind and nature arising out of or in connection with any and all third-party claims, challenges, litigations and subpoenas related to, caused by, or arising from the Port’s failure to timely transfer of funds received from CalSTA to the City in accordance with Section 2.2 (Transfer of Funds), provided that such funds are not transferred directly from CalSTA to the City. Notwithstanding the foregoing, the City’s obligations under this section shall not include City Liability caused by the sole gross negligence or willful misconduct of the City, its officers, officials, employees, and agents.

6.3 Assumed Indemnification. If CalSTA or the California Department of Transportation (“**Caltrans**”) require sub-recipients of the CalSTA Grant to indemnify CalSTA, Caltrans, or any other entity, the City agrees to accept such indemnification obligations related to any Project.

7. TERM & TERMINATION

7.1 Term. This term of this MOU (the “**Term**”) shall commence on the Effective Date and shall terminate upon the sooner of the completion of the Projects, termination of the CalSTA Agreement, or expenditure of all CalSTA Grant funds as set forth herein.

7.2 Termination. This MOU may be terminated by mutual written agreement of the Parties, or by either Party upon a breach of the terms and conditions of this MOU, the CalSTA Agreement, or any other Applicable Law by the other Party. The non-breaching Party shall notify the breaching Party of the breach in writing. If such breach is not corrected within thirty (30) days, or if thirty (30) days is not sufficient time to correct the breach, within a reasonable amount of time provided that the breaching party is diligently working to correct the breach, then the non-breaching Party may terminate this MOU upon written notice to the breaching Party.

8. GENERAL PROVISIONS

8.1 Notices. Formal written notices, demands, and communications between City and Port shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service to the offices of City and Port indicated below, or such other location as either Party may identify in writing.

City: City of Oakland
City Administrator
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612

with copies to City of Oakland
 City Attorney
 1 Frank Ogawa Plaza, 6th Floor
 Oakland, CA 94612

City of Oakland
Major Projects Division Manager
Department of Transportation
250 Frank H Ogawa Plaza
Oakland, CA 94612

Port: Port of Oakland
 Executive Director
 530 Water Street
 Oakland, CA 94607

with copies to Port of Oakland
 Port Attorney
 530 Water Street
 Oakland, CA 94607

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit.

8.2 Authorization. Unless otherwise expressly provided for herein, any approval, consent, or action required to be given or taken by the City or Port under this MOU may be given or taken by the City Administrator or Port Executive Director, or designee, without further approval from the City Council or Board of Portion commissioners.

8.3 Further Actions and Instruments. Each Party to this MOU shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this MOU and the CalSTA Agreement, subject to satisfaction of the conditions of this MOU. Upon the request of any Party and to the extent permitted by law, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this MOU to carry out the intent and to fulfill the provisions of this MOU or to evidence or consummate the transactions contemplated by this MOU.

8.4 Cooperation in the Event of Legal Challenge. Each Party shall reasonably cooperate with the other in responding to any third party lawsuits or other challenges to this MOU, consistent with the provisions of Section 6 (Indemnification & Hold Harmless).

8.5 **Assignment.** Neither Party may assign, sell, or transfer in whole or in part its rights, duties and obligations under this MOU, to any person or entity at any time during the Term of this MOU without the prior consent of the other Party.

8.6 **Waiver.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement. No waiver of any term shall be valid unless provided in writing by the waiving party.

8.7 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties. The City Administrator and Port Executive Director shall be authorized to execute amendments to this MOU on behalf of the City and Port, respectively, without further approval from the City Council or Port Board of Commissioners unless such amendment will have the effect of creating additional financial commitment for either Party.

8.8 **Independent Parties.** Neither City nor Port is acting as the agent of the other in any respect hereunder, and City and Port are independent entities with respect to the terms and conditions of this MOU. Nothing contained in this MOU or in any document executed in connection with this MOU shall be construed as making City and Port joint venturers or partners.

8.9 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

8.10 **Third Party Beneficiaries.** Except as otherwise provided herein, City and Port hereby renounce the existence of any third party beneficiary to this MOU and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

IN WITNESS WHEREOF, the Parties hereto have executed this MEMORANDUM OF UNDERSTANDING as the Effective Date.

CITY OF OAKLAND

City of Oakland, a municipal corporation,
acting by and through its City Council

Date: _____

Ed Reiskin
City Administrator

Approved as to form:

Date: _____

Barbara J. Parker
City Attorney
City Resolution No. ****

PORT OF OAKLAND

City of Oakland, a municipal corporation,
acting by and through its Board of Port
Commissioners

Date: _____

Danny Wan
Executive Director

Approved as to form:

Mary C. Richardson
Port Attorney
Port Resolution No. ****
PA #: _____

Exhibit A
Baseline Agreement with CalSTA dated July 21, 2022

California State Transportation Agency

Port of Oakland

Baseline Agreement

July 21, 2022

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APPENDIX A Required Contract Provisions

**STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY**

Effective Date of this Agreement: Upon signatures by all Parties

Termination Date of this Agreement: June 30, 2027

Recipient: City of Oakland, a municipal corporation,
acting by and through its Board of Port
Commissioners ("Port of Oakland")

Present Funding Sources: Statutes of 2021, Ch. 21 Assembly Bill 128
Budget Act of 2021, FY 2021-22, Item 0521-102-
0001.

RECITALS

1. WHEREAS the 2021 Budget Act (A.B. 128) allocated up to \$279,500,000 to the California State Transportation Agency (CalSTA) for the Port of Oakland Truck, Rail and Neighborhood Safety Corridor Infrastructure to fund improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people.

2. WHEREAS the funds appropriated under the Port of Oakland Budget Item: (1) shall be available for encumbrance until June 30, 2024; (2) shall be available for liquidation until June 30, 2027; and (3) may be transferred to item 0521-002-0001 of the Act with the prior approval of the Department of Finance.

3. WHEREAS the Port of Oakland continues to invest in capital infrastructure and Intelligent Transportation System initiatives that promote the efficient and safe movement of goods and people.

4. WHEREAS CalSTA and the Port of Oakland share a commitment to the continued introduction of zero-emissions and sustainable transportation initiatives to reduce the local health and global climate change impacts of freight activities.

5. WHEREAS the Port of Oakland identified several infrastructure programs and projects to the California Legislature that will accelerate these initiatives and provide additional benefits to both residents and stakeholders including: (1) port drayage truck route and rail corridor safety improvements; (2) heavy-weight truck corridor improvements; (3) rail crossing safety and train-vehicles-pedestrian

separation improvements; and (4) right of way acquisition for rail safety improvements.

6. WHEREAS concurrent with the execution of this Baseline Agreement, CalSTA delegates to Caltrans CalSTA's rights and/or responsibilities under this Baseline Agreement and any Project Supplements, except for funding obligations, approval and execution of Project Supplements and any amendments thereto, approval of any Corrective Action Plan, and approval and execution of any amendments to this Baseline Agreement, as further described herein.

NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to this Baseline Agreement, entered into effective as of the signature by all Parties, and as may be amended from time to time is between the Port of Oakland and CalSTA.

1 DEFINITIONS

The terms defined in this Section 1 shall for all purposes of this Agreement have the meanings specified herein.

1.1 "Act" means Assembly Bill 128 (Stats. 2021, ch. 21).

1.2 "Agreement" means this Baseline Agreement and its attachments, together with each Project Supplement.

1.3 "Baseline Agreement" means this Baseline Agreement, inclusive of all attachments.

1.4 "CalSTA" means the California State Transportation Agency.

1.5 "Caltrans" means the California Department of Transportation.

1.6 "Corrective Action Plan" means the plan described in Section 2.2.2.1(c).

1.7 "Effective Date" means the date on which all Parties have executed this Baseline Agreement.

1.8 "Overall Funding Plan" means a plan that identifies the Projects, each Project's major components, and the committed funding program(s) or source(s) for each category of expenditure associated with each Project.

1.9 "Parties" means CalSTA and the Port of Oakland, with each referred to individually as a "Party".

1.10 “Port of Oakland” or “Port” means the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and is commonly referred to as the Port of Oakland.

1.11 “Port of Oakland Budget Item” means Item 0521-102-0001, which appropriated \$279.5 million to fund improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people at the Port of Oakland, which funds must be encumbered by June 30, 2024, and liquidated by June 30, 2027.

1.12 “Project” means each component identified generally in Section 2.1.3, and any additional components added by Project Supplements.

1.13 “Project Supplement” means a Project-specific agreement executed by the Port and CalSTA pursuant to this Baseline Agreement and shall include all Project-specific information required by CalSTA and shall include expected outcomes and deliverables.

1.14 “Project Supplement Termination” means the date of the earliest to occur of: full performance of the Port’s obligations under the Project Supplement; by mutual agreement of the Parties; or when otherwise terminated under this Agreement.

1.15 “Program” or “Port Improvement Program” means the aggregate Projects, such as studies, capital improvements, and other activities to support the purposes of the Port of Oakland Budget Item.

1.16 “Project Closeout Report” means the report the Port will send upon completion of all work within a Project Supplement, which shall include the following: (a) Scope of completed Project component as compared to its description in the Project Supplement; (b) description of Project outcomes and how they relate to the goals of the Program as set forth in this Agreement and Project Supplements, including any other descriptions required by the Project Supplement; (c) the final costs by component and fund type as compared to the Project Financial Plan; (d) the Project duration as compared to the Project Schedule.

1.17 “Project Financial Plan” means the plan that contains the budget for the Project’s work and identifies estimated expenditures by funding source for the work in a Project Supplement, provided that, for the purposes of this Agreement, CalSTA is only monitoring compliance for expenditures of State funds. Information regarding non-state funds may be reported generally, although with enough specificity regarding the source and amount of non-State funds for CalSTA to be reasonably satisfied that sufficient funds exist to complete the relevant Project.

1.18 “Progress Payment Invoice” means a signed invoice reflecting actual Project costs incurred and paid for by the Port consistent with the allocation and Scope of Work in the applicable Project Supplement.

1.19 “Project Schedule” means the schedule in each Project Supplement that includes major tasks and/or milestones and the anticipated start and end dates for each.

1.20 “Scope of Work” means a detailed description of the Project that itemizes the major tasks and their estimated costs, as well as includes each deliverable and the requirements for each deliverable within a Project Supplement.

1.21 “State” means the State of California, including its separate constitutional officers, agencies, and departments, and their officers and directors.

2 PROGRAM, PROJECT, AND ADMINISTRATION

2.1 Program, Project, and Project Management

2.1.1 Overall Funding Plan Submittal

Within one year of the signing of this Baseline Agreement by all Parties or the execution of any Project Supplement by all Parties, whichever is later or upon another timeline mutually agreed to by the Parties, the Port shall submit the Overall Funding Plan to Caltrans (with a copy to CalSTA) for Caltrans's approval, whose approval shall not be unreasonably withheld. The Overall Funding Plan may be revised or updated from time to time as Project Supplements are approved.

2.1.2 Project Supplement Funding and Administration

Each Project Supplement shall be funded by CalSTA in accordance with the Act, this Baseline Agreement, and the relevant Project Supplement. The Port and/or other agencies identified in a Project Supplement may administer any Project Supplement in accordance with the best management practices identified in similar grant programs administered by CalSTA or its constituent departments, boards, or commissions.

2.1.3 Program Components

The Program consists of the four components generally described below, which will be further detailed in their respective Project Supplements:

- 2.1.3.1 7th Street Grade Separation East. This Project is anticipated to realign and reconstruct the existing railroad

underpass and multi-use path along 7th Street between west of I-880 and Maritime Street in the City of Oakland, increase vertical and horizontal clearances for trucks to current standards (including seismic and geometric standards), improve the shared pedestrian/bicycle pathway, and provide efficient multimodal landside access and infrastructure improvements to promote existing and anticipated Port operations.

2.1.3.2 West Oakland & Jack London Square Rail Safety Enhancement Project. This Project would advance and substantially, if not fully, complete the engineering, cost-estimating, design work, project management, right of way acquisition, and/or construction associated with improvements to safety on the rail corridor mainline tracks accessing the Port of Oakland and the West Oakland/Jack London Square Districts of the City of Oakland. The improvements may include upgrading at-grade rail crossings, constructing physical barriers at or near crossings, separating grades, and designing and/or constructing capital improvements to reduce freight delays, enhance passenger access, and/or increase the overall efficiency of goods movement within the Oakland seaport area & waterfront.

2.1.3.3 Vehicular & Pedestrian Grade Separation Improvements. This Project would advance and substantially, if not fully, complete the engineering, cost-estimating, design work, project management, right of way acquisition, and/or construction associated with potential grade separation improvements for trucks, cars, pedestrians, and/or bicycles at one or more rail crossings providing access to the Oakland seaport area & waterfront and enhance passenger access.

2.1.3.4 Local Road, Intersection, and Congestion Management Improvements. This Project would advance and substantially, if not fully, complete the planning, engineering, cost-estimating, design work, project management, right of way acquisition, and/or construction associated with infrastructure improvements and programs to relieve congestion and reduce conflicts on local roadways that serve as major access routes for trucks, vehicles, pedestrians, and bicyclists accessing the Oakland seaport area & waterfront from the local highway and roadway network and nearby transit nodes.

The foregoing list of Projects is not intended to be exhaustive and may be augmented if there are costs savings or additional funding is allocated.

2.1.4 **Project Representatives**

All inquiries during the term of this Baseline Agreement and any applicable Project Supplements shall be directed to the project representatives identified below, as such representatives may be replaced with prior written notice to the other party:

State Project Representative:

California State Transportation Agency
Giles Giovinazzi
Senior Advisor
(916) 323-5400
giles.giovinazzi@calsta.ca.gov

Port of Oakland Project Representative:

Port of Oakland
Kristi McKenney
Chief Operating Officer
(510) 627-1178
kmckenney@portoakland.com

Caltrans Project Representative:

California Department of Transportation
Cathy McKeon
Chief, Office of State Programs, HQ
Caltrans Local Assistance
(916) 926-7882
cathy.mckeon@dot.ca.gov

2.2 **Project Supplements**

2.2.1 **General**

2.2.1.1 The Parties shall mutually execute the Project Supplements prior to commencement of work. The Port shall execute each Project Supplement after obtaining a resolution duly adopted by its Board of Port Commissioners that specifically authorizes execution of each Project Supplement.

2.2.1.2 A financial commitment of actual funds will only occur in each separate Project Supplement. No funds are obligated

or encumbered by the execution of this Baseline Agreement alone.

- 2.2.1.3 The Port further agrees to comply with all of the terms and conditions of this Baseline Agreement and all the agreed-upon special covenants and conditions set forth in the relevant Project Supplement as a condition to the release and payment of the funds encumbered for each deliverable identified in the particular Project Supplement's Scope of Work.
- 2.2.1.4 Each Project Supplement shall include a detailed Scope of Work, a Project Schedule, a Project Supplement Funding Plan for the relevant Project or portion of the Project, any revisions or updates to the Overall Funding Plan if affected, and Project-specific reporting requirements.
- 2.2.1.5 Each Project Supplement shall incorporate the terms and conditions of this Baseline Agreement by reference. Adoption and execution of a Project Supplement by the Port and CalSTA, incorporating the terms and conditions of this Baseline Agreement into the Project Supplement as though fully set forth therein, shall be sufficient to bind the Port to these terms and conditions when performing its responsibilities under the Project Supplement.
- 2.2.1.6 The estimated cost and scope of a particular Project will be as described in the applicable Project Supplement and shall be consistent with the Overall Funding Plan. CalSTA shall not participate in any funding for a particular Project beyond those amounts actually encumbered by CalSTA as set forth in the applicable Project Supplement.
- 2.2.1.7 The expiration date of any Project Supplement may be extended to the extent necessary to allow for completion of deliverables and payment of funds consistent with this Agreement, provided, however, that no Project Supplement Termination shall be extended past the liquidation deadline in the Port of Oakland Budget Item (i.e., June 30, 2027). Notwithstanding anything in this Agreement, in no event shall funds be paid under this Agreement after the liquidation deadline in the Port of Oakland Budget Item.

2.2.2 Project and Program Overrun

2.2.2.1 If the Port, Caltrans, or CalSTA determines, at any time during the performance of the Program, that the Overall Funding Plan allowed under the Port of Oakland Budget Item, or the budget for any individual Project Supplement, may be exceeded, the Port shall take the following steps:

a. Notify the designated Caltrans and CalSTA representatives of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which the Port will institute to bring the Overall Funding Plan or Project Financial Plan, as applicable, into balance; and

b. Identify the source of additional Port or other third-party funds that can be made available to complete the Project or Projects, as applicable, underway. The Port agrees that the allocation of additional funds to the Program is subject to appropriation and allocation by the State Legislature. The Port understands and agrees that CalSTA cannot guarantee additional funding.

c. Corrective Action Plan. If the costs savings are insufficient or additional funds are not appropriated and allocated for the Program and/or any particular Project, the Port shall provide CalSTA (with a copy to Caltrans) a corrective action plan for the Program and/or a Project ("Corrective Action Plan") for CalSTA's reasonable approval. The Corrective Action Plan shall include, at minimum, a new budget, and any necessary revisions to the Overall Funding Plan and/or Project scope so it can be completed within that budget, and additional major tasks/milestones to measure progress.

2.2.3 Cost Savings and Project Completion

2.2.3.1 The Port is encouraged to evaluate design and construction alternatives that would mitigate the costs of delivering the Projects. The Port shall take all commercially reasonable steps that are necessary in accordance with best management practices to complete each Project. In determining cost savings, the Port and Caltrans shall take into account all avoided costs, including avoided design, material, equipment, labor, construction, testing, acceptance and

overhead costs, and avoided costs due to time savings, and all the savings in financing costs associated with such avoided costs.

2.2.3.2 If the Port and Caltrans approve an alternative resulting in reduction of Project costs or there are other Program savings or windfalls, the Parties may revise the Overall Funding Plan to show the affected Project Supplement(s). Any budget surplus may be directed to another Project or additional Projects upon written agreement by the Port and CalSTA, and the Overall Funding Plan shall be updated accordingly.

2.2.3.3 Each Project Supplement shall identify any additional funding sources and amounts in the Project Financial Plan.

2.2.4 **Scope of Work**

2.2.4.1 The Port shall be responsible for complete performance of the work described in each Project Supplement. All work shall be accomplished in accordance with the applicable provisions of the Act, the Port of Oakland Budget Item, any relevant annual State budget acts, and applicable state and federal law.

2.2.4.2 The Port acknowledges and agrees that State is not responsible for the subsequent employment, operation, repair, and maintenance of any Project funded by this Agreement. All work funded by this Agreement shall facilitate the purposes of the Program, including enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people. The Port shall be solely responsible for complying with the applicable funding and use restrictions established by (a) the Act and Port of Oakland Budget Item, (b) the State Treasurer, (c) the Internal Revenue Service, (d) the applicable Project Supplement, and (e) this Baseline Agreement.

2.2.4.3 The Port acknowledges and agrees that the Port is responsible for complying with all reporting requirements established by the Act and Port of Oakland Budget Item according to the Agreement.

2.3 Allowable Costs and Payments

2.3.1 Allowable Costs and Progress Payment Invoice

2.3.1.1 At intervals mutually agreed upon by the Port and Caltrans, but not more frequently than monthly, the Port will prepare and submit to Caltrans a Progress Payment Invoice. If no costs were incurred during any given quarter, the Port is exempt from submitting a signed Progress Payment Invoice.

2.3.1.2 With approval of each Progress Payment Invoice by Caltrans, CalSTA shall pay to the Port (or other entity designated in the Project Supplement) those uncontested allowable costs under such Progress Payment Invoice or final Progress Payment Invoice.

2.3.1.3 Neither Caltrans nor CalSTA shall be required to authorize the reimbursement of more funds, cumulatively, of any fiscal year greater than the sums identified and included in the Overall Funding Plan. Caltrans, in consultation with CalSTA, shall hold the right to determine reimbursement availability based on an approved expenditure plan and actual funding capacity. Each invoice will report the total of Project expenditures (including those of the Port and third parties) and will specify the Project Supplement and percentage of CalSTA reimbursement requested.

2.3.2 Final Invoice

Within one hundred and eighty (180) days after the Project Supplement Termination, the Port shall submit to CalSTA and Caltrans a Project Closeout Report and the final Progress Payment Invoice for reimbursement of allowable Project costs. The Port expressly waives and releases any and all rights to allowable reimbursements from State pursuant to this Agreement for costs incurred after Project Supplement Termination and for costs invoiced to the Port for payment after that one hundred and eightieth (180th) day following the Project Supplement Termination. No funds may be paid under this Agreement after the liquidation deadline in the Port of Oakland Budget Item.

3 GENERAL PROVISIONS

3.1 Other Reimbursable Project Expenditures

3.1.1 Project Labor Agreement

3.1.1.1 Unless otherwise precluded by law and to the extent any Project work is covered under a project labor agreement, such as the Port's Maritime and Aviation Project Labor Agreement (MAPLA), reimbursable expenditures may include costs necessarily incurred as a result of the terms of the project labor agreement in effect at the time the work is performed. For example, payment of applicable wages and benefits under a craft Master Labor Agreement and payment into the MAPLA's Social Justice Labor Management Cooperation Trust Fund are eligible expenses.

3.1.2 Owner Controlled Insurance Program

3.1.2.1 Unless otherwise precluded by law and to the extent any Project components are covered by the Port's Owner Controlled Insurance Program (OCIP), reimbursable expenditures may include costs of OCIP, including actual amounts of premiums attributable to work for a Project and detailed in the Project Financial Plan.

3.2 Audits and Reports

3.2.1 Cost Principles

3.2.1.1 The Port agrees to comply with Title 2 Code of Federal Regulations Part 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards, to the fullest extent for determining the eligibility of reimbursable costs.

3.2.1.2 The Port agrees, and will assure that, its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200, to the fullest extent for determining the eligibility of reimbursable costs.

- 3.2.1.3 Any Project costs for which the Port has received payment that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by the Port to CalSTA or, if possible, reallocation. For reallocation, CalSTA in its sole discretion but in consultation with Port and Caltrans, will determine if reallocation is possible and if so, how to reallocate the amount of such costs to other Project work to be performed. If no Project work remains to provide for reallocation, the Port shall reimburse the amount of unallowable costs to CalSTA within ninety (90) days of the final determination of the unallowable costs.
- 3.2.1.4 Should the Port fail to reimburse moneys finally determined to be due to CalSTA under this Agreement (after all applicable opportunities provided by Section 3.3.3 (Termination by CalSTA) have been exhausted) within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, CalSTA is authorized to intercept and withhold future payments due the Port from State or any third-party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller, and the California Transportation Commission.
- 3.2.1.5 The State may terminate a Project Supplement if a final audit under this section determines that there has been a violation of any State or federal law or policy by the Port or any sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement during performance under this Agreement. If the Agreement or any project supplement, as applicable, is terminated under this section, the Port may be required to fully or partially repay funds no later than 90 days after CalSTA gives notice of the final determination.
- 3.2.1.6 To the extent that a finding of an unallowable cost or a violation of any State or federal law or policy by the Port or any sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement during performance under this Agreement is curable, as determined by CalSTA in its sole discretion but in consultation with Port and Caltrans, CalSTA will follow the termination provisions of Section 3.3.3 (Termination by CalSTA).

3.2.2 Record Retention

- 3.2.2.1 The Port agrees, and will assure that, its sub-recipients, contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of the Port, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- 3.2.2.2 All accounting records and other supporting papers of the Port, its contractors and subcontractors connected with Program and Project performance under this Agreement and each Project Supplement shall be maintained for a minimum of three (3) years from the date of final payment to the Port under a Project Supplement and shall be held open to inspection, copying, and audit by the California State Auditor, any other relevant auditor for the State of California (e.g., Caltrans' Independent Office of Audits and Investigations), and, to the extent applicable or appropriate, auditors representing the federal government. Copies thereof will be furnished by the Port, its contractors, and subcontractors upon receipt of any request made by State or its agents.
- 3.2.2.3 In conducting an audit of the costs and match credits claimed under this Agreement, CalSTA will rely, to the maximum extent allowable, on any prior audit of the Port pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the Port's external and internal auditors may be relied upon and used by State when planning and conducting additional audits.
- 3.2.2.4 For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the Port's contracts with third parties pursuant to Government Code section 8546.7, the Port, its contractors and subcontractors, and State, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the

performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such Agreement and Project Supplement materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to the Port under any Project Supplement. CalSTA, the California State Auditor, or any duly authorized representative of the State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and the Port shall furnish copies thereof if requested.

3.2.3 Reporting Requirements

3.2.3.1 Reporting requirements of the Port to Caltrans will include whether reported implementation activities are within the scope of the Project Supplement and in compliance with all applicable State and federal laws, regulations, and administrative requirements.

3.2.3.2 Progress Reporting by the Port to Caltrans shall be made no more frequently than quarterly and no less frequently than semi-annually at the discretion of Caltrans and shall include in general terms the following information for each Project Supplement:

a. Activities and progress made towards implementation of the Project during the reporting period and activities anticipated to take place in the next reporting period;

b. Identification of whether the Project Schedule, deliverables, and Scope of Work is proceeding on schedule and within budget;

c. Identification of changes to the Project Financial Plan, milestone schedule, or deliverables completion date; and

d. Identification of any actual or anticipated changes or delays in the Project Schedule, deliverables, or Scope of Work, such as increased costs or other difficulties for either the Project or other State-funded projects impacted by the Scope of Work and the efforts or activities being undertaken to minimize impacts to schedule, cost, or deliverables.

3.3 Special Requirements

3.3.1 Environmental Responsibilities

3.3.1.1 The Port shall conform to any and all permit and mitigation duties associated with Project as well as all environmental obligations established by law or regulation at the time a Project Supplement is signed, as applicable, at the expense of the Port and/or the responsible party and without any further financial contributions or obligations on the part of State unless a separate Project Supplement expressly provides funding for the specific purpose of hazardous materials remediation.

3.3.2 Port Resolution

3.3.2.1 The Port has executed this Baseline Agreement pursuant a duly authorized resolution of its Board of Port Commissioners. All Project Supplements will be executed by the Port only pursuant a duly authorized resolution of its Board of Port Commissioners.

3.3.3 Termination By CalSTA

3.3.3.1 In addition to the termination provision in Section 3.2.1.5, in the event of a material breach of any Project Supplement or this Baseline Agreement CalSTA reserves the right to terminate funding for any Project Supplement upon written notice to the Port. One example of a material breach would be the Port's failure to adhere to a Project Schedule and/or Project Financial Plan and subsequent failure to submit a Corrective Action Plan such that substantial performance of the Scope of Work is materially endangered.

3.3.3.2 No such termination under Section 3.2.1.5 or Section 3.3.3 (Termination by CalSTA) shall become effective if, within sixty (60) days after receipt of a written notice of termination, the Port either cures the default involved or, if not reasonably susceptible of cure within said sixty (60)-day period, the Port proceeds thereafter to complete the cure in a manner and timeline acceptable to CalSTA set in advance and in writing by CalSTA. Any such termination shall be accomplished by delivery to the Port of a notice of termination, which notice shall become effective not less than sixty (60) days after receipt, specifying the reason for the termination, the extent to

which funding of work under this Agreement is terminated and the date upon which such termination becomes effective, if beyond sixty (60) days after receipt. During the period before the effective termination date, the Port and State shall meet to attempt to resolve any dispute.

3.3.3.3 Following a fund encumbrance made pursuant to a Project Supplement, if the Port fails to expend monies within the time allowed specified in the Project Supplement, the Parties shall collaborate in good faith to revise the Project Supplement's Project Schedule or to reallocate such funds to other Project components or Project Supplements, in accordance with the Overall Funding Plan and the purposes of the Program.

3.3.3.4 In the event CalSTA terminates a Project Supplement for convenience and not for a default on the part of the Port as is contemplated in this section, the Port shall be reimbursed its authorized costs up to State's proportionate and maximum share of allowable Project costs incurred to the date of the Port's receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by the Port to effect such termination following receipt of that termination notice.

3.3.4 **Third Party Contracting and Other Provisions**

3.3.4.1 The Port and/or its subrecipients shall award construction contracts in accordance with, as applicable, the Port's Purchasing Authorities and Procedures (Port Ordinance No. 4576) or the City of Oakland's Municipal Code and Procurement Policies and Procedures, as each may be amended or superseded, for work to be performed under a Project Supplement, which includes competitively awarding such contracts as required.

3.3.4.2 The Port agrees to all of the following provisions with respect to this Agreement:

3.3.4.2.1. DRUG-FREE WORKPLACE REQUIREMENTS: The Port will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and the Port may be ineligible for award of any future State agreements if CalSTA determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3.3.4.2.2 The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: The Port needs to be aware of the following provisions regarding current or former state employees. If the Port has any questions on the status of any person rendering services or involved with the Agreement, CalSTA must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If the Port violates any provisions of above paragraphs, such action by the Port shall render this Agreement void. (Pub. Contract Code §10420.)

2. LABOR CODE/WORKERS' COMPENSATION: The Port needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and the Port affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: The Port assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
 4. CONTRACTOR NAME CHANGE: An amendment is required to change the Port's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
 5. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
 6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
- 3.3.4.3 Any subcontract entered into by the Port as a result of this Agreement shall contain the provisions of Section 3.2 (Audits and Reports) in the manner set forth in **Appendix A** (Required Contract Provisions).
- 3.3.4.4 The Port agrees to require its contractors and subrecipients to comply with all applicable federal and state laws.

3.3.5 Change in Funds and Terms/Amendments

This Baseline Agreement and the Project Supplements may be modified, altered, or revised only by a written amendment that is executed by the Parties in accordance with Section 4.4 (Amendment).

3.3.6 Public Purpose of Projects

3.3.6.1 Each Project funded under this Agreement shall be for a public purpose and not a private one.

3.3.6.2 Project right-of-way, Project facilities constructed or reconstructed on the Project site and/or Project property purchased by the Port (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain permanently dedicated, to the fullest extent permitted by law, to the described uses in the same proportion and scope, and to the same extent as mandated in the Project Supplement, unless CalSTA agrees otherwise in writing. The exceptions to this section are outlined below:

3.3.6.3 Except as otherwise set forth in this Section 3.3.6 (Public Purpose of Projects), State, or any other State-assignee public body acting on behalf of CalSTA, shall be entitled to a refund or credit (collectively, "the Credit"), at State's sole option, equivalent to the proportionate Project funding participation received by the Port from State if the Port, or a sub-recipient, as applicable, ceases to utilize Project for the original intended purposes. If federal funds (meaning only those federal funds received directly by the Port and not federal funds derived through or from the State) have contributed to the Project, the Port shall notify both State and the original federal source of those funds of the disposition of the Project assets or the intended use of those sale or transfer receipts.

3.3.7 Disputes

If the Port, Caltrans, and/or CalSTA are unable to reach agreement on any particular issue relating to the obligations contained in this Agreement, the Port, Caltrans, and CalSTA agree to promptly follow the issue resolution process as outlined below, with all timelines subject to amendment by mutual agreement by the Port and Caltrans (for Step 1) and the Parties (for Steps 2 and 3):

- 3.3.7.1 Step 1: Caltrans' project manager and the Port's Executive Director (or designee) may initiate the process of informal dispute resolution by providing the other party with written notice of a dispute. The written notice shall provide a clear statement of the dispute, and shall refer to the specific provisions of this Baseline Agreement or Project Supplement that pertain to the dispute. Caltrans' project manager and the Port's Executive Director (or designee) shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the parties shall create and sign a short description of the facts and the resolution that was agreed upon by the parties.
- 3.3.7.2 Step 2: If the dispute is not resolved by the fifth day from the written notice, CalSTA's Undersecretary (or designee) and the Port's Executive Director (or designee) shall meet and review the dispute within five days. CalSTA's Undersecretary (or designee) and the Port's Executive Director (or designee) shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.
- 3.3.7.3 Step 3: If the dispute is not resolved by the tenth day, CalSTA's Secretary (or designee) and the Port's Executive Director (or designee) shall meet and review the dispute within five days. CalSTA's Secretary (or designee) and the Port's Executive Director (or designee) shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

3.3.8 **Hold Harmless and Indemnification**

- 3.3.8.1 Neither State nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the Port, its agents, subrecipients, and contractors under or in connection with any work performed or project deliverables under this Baseline Agreement or any Project Supplement. The Port shall fully defend, indemnify, and save harmless the State and its officers and employees from any claims, losses, or liability imposed for injury and/or damages or environmental obligations or duties arising or created by reason of anything done or omitted by

the Port, any and all of Port's contractors, subcontractors, subrecipients, and any other person, firm, or corporation furnishing or supplying work, services, materials, and/or supplies in connection with the performance of this Baseline Agreement and all Project Supplements.

3.3.8.2 The Port shall indemnify, defend and hold harmless State relative to any misuse by the Port of funds disbursed by CalSTA under this Agreement or other fiscal acts or omissions of the Port directly related to this Agreement.

3.3.9 Labor Code Compliance

The Port shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements, in the manner set forth in **Appendix A** (Required Contract Provisions).

3.3.10 Non-Discrimination Clause

3.3.10.1 In the performance of work under this Agreement, the Port, its contractor(s), and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. The Port, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Port, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of the Port's contractors and all subcontractors shall give written notice of their obligations under this clause to labor

organizations with which they have a collective bargaining or other agreements, as appropriate.

3.3.10.2 Each of the Port's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under the non-discrimination clause to labor organizations with which they have collective bargaining or other labor agreements.

3.3.10.3 Should federal funds be constituted as part of Project funding or compensation received by the Port under a separate contract during the performance of this Agreement, the Port shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

3.3.10.4 The Port shall include in all contracts with sub-recipients, contractors, subcontractors, and any other persons or entities performing work under the Agreement the non-discrimination and compliance provisions of this Section 3.3.10 (Non-Discrimination Clause) in the manner set forth in **Appendix A** (Required Contract Provisions).

3.3.10.5 The Port shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term “Contractor” appears therein, it shall mean the Port.

3.3.10.6 To the extent applicable to the Program, each Project, and as permitted by law, the Port and its contractors, subcontractors, and subrecipients shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records to the State Department of Fair Employment and Housing, or any other agency of the State designated by CalSTA to investigate compliance with this clause.

3.3.11 **State Fire Marshal Building Standards Code**

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction,

means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, the Port shall request that the State Fire Marshal review Project plan, specification, and estimate to ensure Project consistency with State fire protection standards.

3.3.12 Access for Persons with Disabilities

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. The Port will award no construction contract unless the Port's plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

3.3.13 Disabled Veterans Program Requirements

3.3.13.1 Should Military and Veterans Code sections 999 et seq. be applicable to the Port, the Port will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or the Port's applicable higher goals) in the award of every contract for Project work to be performed under this Agreement.

3.3.13.2 The Port shall have the sole duty and authority under this Agreement and each Project Supplement to determine whether these referenced code sections are applicable to the Port or subrecipient (as applicable) and, if so, whether good faith efforts asserted by those contractors of the Port were sufficient as outlined in Military and Veterans Code sections 999 et seq.

3.3.14 Environmental Process

All funds expended under this Agreement shall, to the fullest extent applicable, comply with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). No funds shall be expended under this Agreement without appropriate documentation of compliance with or exemption from CEQA and/or NEPA, as applicable.

3.3.15 Force Majeure

Each Party and Caltrans will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable

control, such as any non-appealable order, rule or regulation of any federal or state governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the Party or Caltrans, as the case may be, excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a force majeure event occur which renders it impossible or substantially infeasible for a period of forty-five (45) or more consecutive days for either Party and/or Caltrans to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the Agreement and/or Project Supplements to deal with such event and to seek additional sources of funding to continue the delivery of the Program and each Project.

3.3.16 California Executive Order N-6-22 (Russia Sanctions)

3.3.16.1 The Port confirms that it is in compliance with Executive Order 14065 issued by President Joseph R. Biden on February 21, 2022, as required by California Executive Order N-6-22. Within 30 days of the execution of this Baseline Agreement, the Port shall report to CalSTA regarding its compliance with economic sanctions as required by Executive Order 14065, as required by California Executive Order N-6-22.

3.3.16.2 With 30 days of the execution of this Baseline Agreement, the Port shall report to CalSTA the steps it has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

4 MISCELLANEOUS PROVISIONS

4.1 Successor Acts

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

4.2 Successor and Assigns to the Parties

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any Party without the express written consent of the other Party.

4.3 Notice

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to CalSTA:

California State Transportation Agency
400 Capitol Mall, Suite 2340
Sacramento, CA 95814
Attention: Undersecretary

If given to Caltrans:

California Department of Transportation
Caltrans Local Assistance
1120 N Street
Sacramento, CA 95814
Attention: Cathy McKeon,
Chief, Office of State Programs, HQ

If given to the Port:

530 Water Street
Oakland, CA 94607
Attention: Executive Director

With a copy to:

530 Water Street
Oakland, CA 94607
Attention: Port Attorney

4.4 Amendment

This Agreement may not be changed, modified, or amended except in writing, signed by the Parties, and approved in advance in writing by CalSTA's Secretary,

and any attempt at oral modification of this Agreement shall be void and of no effect.

4.5 Representation and Warranties of the Parties

4.5.1 Port Representations and Warranties.

a. The Port is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Baseline Agreement.

b. The Port has the requisite power and authority to execute and deliver this Baseline Agreement and to carry out its obligations hereunder. The execution and delivery of this Baseline Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Baseline Agreement or to consummate the transactions contemplated thereby. The Baseline Agreement has been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Baseline Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which the Port is a party; (ii) violate any writ, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

4.5.2 CalSTA Representations and Warranties.

a. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Baseline Agreement.

b. It has the requisite power and authority to execute and deliver this Baseline Agreement and to carry out its obligations thereunder. The execution and delivery of this Baseline Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings

are necessary to authorize this Baseline Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Baseline Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which the Port is a party; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

4.6 Construction, Number, Gender and Captions

Numbers and gender as used herein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

4.7 Complete Agreement

This Baseline Agreement, including Appendices, constitutes the full and complete agreement of the Parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices are hereby incorporated and made an integral part of this Agreement by this reference.

4.8 Partial Invalidity

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

4.9 Conflicts

To the extent that any provision of or requirement of this Baseline Agreement may conflict with a provision or requirement of a Project Supplement, the Baseline Agreement shall control.

4.10 Counterparts; Electronic Signatures

This Baseline Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Baseline Agreement may be used in lieu of the original. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Baseline Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

4.11 Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers.

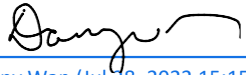
[SIGNATURES TO FOLLOW]

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: *Toks Omishakin*
Toks Omishakin
Secretary

DATE Aug 4, 2022
:

PORT OF OAKLAND

BY: 
[Danny Wan \(Jul 28, 2022 15:15 PDT\)](#)
Danny Wan
Executive Director

DATE Jul 28, 2022
:

APPROVED AS TO FORM AND PROCEDURE

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: *Bret Ladine*
Bret Ladine
General Counsel

DATE Jul 28, 2022
:

PORT OF OAKLAND

BY: 
Mary C. Richardson
Port Attorney

DATE Jul 26, 2022
:

Port Reso No.: 22 - 81

PA #: 2022 - 370

APPENDIX A

REQUIRED CONTRACT PROVISIONS

The Port shall ensure that the following provisions (substantially and materially in the forms below) are included in all contracts and subcontracts to perform work under this Agreement. As used below, the term "Contractor" refers to all contractors and subcontractors performing work under this Agreement.

A. Audit and Cost Provisions

To the fullest extent applicable, Contractor shall comply with Title 2 Code of Federal Regulations Part 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards.

Contractor shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of contractors and all subcontractors shall conform to GAAP, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

For at least three (3) years from the date of final payment by CalSTA under a Project Supplement: (a) Contractor shall maintain all accounting records and other supporting papers ("Program Records"); (b) the Program Records shall be held open to inspection, copying, and audit by the California State Auditor, and, to the extent applicable or appropriate, other auditors representing the State or the federal government. Copies thereof will be furnished by Contractor upon receipt of any request made by State or its agents.

Travel and per diem reimbursements and third-party contract reimbursements will be allowable as Project costs only after those costs are incurred and paid for by Contractor.

B. Labor Code Compliance

Contractor shall comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of the contract award.

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

C. Non-Discrimination Provisions

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102.)

Contractor assures that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

D. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

E. Corporate Qualification to do Business in California

1. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
2. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

F. Air or Water Pollution Violation

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.