

## Funding Agreement

This Agreement is entered into by the State of California (State), acting through the State Lands Commission (Commission), and [Port] (Port). The Commission and Port are referred to individually as a Party and collectively as the Parties. The Parties, as consideration for, and as a condition to, the Commission awarding State Fiscal Recovery Funds allocated from the Coronavirus State Fiscal Recovery Fund as authorized by the federal American Rescue Plan Act of 2021 (ARPA) to the Port, agree as follows:

1. Purpose. The 2021 Budget Act appropriated \$250 million Coronavirus Fiscal Recovery Funds of 2021 to the Commission with instructions to allocate the funding to California ports to address negative economic impacts due to the COVID-19 pandemic. According to the Budget Act, ports shall use these funds to support their economic recovery, such as for activities that include avoiding layoffs, restoring jobs and services lost due to COVID-19, and supporting safe operations.. During its [DATE] [Regular/Special] Meeting, the Commission approved distribution of [Amount] (\$#,###,###.##) (the Funds). Entering this agreement is a condition for disbursement of the Funds.
2. Award. Upon receiving the Funds, the Port will be a subrecipient of the state. The Port must comply with the ARPA and all other applicable state and Federal statutes, regulations, executive orders, and interpretative guidance.
3. Term. The term of this Agreement begins on the date this Agreement is executed by State and terminates when the Port expends or returns all Funds. Funds are available for expenditure through June 30, 2024. This deadline may be extended if the Director of Finance determines that a later date is authorized by the federal government or that a department, such as the State Land's Commission, will complete the program, project, or function such that the funds will be expended or encumbered by December 31, 2024.
4. Accuracy. The Port represents and warrants that all information contained in its Funding Request is true and correct to the best of the Port's knowledge and ability. The Port acknowledges that providing false information may be a felony under California Penal Code section 115.
5. Use of Funds.
  - a. State law and guidance. The Port must use the Funds consistent with Item 3560-162-8506 and Control Section 11.96 of the 2021 Budget Act, applicable state law, as well as related guidance from the Commission, the Department of Finance, and other state entities. These funds are available for expenditure through June 30, 2024. This deadline may be extended if the Director of Finance determines that a later date is authorized by the federal government or that a department, such as the State Land's Commission, will complete the program, project, or function such that the funds will be expended or

encumbered by December 31, 2024. A recipient port must return any funds to the State that are not encumbered as of August 1, 2024.

- b. *Federal law and guidance.* The Port must use the Funds consistent with the ARPA and related federal guidance. Funds may not be used to replenish a rainy-day fund or budget reserves of the port.
  - c. *Fully automated cargo handling equipment.* Funds must not be used for the purchase of fully automated cargo handling equipment. For the purposes of this paragraph, “fully automated” means equipment that is remotely operated or remotely monitored with or without the exercise of human intervention or control. This provision does not prohibit the use of the funds for a project that includes the purchase of human-operated zero-emission equipment, human-operated near-zero-emission equipment, and infrastructure supporting that human-operated equipment. Furthermore, this provision does not prohibit the purchase of devices that support human-operated equipment, including equipment to evaluate the utilization and environmental benefits of that human-operated equipment.
  - d. *Funding Request.* Ports must use the funds for the purposes described in their Monitoring Plan, discussed in Section 10 below. Ports may amend their projects descriptions as necessary.
6. *Reporting.*
- a. *State Reporting.* The Port must comply with all reporting requirements set by the State of California, including the Department of Finance. The Port must provide the necessary information to the State by the deadlines set by the State. Additional information regarding state reporting requirements may be found on the State Fiscal Recovery Fund website available at: [https://www.dof.ca.gov/budget/COVID-19/State\\_Fiscal\\_Recovery\\_Fund/](https://www.dof.ca.gov/budget/COVID-19/State_Fiscal_Recovery_Fund/).
  - b. *Quarterly Project and Expenditure Reports.* The Port must comply with the quarterly Project and Expenditure reporting requirements, including providing outcomes, outputs, and performance indicators required by the U.S. Treasury or identified by the Port, Commission, or State. The first state quarterly report is due to Treasury on October 31, 2021 and covers expenditures through September 30, 2021. By no later than the deadlines set by the Department of Finance for sub-recipient reporting, the Port must provide the information required by the State to support federal reporting and may include the following:
    - i. Subrecipient information (DUNS number, location, and NAICS employment sector).
    - ii. Quarterly obligation amount
    - iii. Quarterly expenditure amount
    - iv. Outcomes, outputs, and programmatic performance indicators
    - v. Other data requested by the state based on additional requirements outlined by the U.S. Treasury in Final Rule or other program guidance.

- c. Recovery Plan Performance Report. Ports must promptly provide any information requested by the State for purposes of the Annual Recovery Plan Performance Report. The next state plan is due July 31, 2022.
7. Records.
  - a. Retention. The Port must maintain records and financial documents related to the Funds for five years after all Funds have been expended. This provision survives termination of the Agreement.
  - b. Availability. The Port must provide or make available such records to the U.S. Department of the Treasury upon request, and to any authorized federal oversight body, including but not limited to the Government Accountability Office, Treasury's Office of Inspector General, and the Pandemic Relief Accountability Committee. The Port must also provide or make available such records to the Commission, the California State Auditor, Department of Finance, and any other authorized State oversight agency. The Port agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Port agrees to include a similar right of the State to audit records and interview staff in any contract paid for with the Funds. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896). This provision survives termination of the Agreement.
8. Single Audit Act. Ports that expend more than \$750,000 in Federal awards, including the Coronavirus Fiscal Recovery Funds of 2021, during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements. The Port must provide the copies of any audit report to Commission staff and a summary of findings to the Department of Finance.
9. Monitoring Plan.
  - a. Commission staff will monitor the Port's activities to ensure that the Funds are used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement as described in the Monitoring Plan, attached to this Agreement as Exhibit A and incorporated by this reference.
  - b. The Commission or Commission staff may modify the Monitoring Plan as necessary to ensure the Port's compliance with the ARPA, associated rules and guidance, and this Agreement. Commission staff will work with Port staff to update the Monitoring Plan to reflect cost estimates, outcomes, outputs, and performance indicators.
  - c. The Port must promptly provide all information requested by the Commission or its staff that is necessary or desirable, in the Commission or its staff's sole discretion, to allow Commission staff to perform the monitoring activities described in the Monitoring Plan.
  - d. If the Port receives notice of potential non-compliance, the Port must provide written confirmation highlighting the status of actions planned or taken to address the potential non-compliance. The Commission shall report any such notifications to the Department of Finance.
10. Reimbursement of Recouped Costs. If the federal government identifies any funds received by the Port for recoupment based on the Port's use, misuse, or failure to use any portion of the Funds, the Port must reimburse the State for the amount identified by the federal government.

Additionally, the Port must reimburse the State and the Commission for any costs, including staff costs, relating to or arising out of the federal government's recoupment of those funds. This provision survives termination of the Agreement.

11. Indemnity. To the extent permitted by law, the Port must indemnify, hold harmless and, at the option of the Commission or the State, defend the Commission and the State and their officers, agents, and employees, from all damages, injuries, or claims arising from the Port's use of the Funds. This provision survives termination of the Agreement.
  
12. Nondiscrimination.
  - a. When using the Funds, the Port must meet federal legal requirements relating to nondiscrimination and nondiscriminatory use of funds. Those requirements include ensuring that entities receiving federal financial assistance do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and Treasury's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Treasury's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Treasury's implementing regulations at 31 CFR part 23.
  
  - b. The Port must also meet state requirements relating to nondiscrimination and nondiscriminatory use of funds. The Port must not deny the benefits paid for with the Funds to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor may the Port discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Port must ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The Port must comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. The Port must permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. The Port and its subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other

13. Authority. The Parties represent and warrant that the individuals signing below have authority to sign this Agreement on behalf of their respective Party.
14. Approval. This Agreement is of no force or effect until signed by both Parties.
15. Amendment. No amendment or variation of the terms of this Agreement is valid unless made in writing, signed by the Parties, and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the Parties.
16. Conflict. This Agreement does not authorize or condone any act or omission that violates the ARPA or any other applicable federal law. Any conflict between this Agreement and any applicable federal law must be resolved in favor of the federal law.

**PORT**

Name

Title

Date

**STATE LANDS COMMISSION**

Name

Title

Date