

**SUBAWARD AGREEMENT
BETWEEN
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA)
AND
PORT OF SAN FRANCISCO (PORT)**

This Subaward Agreement (Agreement) is effective May 1, 2025 and is entered into by and between the San Francisco Bay Area Water Emergency Transportation Authority (SF Bay Ferry) and the Port of San Francisco (Port).

WHEREAS, the Environmental Protection Agency (EPA) awarded the San Francisco Waterfront Emissions-Free Ferry System grant (Primary Grant Agreement) to Port on December 12, 2024 to improve air quality and reduce pollution at the San Francisco and Alameda County Ports and in the surrounding area through the deployment of zero-emission equipment and infrastructure at the ports; and

WHEREAS, Port intends through this Agreement to pass-through \$51,000,000 from the Primary Grant to SF Bay Ferry which will allow the Port and SF Ferry to collaborate in the implementation of the Primary Grant Agreement through the construction of port infrastructure, procurement of zero-emissions equipment and development of a workforce training program; and

WHEREAS, SB 595 (Chapter 650, Statutes 2017), commonly referred to as Regional Measure 3 (RM3), identified projects eligible to receive funding under the RM3 Expenditure Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for RM3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

WHEREAS, the SF Bay Ferry is an eligible sponsor of transportation projects in the RM3 Expenditure Plan; and

WHEREAS, SF Bay Ferry intends on utilizing up to \$26 Million from allocations approved by MTC for the Ferry Enhancement Program authorized by RM3; and

WHEREAS, SF Bay Ferry committed an additional \$2 million in funding for the San Francisco Waterfront Emissions-Free Ferry System from other SF Bay Ferry-controlled grant funds; and

WHEREAS, SF Bay Ferry intends to allow Port to request reimbursement of up to \$28 million for expenses related to the implementation of the Primary Grant Agreement at the Mission Bay Terminal as appropriate for the project elements.

NOW THEREFORE BE IT RESOLVED, that SF Bay Ferry and Port agree to the following:

1. DEFINITIONS

The following definitions apply to this agreement:

- a. "Awarding Agency" means EPA.
- b. "City" means the City and County of San Francisco.
- c. "EPA" means the U.S. Environmental Protection Agency.

- d. "Ferry Enhancement Program" means RM3 Project Five, which funds the purchase of new vessels, upgrading and rehabilitating existing vessels, building facilities and landside improvements, and upgrading existing facilities of SF Bay Ferry.
- e. "Mission Bay Terminal" means Mission Bay Ferry Landing.
- f. "Port" means the Port of San Francisco.
- g. "Primary Grant Agreement" means Inflation Reduction Act – Clean Ports Program, grant number 97T27501.
- h. "Project" means all activities related to the construction of port infrastructure, electrical grid extensions, procurement of zero-emissions equipment and development of a workforce training program, all as called for in the Primary Grant Agreement
- i. "SF Bay Ferry" means the San Francisco Bay Area Water Emergency Transportation Authority.
- j. "Pass-through entity" means Port.
- k. "RM3" means Regional Measure 3, a voter-approved funding mechanism that finances highway and transit improves in the San Francisco Bay Area.
- l. "Sub-recipient" means SF Bay Ferry.
- m. "Working Waterfront Coalition" means the regional maritime workforce development program that will be contracted to implement a workforce development program in line with the requirements of the Primary Grant Agreement.

2. PURPOSE

The purpose of this Agreement is to pass-through funds from the Primary Grant Agreement from Port to SF Bay Ferry.

In addition, pursuant to the Memorandum of Understanding between the Port and SF Bay Ferry dated March 13, 2025, SF Bay Ferry has agreed to request allocation of \$26,000,000 from the Ferry Enhancement Program that is part of RM3 to further the Project. The additional purpose of this Agreement is to allow Port to request reimbursement from SF Bay Ferry for expenses related to the implementation of the Project at Mission Bay Terminal, which will be paid out of the above requested allocation.

3. FEDERAL AWARD IDENTIFICATION

The following information is provided in line with the EPA's Grants Policy Issuance (GPI) 16-01: EPA Subaward Policy for EPA Assistance Agreement Recipients.

- a. SF Bay Ferry's Data Universal Numbering System (DUNS) number: 829410518.
- b. Federal Award Identification Number (FAIN): 97T27501.
- c. EPA Award Date: 12/11/2024.
- d. Amount of Subaward from Port to SF Bay Ferry: \$51,000,000.
- e. Total Amount of the EPA Award to Port: \$55,386,000.
- f. Catalog of Federal Domestic Assistance (CFDA) Number and Name: 66.051 - Clean Ports Program.
- g. Indirect cost rate for the pass-through entity's Federal award: 0.00%
- h. SF Bay Ferry indirect cost rate: De Minimus

4. FEDERAL AWARD PROJECT DESCRIPTION

The activities that make up the Project include the purchase and deployment of zero-emission equipment, technologies, and related infrastructure, as well as near-port community engagement and workforce development. The anticipated deliverables include the purchase and deployment of one

new zero-emission electric ferry vessel and two vessel shore power charging systems with 17 kW total capacity. Other deliverables include zero-emission technology and equipment training for underserved communities, long-term community engagement forums, and institutional and operational changes that allow for future deployment of additional zero-emission technologies.

5. SUBAWARD PROJECT DESCRIPTION

SF Bay Ferry will manage the construction of the high-speed electric ferry vessel, behind the meter infrastructure as well as procure a shore power and anchoring system. The subaward to SF Bay Ferry includes the workforce development services from the Working Waterfront Coalition that are part of the Project.

6. COMPENSATION

- Port will award SF Bay Ferry \$51,000,000
- SF Bay Ferry will reimburse the Port for expenditures related to the Project at Mission Bay Terminal up to \$28,000,000 as appropriate for the source of those funds.

The parties agree that project funding for project elements may shift by mutual agreement in order to comply with federal and state guidelines around the use of grant funds as needed.

7. MANNER OF PAYMENT

SF Bay Ferry will submit requests for reimbursement to Port monthly based on its actual expenditures during the previous month. Port will reimburse SF Bay Ferry within 30 days of SF Bay Ferry's request; for avoidance of doubt, Port's reimbursement of SF Bay Ferry's expenditures is not conditioned on the Port's draw down of funding from the EPA Award.

Port will submit requests for reimbursement to SF Bay Ferry monthly based on its actual expenditures related to the implementation of the Project at Mission Bay Terminal during the previous month. SF Bay Ferry will reimburse Port within 30 days of Port's request. PDF invoices should be emailed to the WETA Project Manager, Chad Mason at Chad.Mason@sfbayferry.com with cc to payables@watertransit.org. No hard copy invoices are required if WETA acknowledges receipt of the email invoice

8. TERM

The term of this Agreement will be until completion of the Project that is subject of the Primary Grant Agreement.

9. FEDERAL FLOW DOWN REQUIREMENTS

SF Bay Ferry will cooperate with recipient obligations under the Primary Grant Agreement.

SF Bay Ferry is accountable to Port as the pass-through entity for compliance with Federal requirements. These requirements include, but are not limited to:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex (including sexual orientation and gender identity), age, or disability. In addition, the SF Bay Ferry agrees to comply with applicable Federal implementing regulations.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the Agreement to the extent required by law:

- i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action must include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- iii. Disabilities - In accordance with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq* (ADA), the Contractor agrees to comply with the ADA, and agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Conditions of the Primary Grant Agreement entitled "Reporting Subawards and Executive Compensation."

4. EPA's limitations on individual consultant fees: As required by the Primary Grant Agreement, SF Bay Ferry may not pay individual consultants more than the maximum daily rate for a Level IV of the Executive Schedule, as maintained by the U.S. Office of Personnel Management, to be adjusted annually. This cap does not apply to salaries/compensations for the employees of a firm that contracts with SF Bay Ferry.

5. EPA's prohibition on paying management fees: Management Fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. "Management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this

assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

6. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the SF Bay Ferry acquires goods and services from contractors (including consultants).

7. Build America, Buy America Requirements

All projects under this Agreement are subject to the domestic sourcing requirements under the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117- 58, §§ 70911-70917) when using federal funds for the purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure in the United States as required by the Primary Grant Agreement.

See EPA's "Build America, Buy America" general term and condition for additional requirements: <https://www.epa.gov/grants/grant-terms-and-conditions>.

10. DOCUMENTATION AND REPORTING REQUIREMENTS

SF Bay Ferry must comply with the documentation and reporting requirements as set forth in the Programmatic Conditions of the Primary Grant Agreement entitled "Performance Reporting and Final Performance Report."

Port must provide SF Bay Ferry with all documentation and information necessary for SF Bay Ferry to comply with MTC's RM3 reporting requirements, as detailed in MTC Resolution No. 4404 Attachment A, RM3 Policies and Procedures.

11. ACCESS TO RECORDS AND REPORTS

SF Bay Ferry must provide access to any books, documents, papers, and records which are directly pertinent to this subaward for the purpose of making audits, examinations, excerpts, and transcriptions to authorized representatives of Port and the Federal awarding agency. Access includes:

1. SF Bay Ferry financial statements and reports.
2. Programmatic reports including information on environmental results.
3. Audit findings.
4. Any other documentation necessary to verify compliance with subaward terms and Federal regulations.

12. INSURANCE

SF Bay Ferry and Port will require any third-party contractor, vendor, or service provider engaged in connection with this Agreement to maintain insurance coverage that names both Port and SF Bay Ferry as an additional insured.

13. INDEMNITIES

Whenever Port or SF Bay Ferry enter into a contract with a third party contractor related to the Project, that third-party contract must require the third-party contractor to name both Port and SF Bay Ferry, as well as their respective officers, directors, employees, consultants, and agents, as indemnitees receiving any contractual indemnity obligations from the third party contractor.

14. AMENDMENT

This Agreement can be modified only by written amendment signed by both parties hereto.

15. CLOSE OUT TERMS AND CONDITIONS

SF Bay Ferry must submit a final performance report within 120 days after the end of the period of performance. Any funds not expended by the end of the period of performance must be returned to the pass-through entity within 30 days of the end of the period of performance. SF Bay Ferry must comply with all equipment disposition requirements in the Primary Grant Agreement.

Port must provide SF Bay Ferry with all documentation and information necessary to allow SF Bay Ferry to comply with notification and close out requirements as detailed in MTC Resolution No. 4404 Attachment A, RM3 Policies and Procedures.

Signatures on Next Page

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

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

PORT:

PORT OF SAN FRANCISCO

By: _____

Date: _____

Name: Elaine Forbes

Title: Executive Director

David Chiu, City Attorney

By: _____

Date: _____

Name: Michelle Sexton

Title: Deputy City Attorney

SF BAY FERRY:

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____

Date: _____

Name: Seamus Murphy

Title: Executive Director

Approved as to form:

Legal Counsel to SF Bay Ferry