

Municipality of Anchorage

Port of Alaska

**PORT OF ALASKA MODERNIZATION PROGRAM
DESIGN/BUILD SERVICES FOR
HELIPAD AND ACCESS ROAD**

REQUEST FOR PROPOSAL NO. 2026P002

SECTION V

Sample Contract

Exhibit L

MARAD Terms and Conditions

**U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION**

**GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2024 PORT INFRASTRUCTURE DEVELOPMENT PROGRAM
GRANTS**

March 31, 2025

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GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), and the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42 (Mar. 9, 2024) (“**Consolidated Appropriations Act, 2024**” or “**the Act**”) appropriated funds to the United States Department of Transportation (the “**USDOT**”) Maritime Administration (“**MARAD**”) for fiscal year (FY) 2024 under the heading “Port Infrastructure Development Program.” Of the amount appropriated, \$500,000,000 is available to make grants to improve port facilities at coastal seaports, inland river ports, or Great Lakes ports. The Consolidated Appropriations Act, 2024 also appropriated \$70,460,124 for Port Infrastructure Development Program (PIDP) grants for Community Project Funding (CPF), also known as Congressionally Directed Spending. The list of projects selected for CPF are found in the table entitled “Community Project Funding/Congressionally Directed Spending” included in the Act’s accompanying explanatory statement. The MARAD program administering these funds is the Port Infrastructure Development Program (the “**PIDP**”).

On December 27, 2023, MARAD posted a funding opportunity at Grants.gov with funding opportunity title “Port Infrastructure Development Program” and funding opportunity number MA-PID-24-001. The notice of funding opportunity posted at Grants.gov (the “**NOFO**”) solicited applications for Federal financial assistance under the FY 2024 PIDP for the available FY 2024 PIDP discretionary funding.

These general terms and conditions are incorporated by reference in a project-specific agreement under the FY 2024 PIDP. The term “Recipient” is defined in the project-specific portion of the agreement. The project-specific portion of the agreement includes schedules A through H. The project-specific portion of the agreement may include special terms and conditions in project-specific articles.

ARTICLE 1 PURPOSE

1.1 Purpose. The purpose of this award is to make grants to improve port facilities at coastal seaports, inland river ports, or Great Lakes ports. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, if applicable, as modified by schedule D.

ARTICLE 2 MARAD ROLE

2.1 Administration. MARAD will administer this agreement.

2.2 MARAD Program Contacts.

Peter Simons
Director, Office of Port Infrastructure Development
DOT – Maritime Administration
1200 New Jersey Ave, SE
Washington, DC 20590
MAR-510
W21-308
Mailstop 3
(202) 366-8921
peter.simons@dot.gov

ARTICLE 3 RECIPIENT ROLE

3.1 Statements on the Project. The Recipient states that:

- (1) all material statements of fact in the Technical Application were accurate when that application was submitted; and
- (2) schedule E documents all material changes in the information contained in that application.

3.2 Statements on Authority and Capacity. The Recipient states that:

- (1) it has the authority to receive Federal financial assistance under this agreement;
- (2) it has the legal authority to complete the Project;
- (3) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
- (4) not less than the difference between the total eligible project costs listed in section 3 of schedule D and the PIDP Grant Amount listed in section 1 of schedule D is committed to fund the Project;
- (5) it has sufficient funds available to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and

- (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 3 and in section 18.7 on behalf of the Recipient.

3.3 MARAD Reliance. The Recipient acknowledges that:

- (1) if the Discretionary-CPF designation in section 5 of schedule F is “Discretionary,” MARAD relied on statements of fact in the Technical Application to select the Project to receive this award;
- (2) MARAD relied on statements of fact in both the Technical Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO and Program Statute;
- (3) MARAD relied on statements of fact in both the Technical Application and this agreement to establish the terms of this agreement; and
- (4) if the Discretionary-CPF designation in section 5 of schedule F is “Discretionary,” MARAD’s selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

3.4 Project Delivery.

- (a) The Recipient shall complete the Project under the terms of this agreement.
- (b) The Recipient shall ensure that the Project is financed, constructed, operated, and maintained in accordance with all Federal laws, regulations, and policies that are applicable to projects of MARAD.

3.5 Rights and Powers Affecting the Project.

- (a) The Recipient shall not take or permit any action that deprive it of any rights or powers necessary to the Recipient’s performance under this agreement without written approval of MARAD.
- (b) The Recipient shall act promptly, in a manner acceptable to MARAD, to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient’s performance under this agreement.

3.6 Notification of Changes to Key Personnel. The Recipient shall notify MARAD within 30 calendar days of any change in key personnel who are identified in section 4 of schedule A.

ARTICLE 4

AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

- 4.1 Federal Award Amount.** MARAD hereby awards a PIDP Grant to the Recipient in the amount listed in section 1 of schedule D as the PIDP Grant Amount.
- 4.2 Federal Funding Source.**
- (a) If section 4 of schedule F identifies the Funding Act as “IIJA,” then the PIDP Grant is from PIDP grant funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021).
 - (b) If section 4 of schedule F identifies the Funding Act as “FY2024,” then the PIDP Grant is from PIDP grant funding that was appropriated in the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42 (Mar. 9, 2024).
 - (c) If section 4 of schedule F contains a table that lists separate amounts for “IIJA” and “FY2024,” then the amount listed for “IIJA” is from PIDP grant funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) and the amount listed for “FY2024” is from PIDP grant funding that was appropriated in the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42 (Mar. 9, 2024).
 - (d) If section 4 of schedule F identifies the Funding Act as something other than “FY2024” or “IIJA,” then the PIDP Grant includes PIDP grant funding that was appropriated under a different funding act than “FY2024” or “IIJA.”
- 4.3 Federal Obligations.** This agreement obligates for the budget period the amount listed in section 1 of schedule D as the PIDP Grant Amount.

ARTICLE 5

STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 5.1 Change Notification Requirement.** The Recipient shall notify MARAD within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s capacity or intent to complete the Project in compliance with this agreement. In that notice, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. The notification requirement under this section 5.1 is separate from any requirements under this article 5 that the Recipient request modification of this agreement.
- 5.2 Scope and Statement of Work Changes.** If the Project’s activities differ from the activities described in schedule B, then the Recipient shall request a modification of this agreement to update schedule B.

5.3 Schedule Changes. If one or more of the following conditions are satisfied, then the Recipient shall request a modification of this agreement to update schedule C:

- (1) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed in section 2 of schedule C;
- (2) a schedule change would require the budget period to continue after the budget period end date listed in section 1 of schedule C; or
- (3) a schedule change would require the period of performance to continue after the period of performance end date listed in section 1 of schedule C.

For other schedule changes, the Recipient shall follow the applicable procedures of MARAD and document the changes in writing.

5.4 Budget Changes.

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient's obligation under this agreement to complete the Project; and
 - (2) MARAD will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request a modification of this agreement to update schedule D if, in comparing the Project's budget to the amounts listed in section 3 of schedule D:
 - (1) the total "Non-Federal Funds" amount decreases; or
 - (2) the total eligible project costs amount decreases.
- (c) For budget changes that are not identified in section 5.4(b), the Recipient shall follow the applicable procedures of MARAD and document the changes in writing.
- (d) If there are Project Cost Savings, then the Recipient may propose to MARAD, in writing consistent with MARAD's requirements, to include in the Project specific additional activities that are within the scope of this award, as defined in section 1.1 and schedule B, and that the Recipient could complete with the Project Cost Savings.

In this agreement, "**Project Cost Savings**" means the difference between the actual eligible project costs and the total eligible project costs listed in section 3 of schedule D, but only if the actual eligible project costs are less than the total eligible project costs that are listed in section 3 of schedule D. There are no Project Cost Savings if the actual eligible project costs are equal to or greater than the total eligible project costs that are listed in section 3 of schedule D.

- (e) If there are Project Cost Savings and either the Recipient does not make a proposal under section 5.4(d) or MARAD does not accept the Recipient's proposal under section 5.4(d), then:
- (1) in a request under section 5.4(b), the Recipient shall reduce the PIDP award amount of the Federal Share by the Project Cost Savings; however, if the total eligible project costs that are listed in section 3 of schedule D are more than the total estimated project costs in the Technical Application, the Recipient may request to MARAD to only reduce the PIDP award amount of the Federal Share by the difference between the actual eligible project costs and the total estimated project costs in the Technical Application so long as the Recipient is providing under this agreement the non-Federal share amount committed to in the Technical Application; and
 - (2) if that modification reduces this award and MARAD had reimbursed costs exceeding the revised award, the Recipient shall refund to MARAD the difference between the reimbursed costs and the revised award.

In this agreement, “**Federal Share**” means the sum of the total “PIDP Funds” and “Other Federal Funds” amounts that are listed in section 3 of schedule D.

- (f) The Recipient acknowledges that amounts that are required to be refunded under section 5.4(e)(2) constitute a debt to the Federal Government that MARAD may collect under 2 CFR 200.346 and the Federal Claims Collection Standards (31 CFR Parts 900–999).

5.5 MARAD Acceptance of Changes. MARAD may accept or reject modifications requested under this article 5, and in doing so may elect to consider only the interests of the PIDP grant program and MARAD. The Recipient acknowledges that requesting a modification under this article 5 does not amend, modify, or supplement this agreement unless MARAD accepts that modification request and the parties modify this agreement under section 17.1.

ARTICLE 6 GENERAL REPORTING TERMS

- 6.1 Report Submission.** The Recipient shall send all reports required by this agreement to all MARAD contacts who are listed in section 5 of schedule A and all MARAD contacts who are listed in section 2.2.
- 6.2 Alternative Reporting Methods.** MARAD may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by MARAD.
- 6.3 Paperwork Reduction Act Notice.** Under 5 CFR 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control

number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2133- 0552.

ARTICLE 7 PROGRESS AND FINANCIAL REPORTING

- 7.1 Quarterly Project Progress Reports and Recertifications.** On or before the 20th day of the first month of each calendar year quarter and until the end of the budget period, the Recipient shall submit to MARAD a Quarterly Project Progress Report and Recertification, including a Federal Financial Report (SF-425) as an attachment, in the format and with the content described in exhibit C. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report, Recertification, and SF-425 in the second calendar year quarter that begins after the date of this agreement.
- 7.2 Final Progress Reports and Financial Information.** No later than 120 days after the end of the budget period, the Recipient shall submit:
- (1) a Final Project Progress Report and Recertification in the format and with the content described in exhibit C for each Quarterly Project Progress Report and Recertification, including a final Federal Financial Report (SF-425); and
 - (2) any other information required under MARAD’s award closeout procedures.

ARTICLE 8 PERFORMANCE REPORTING

- 8.1 Baseline Performance Measurement.** If the Capital-Planning Designation in section 2 of schedule F is “Capital,” then:
- (1) the Recipient shall collect data for each performance measure that is identified in the Performance Measure Table in schedule G, accurate as of the Baseline Measurement Date that is identified in schedule G; and
 - (2) on or before the Baseline Report Date that is stated in schedule G, the Recipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 8.1 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in schedule G.
- 8.2 Post-construction Performance Measurement.** If the Capital-Planning Designation in section 2 of schedule F is “Capital,” then:

- (1) for each performance measure that is identified in the Performance Measure Table in schedule G with quarterly measurement frequency, for each of 12 consecutive calendar quarters, beginning with the first calendar quarter that begins after the Project substantial completion date, at least once during the quarter, the Recipient shall collect data for that performance measure;
- (2) for each performance measure that is identified in the Performance Measure Table in schedule G with annual measurement frequency, the Recipient shall collect data for that performance measure on at least three separate occasions: (i) once during the four consecutive calendar quarters that begin after the Project substantial completion date; (ii) once during the fourth calendar quarter after the first collection; and (iii) once during the eighth calendar quarter after the first collection; and
- (3) the Recipient shall submit to MARAD a quarterly Post-construction Performance Measurement Report to report project performance for the prior quarter. Post-construction reporting will begin one quarter after project substantial completion and continue for three years (12 quarters). The Post-construction Performance Measurement Report shall contain the data collected under this section 8.2 and shall state the dates when the data was collected.

If an external factor significantly affects the value of a performance measure collected under this section 8.2, then the Recipient shall identify that external factor in the Post-construction Performance Measurement Report and discuss its influence on the performance measure.

- 8.3 Project Outcomes Narrative.** If the Capital-Planning Designation in section 2 of schedule F is “Capital,” then the final Post-construction Performance Measurement Report must also include a project outcomes narrative. The project outcomes narrative should include an overview of the project’s performance compared to the baseline and trend expectations. It should also include a discussion on the influence of external factors, if applicable.

ARTICLE 9 CIVIL RIGHTS AND TITLE VI

9.1 Civil Rights and Title VI.

- (a) Consistent with DOT Order 1000.12C, “The U.S. Department of Transportation Title VI Program” (June 11, 2021), including any amendments or updates thereto, the purpose of sections 9.1(b)–9.1(c) is to ensure that the Recipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 CFR Part 21, including any amendments thereto.
- (b) If the Recipient is an “Existing” Recipient, then the Recipient shall submit to MARAD either:

- (1) not later than one month after the date of this agreement, documentation showing that the Recipient has complied with all reporting requirements under MARAD's implementation of Title VI; or
- (2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C, including any amendments or updates thereto.
- (c) If the Recipient is a “New” Recipient, then MARAD completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C, including any amendments or updates thereto, before entering into this agreement.
- (d) In this section 9.1,
 - (1) “**Title VI**” means Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. 2000d to 2000d-4a), including any amendments thereto.
 - (2) “**Existing**” means a prior recipient of DOT Federal financial assistance since the publication of DOT Order 1000.12C on June 11, 2021.
 - (3) “**New**” means a recipient who has not received DOT Federal financial assistance since the publication of DOT Order 1000.12C on June 11, 2021.

9.2 Legacy Infrastructure and Facilities. In furtherance of the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336 (codified at 42 U.S.C. 12101-12213), and Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified at 29 U.S.C. 794), not later than one year after the date of this agreement, the Recipient shall develop a plan to address any legacy infrastructure or facilities that are not in compliance with ADA standards and are involved in, or closely associated with, the Project.

ARTICLE 10 CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

10.1 Critical Infrastructure Security and Resilience.

- (a) Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient shall consider physical and cybersecurity and resilience in planning, design, and oversight of the Project.
- (b) If the Security Risk Designation in section 6 of schedule F is “Elevated,” then the Recipient shall:

- (1) in the first Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, identify a cybersecurity Point of Contact for the transportation infrastructure being improved in the Project; and
 - (2) in the second Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, provide a plan for completing the requirements in section 10.1(c).
- (c) If the Security Risk Designation in section 6 of schedule F is “Elevated,” then not later than the eighth Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, the Recipient shall include each of the following in a Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1:
- (1) a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project or a summary of that plan;
 - (2) a cybersecurity incident response plan for the transportation infrastructure being improved in the Project or a summary of that plan;
 - (3) the results of a self-assessment of the Recipient’s cybersecurity posture and capabilities or a summary of those results; and
 - (4) a description of any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 11

PIDP DESIGNATIONS

11.1 Effect of Urban or Rural Designation. Based on information that the Recipient provided to MARAD, including the Technical Application, if applicable, section 1 of schedule F designates this award as an urban award or a rural award, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on geographic location and cost sharing.

11.2 Effect of Discretionary or CPF Designation.

- (a) If section 5 of schedule F lists “Discretionary,” for the “Discretionary-CPF Designation,” then the Recipient submitted an application for funding under the NOFO and MARAD selected the Project for funding under that NOFO.
- (b) If section 5 of schedule F lists “CPF,” for the “Discretionary-CPF Designation,” then Congress selected the Recipient to receive FY 2024 PIDP CPF through the Consolidated Appropriations Act, 2024, as identified in the table entitled “Community Project Funding/Congressionally Directed Spending” included in the Act’s accompanying

explanatory statement, and that award is subject to the available provisos of the Consolidated Appropriations Act, 2024. MARAD is required to award CPF grants in accordance with the specific “recipient,” “project,” and “amount information” provided in the “Community Project Funding/Congressionally Directed Spending” table.

ARTICLE 12

CONTRACTING AND SUBAWARDS

12.1 Minimum Wage Rates. The Recipient shall include, in all contracts in excess of \$2,000 for work on the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with the Davis-Bacon Act, 40 U.S.C. 3141–3148, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

12.2 Buy America.

- (a) For the purpose of the award term at exhibit B, term B.5, the Project is “an infrastructure project.” The Recipient acknowledges that iron, steel, manufactured products, and construction materials used in the Project are subject to the Buy America preference in that award term and this agreement is not a waiver of that preference. All non-infrastructure spending is subject to the Buy American Act, 41 U.S.C. chapter 83.
- (b) If the Recipient uses iron, steel, manufactured products, or construction materials that are not produced in the United States in violation of the award term at exhibit B, term B.5, MARAD may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 13 and 2 CFR 200.339–200.340.
- (c) Under 2 CFR 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The Recipient shall include the requirements of 2 CFR 200.322 in all subawards including all contracts and purchase orders for work or products under this award.
- (d) For all iron, steel, manufactured products, or construction materials incorporated into the Project and to which a Buy America preference applies, the manufacturer or supplier of the item(s) should provide to the Recipient a signed certification statement attesting that each item procured under this award meets the applicable Buy America preference requirements. The Recipient must maintain on file any certifications received under this section 12.2(d) and provide to MARAD copies of any such certifications or other documentation supporting compliance upon request of MARAD pursuant to article 19 and 2 CFR 200.334-200.338.

12.3 Small and Disadvantaged Business Requirements.

- (a) If any funds under this award are administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 49 CFR Part 26, including any amendments thereto.
- (b) If any funds under this award are not administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 2 CFR 200.321, including any amendments thereto.

12.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 CFR 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

12.5 Pass-through Entity Responsibilities.

- (a) If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 CFR Parts 200 and 1201, including 2 CFR 200.331–200.333.
- (b) By accepting this award, the Recipient certifies that it either has systems in place to comply with the requirements set forth at 2 CFR 200.331-333 and described in this section 12.5(b)(1)-(9) or will refrain from making subawards until the systems are designed and implemented:
 - (1) The Recipient is responsible for selecting subrecipients using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331.
 - (2) The Recipient must establish and follow a system that ensures all subaward agreements are in writing and contain all the elements required by 2 CFR 200.332(b).
 - (3) Prior to making subawards under this award, the Recipient must ensure that each subrecipient has a Unique Entity Identifier.
 - (4) The Recipient must ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's PIDP award, as required by 2 CFR 200.332(b)(2), including but not limited to, applicable Buy America requirements, procurement standards, reporting subawards and executive compensation under the Federal Funding Accountability and Transparency Act, certifications regarding lobbying, and Title VI of the Civil Rights Act of 1964 requirements.

- (5) The Recipient must establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward as required by 2 CFR 200.332(c) and document that evaluation.
- (6) The Recipient must establish and follow a system for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(d).
- (7) The Recipient must establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.332(e) and report the results of the monitoring in the quarterly progress reports referenced in article 7 of this agreement.
- (8) The Recipient must verify that every subrecipient is audited as required by subpart F of 2 CFR 200 when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501.
- (9) The Recipient may not make a fixed amount subaward without prior approval from MARAD.

12.6 Disclosing Conflict of Interest.

- (a) In accordance with 2 CFR 200.318(c)(1), the Recipient must establish and maintain written Standards of Conduct to address, resolve, and disclose to MARAD conflicts of interest affecting any contract or subaward and governing the performance of its employees that are engaged in or otherwise involved in the award or administration of third-party contracts. Additionally, the Recipient must be aware of conflict of interest issues a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage.
- (b) In accordance with 2 CFR 200.318(c)(2), if the Recipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the Recipient must also maintain written standards of conduct covering organizational conflicts of interest.
- (c) The Recipient must disclose in a timely manner, in writing, any potential or real conflicts of interest described in section 12.6(a)-(b) to MARAD pursuant to 2 CFR 200.112, including the Recipient's approach for resolving or mitigating the conflict of interest.

12.7 Securing Logistics Information Data of the United States.

- (a) As a condition of receiving PIDP funding, the Recipient acknowledges that Section 825 of Pub. L. No. 118-31 and 46 U.S.C. 50309 prohibit Covered Entities from using a Covered Logistics Platform in part or in whole.

- (b) In this section 12.7, “Covered Entity” and “Covered Logistics Platform” have the same meaning as defined in 46 U.S.C. 50309(e).

ARTICLE 13

NONCOMPLIANCE AND REMEDIES

13.1 Noncompliance Determinations.

- (a) If MARAD determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, MARAD may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and MARAD must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If MARAD notifies the Recipient of a proposed determination of noncompliance under section 13.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
- (1) accept the remedy;
 - (2) acknowledge the noncompliance, but propose an alternative remedy; or
 - (3) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response documentation or other information supporting the Recipient’s compliance.

- (c) MARAD may make a final determination of noncompliance only:
- (1) after considering the Recipient’s response under section 13.1(b); or
 - (2) if the Recipient fails to respond under section 13.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, MARAD must provide a notice to the Recipient that states the bases for that determination.

13.2 Remedies.

- (a) If MARAD makes a final determination of noncompliance under section 13.1, MARAD may impose a remedy, including:
- (1) additional conditions on the award;

- (2) any remedy permitted under 2 CFR 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to MARAD; suspension or termination of the award; or suspension and disbarment under 2 CFR Part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, MARAD must provide a written notice to the Recipient that describes the remedy, but MARAD may make the remedy effective before the Recipient receives that notice.
 - (c) If MARAD determines that it is in the public interest, MARAD may impose a remedy, including all remedies described in section 13.2(a), before making a final determination of noncompliance under section 13.1. If it does so, then the notice provided under section 13.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
 - (d) In imposing a remedy under this section 13.2 or making a public interest determination under section 13.2(c), MARAD may elect to consider the interests of only MARAD.
 - (e) The Recipient acknowledges that amounts that MARAD requires the Recipient to refund to MARAD due to a remedy under this section 13.2 constitute a debt to the Federal Government that MARAD may collect under 2 CFR 200.346 and the Federal Claims Collection Standards (31 CFR Parts 900–999).

13.3 Other Oversight Entities. Nothing in this article 13 limits any party’s authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 14

AGREEMENT TERMINATION

14.1 MARAD Termination.

- (a) MARAD may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
 - (1) the Recipient fails to obtain or provide any non-PIDP Grant contribution or alternatives approved by MARAD as provided in this agreement and consistent with schedule D;
 - (2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient fails to meet that milestone by six months after the date listed in section 2 of schedule C;

- (3) the Recipient fails to meet a milestone listed in section 3 of schedule C by the deadline date listed in that section for that milestone;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the project schedule in schedule C even if it is beyond the reasonable control of the Recipient;
 - (5) circumstances cause changes to the Project that MARAD determines are inconsistent with MARAD's basis for selecting the Project to receive a PIDP Grant; or
 - (6) MARAD determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, MARAD may elect to consider only the interests of MARAD.
 - (c) This section 14.1 does not limit MARAD's ability to terminate this agreement as a remedy under section 13.2.
 - (d) The Recipient may request that MARAD terminate the agreement under this section 14.1.

14.2 Closeout Termination.

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, "**Project Closeout**" means the date that MARAD notifies the Recipient that the award is closed out. Under 2 CFR 200.344, Project Closeout should occur no later than one year after the end of the period of performance.

14.3 Post-Termination Adjustments. The Recipient acknowledges that under 2 CFR 200.345–200.346, termination of the agreement does not extinguish MARAD's authority to disallow costs, including costs that MARAD reimbursed before termination, and recover funds from the Recipient.

14.4 Non-Terminating Events.

- (a) The end of the budget period described under section 25.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The end of the period of performance described under section 25.5 does not terminate this agreement or the Recipient's obligations under this agreement.
- (c) The cancellation of funds under section 16.2 does not terminate this agreement or the Recipient's obligations under this agreement.

14.5 Other Remedies. The termination authority under this article 14 supplements and does not limit MARAD's remedial authority under article 13 or 2 CFR Part 200, including 2 CFR 200.339–200.340.

14.6 Reporting Survival: The reporting requirements set forth in article 8 of this agreement survive the termination of this agreement and the expiration of award funds.

ARTICLE 15 COSTS, PAYMENTS, AND UNEXPENDED FUNDS

15.1 Limitation of Federal Award Amount. Under this award, MARAD shall not provide funding greater than the amount obligated under section 4.3. The Recipient acknowledges that MARAD is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.

15.2 Projects Costs. This award is subject to the cost principles at 2 CFR 200 subpart E, including provisions on determining allocable costs and determining allowable costs.

15.3 Timing of Project Costs.

- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
- (b) Except as permitted under section 15.3(d)–(e), the Recipient shall not charge to this award costs that were incurred before the date of this agreement.
- (c) This agreement hereby terminates and supersedes any previous MARAD approval for the Recipient to incur costs under this award for the Project. Section 5 of schedule D is the exclusive MARAD approval of costs incurred before the date of this agreement.
- (d) If section 5 of schedule D identifies a pre-award approval under 2 CFR 200.458 that will be reimbursed with Federal funds, then the Recipient may charge to this award, for payment from the PIDP Grant or other Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the budget period.
- (e) If MARAD approves a request from the Recipient under 46 U.S.C. 54301(a)(10)(B) and section 5 of schedule D describes that approval, then the Recipient may charge to this award, for payment from non-Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the budget period.

15.4 Recipient Recovery of Federal Funds. The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if MARAD determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under

this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by MARAD.

15.5 Unexpended Federal Funds. Any Federal funds that are awarded at section 4.1 but not expended on allocable, allowable costs remain the property of the United States.

15.6 Timing of Payments to the Recipient.

- (a) Reimbursement is the payment method for the PIDP grant program.
- (b) The Recipient shall not request reimbursement of a cost before the Recipient has entered into an obligation for that cost.

15.7 Payment Method.

- (a) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” then the Recipient shall complete all applicable forms and attach supporting documents, including the SF 270, in Delphi eInvoicing System, which is on-line and paperless, to request reimbursement. To obtain the latest version of these standard forms, visit <https://www.grants.gov/forms/>. The Recipient shall review the training on using Delphi eInvoicing System before submitting a request for reimbursement. To guide the Recipient when reviewing this training, MARAD provides the following additional information, which may change after execution of this agreement:
 - (1) The Recipient may access the training from the MARAD “Delphi eInvoicing System” webpage at <https://einvoice.esc.gov>. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training.
 - (2) A username and password are not required to access the on-line training. It is currently available, will be accessible 24/7, and will take approximately 10 minutes to review.
 - (3) Once the above referenced training has been reviewed, Recipients must request and complete the External User Access Request form. Recipients can request the External User Access Request form by sending an email to a Grants/Contracting Officer who is identified in section 5 of schedule A or section 2.2. A request to establish access will be sent once the External User Access Request form is received.
- (b) MARAD may deny a payment request that is not submitted using the method identified in this section 15.7.

15.8 Information Supporting Expenditures.

- (a) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit and attach the SF 270 (Request for Advance or Reimbursement), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (b) If the Recipient submits a request for reimbursement that MARAD determines does not include or is not supported by sufficient detail, MARAD may deny the request or withhold processing the request until the Recipient provides sufficient detail.

15.9 Reimbursement Request Timing Frequency.

- (a) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” the Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement for a cost more than 180 days after that cost was incurred, MARAD may deny the request for being untimely.
- (b) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” then the Recipient should not request reimbursement more frequently than once every 30 days.

ARTICLE 16 LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

16.1 Liquidation of Recipient Obligations.

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory funds cancellation date identified in section 16.2.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 CFR 200.344–200.346.

16.2 Funds Cancellation.

- (a) PIDP grant funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) for fiscal year 2024, is canceled by statute after September 30, 2039, and then unavailable for any purpose, including adjustments.
- (b) PIDP grant funding that was appropriated in the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42 (Mar. 9, 2024), or a previous annual appropriations act, remains available until expended.

- (c) Section 4.2 identifies the specific source or sources of funding for this award.

ARTICLE 17

AGREEMENT MODIFICATIONS

- 17.1 Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by MARAD and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 17.2 Unilateral Contact Modifications.**
- (a) The Recipient may update the contacts who are listed in section 3 of schedule A by written notice to all of the MARAD contacts who are listed in section 5 of schedule A and section 2.2.
 - (b) MARAD may update the contacts who are listed in section 5 of schedule A and section 2.2 by written notice to all of the Recipient contacts who are listed in section 3 of schedule A.
- 17.3 MARAD Unilateral Modifications.**
- (a) MARAD may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
 - (b) To unilaterally modify this agreement under this section 17.3, MARAD must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.
- 17.4 Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 17.1, 17.2, or 17.3. If an amendment, modification, or supplement is not permitted under section 17.1, not permitted under section 17.2, or not permitted under section 17.3, it is void.

ARTICLE 18

FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

- 18.1 Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 CFR Parts 200 and 1201.
- 18.2 Federal Law and Public Policy Requirements.**

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; and Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.
- (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.
- (c) Pursuant to Section 3(b)(iv)(A) of Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
- (d) Pursuant to Section 3(b)(iv)(B) of Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.

18.3 Federal Freedom of Information Act.

- (a) MARAD is subject to the Freedom of Information Act, 5 U.S.C. 552.
- (b) The Recipient acknowledges that the Technical Application and materials submitted to MARAD by the Recipient related to this agreement may become MARAD records subject to public release under 5 U.S.C. 552.

18.4 History of Performance. Under 2 CFR 200.206, any Federal awarding agency may consider the Recipient's performance under this agreement, when evaluating the risks of making a future Federal financial assistance award to the Recipient.

18.5 Whistleblower Protection.

- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related to this award.
- (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

18.6 External Award Terms and Obligations.

(a) In addition to this document and the contents described in article 26, this agreement includes the following additional terms as integral parts:

- (1) Appendix A to 2 CFR Part 25: System for Award Management and Universal Identifier Requirements;
- (2) Appendix A to 2 CFR Part 170: Reporting Subawards and Executive Compensation;
- (3) 2 CFR Part 175: Award Term for Trafficking in Persons; and
- (4) Appendix XII to 2 CFR Part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient shall comply with:

- (1) 49 CFR Part 20: New Restrictions on Lobbying;
- (2) 49 CFR Part 21, including any amendments thereto: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 CFR Part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- (4) Subpart B of 49 CFR Part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

18.7 Incorporated Certifications. The Recipient makes the statements in the following certifications, which are incorporated by reference:

- (1) Appendix A to 49 CFR Part 20 (Certification Regarding Lobbying).

18.8 Labor and Work. Schedule H documents the consideration of job quality and labor rights, standards, and protections related to the Project.

ARTICLE 19

MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

19.1 Recipient Monitoring and Record Retention.

(a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:

- (1) that those activities comply with this agreement; and

- (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 CFR 200.332(e) and section 12.5 of this agreement.
- (c) The Recipient shall retain records relevant to the award as required under 2 CFR 200.334.

19.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the Project.
- (b) The Recipient shall keep accounts and records described under section 19.2(a) in accordance with a financial management system that meets the requirements of 2 CFR 200.301–200.303 and 2 CFR 200 subpart F and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the FY 2024 PIDP Grants in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 CFR 200 subpart F, including “FY 2024” in the program name; and
 - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2024” in column c (“Additional Award Identification”).

19.3 Internal Controls. The Recipient shall establish and maintain internal controls as required under 2 CFR 200.303.

19.4 MARAD Record Access. MARAD may access Recipient records related to this award under 2 CFR 200.337 in order to make audits, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to the Recipient’s personnel for the purpose of interview and discussion related to such documents.

ARTICLE 20

NOTICES

20.1 Form of Notice.

- (a) For a notice under this agreement to be valid, it must be in writing.
- (b) For a notice to MARAD under this agreement to be valid, it must be signed and dated by an individual with authority to act on behalf of the Recipient.

20.2 Method of Notice to MARAD.

- (a) For a notice to MARAD under this agreement to be valid, it must be sent by one or more of the following: (1) email; (2) a national transportation company with all fees prepaid and receipt of delivery; or (3) by registered or certified mail with return receipt requested and postage prepaid.
- (b) For a notice to MARAD under this agreement to be valid, it must be addressed to all of the MARAD contacts who are listed in section 5 of schedule A and section 2.2.
- (c) Except as specified in section 20.2(d), a valid notice to MARAD under this agreement will be deemed to have been received on the earliest of (1) when the email is received by MARAD, as recorded by MARAD's email systems, and (2) when indicated on the receipt of delivery by national transportation company or mail.
- (d) If a valid notice or other communication to MARAD under this agreement is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

20.3 Method of Notice to Recipient.

- (a) Except as specified in section 20.3(d), for a notice to the Recipient under this agreement to be valid, it must be sent by one or more of the following: (1) email; (2) a national transportation company with all fees prepaid and receipt of delivery; or (3) registered or certified mail with return receipt requested and postage prepaid.
- (b) For a notice to the Recipient under this agreement to be valid, it must be addressed to all of the Recipient contacts who are listed in section 3 of schedule A.
- (c) A valid notice to the Recipient under this agreement is effective when received by the Recipient. It will be deemed to have been received:
 - (1) for email, on receipt; and, for other delivery, when indicated on the receipt of delivery by national transportation company or mail; or

- (2) if the Recipient rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address or representatives for which no notice was given, then on that rejection, refusal, or inability to deliver.
 - (d) For a notice to the Recipient under article 13 to be valid, it must be sent by one or more of the following: (1) a national transportation company with all fees prepaid and receipt of delivery or (2) registered or certified mail with return receipt requested and postage prepaid.
- 20.4 Recipient Contacts for Notice.** If a Recipient contact who is listed in section 3 of schedule A is unable to receive notices under this agreement on behalf of the Recipient, then the Recipient shall promptly identify one or more replacement contacts under section 17.2(a).
- 20.5 Additional Mandatory Notices to MARAD.** The Recipient shall notify MARAD if any one of the following conditions is satisfied, not later than 5 business days after that condition is satisfied:
- (1) the Recipient receives a communication related to this award or this agreement from the United States Comptroller General, a Federal Inspector General, or any other oversight entity; or
 - (2) the Recipient becomes aware of waste, fraud, abuse, or potentially criminal activity related to this agreement.
- 20.6 Scope of Notice Requirements.** The form and method requirements of this article 20, including sections 20.1, 20.2, and 20.3, apply only to communications for which this agreement expressly uses one or more of the following words: “notice”; “notification”; “notify”; or “notifying.” This article 20 does not control or limit other communication between the parties about the Project or this agreement.

ARTICLE 21 INFORMATION REQUESTS

21.1 MARAD Information Requests.

- (a) By notice, MARAD may request from the Recipient any information that MARAD determines is necessary to fulfill its oversight responsibilities under the Program Statute or other Federal law.
- (b) If MARAD requests information from the Recipient under section 21.1(a), the Recipient shall respond in the form and at the time detailed in the notice requesting information.
- (c) This section 21.1 does not limit the Recipient’s obligations under section 19.4 or 2 CFR 200.337 to provide access to Recipient records.

ARTICLE 22 ASSIGNMENT

- 22.1 Assignment Prohibited.** The Recipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.

ARTICLE 23 WAIVER

23.1 Waivers.

- (a) A waiver of a term of this agreement granted by MARAD will not be effective unless it is in writing and signed by an authorized representative of MARAD.
- (b) A waiver of a term of this agreement granted by MARAD on one occasion will not operate as a waiver on other occasions.
- (c) If MARAD fails to require strict performance of a term of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that term or breach.

ARTICLE 24 ADDITIONAL TERMS AND CONDITIONS

- 24.1 Disclaimer of Federal Liability.** MARAD shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this agreement.

24.2 Relocation and Real Property Acquisition.

- (a) To the greatest extent practicable under State law, the Recipient shall comply with the land acquisition policies in 49 CFR 24 subpart B and shall pay or reimburse property owners for necessary expenses as specified in that subpart.
- (b) The Recipient shall provide a relocation assistance program offering the services described in 49 CFR 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 CFR 24 subparts D–E.
- (c) The Recipient shall make available to displaced persons, within a reasonable period of time prior to displacement, comparable replacement dwellings in accordance with 49 CFR 24 subpart E.

24.3 Real Property and Equipment Disposition.

- (a) In accordance with 2 CFR 200.311, when real property is no longer needed for the originally authorized purpose, the Recipient or subrecipient must obtain disposition instructions from the Federal awarding agency or pass-through entity.
- (b) In accordance with 2 CFR 200.313 and 1201.313, equipment acquired under this award must be used by the Recipient or subrecipient in the Project as long as needed, whether or not the Project continues to be supported by the Federal award. When no longer needed for the originally awarded Project or another Federal award:
 - (1) if the entity that acquired the equipment is a State, that entity shall dispose of that equipment in accordance with State laws and procedures;
 - (2) if the entity that acquired the equipment is an Indian Tribe, the Indian Tribe shall dispose of that equipment in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in 2 CFR 200.313; and
 - (3) if the entity that acquired the equipment is neither a State nor an Indian Tribe, that entity shall request disposition instructions from MARAD within 120 days after that entity determines that the equipment is no longer needed.
- (c) In accordance with 2 CFR 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 CFR 200.313–200.316 and 2 CFR 1201.313.
- (d) The Recipient shall ensure compliance with this section 24.3 for all tiers of subawards under this award.

24.4 Environmental Review.

- (a) The Recipient shall not begin final design, begin construction, or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
 - (1) MARAD complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, Section 7 of the Endangered Species Act, 16 U.S.C. 1531, and any other applicable environmental laws and regulations; and
 - (2) MARAD provides the Recipient with written communication stating that the environmental review process is complete.
- (b) The Recipient acknowledges that:
 - (1) MARAD's actions under section 24.4(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary environmental documents to MARAD; and

- (2) applicable environmental statutes and regulations may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (c) To the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (d) The activities described in schedule B and other information described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with schedule B or other information in this agreement, then:
 - (1) the parties may amend this agreement under section 17.1 for consistency with the selected build alternative; or
 - (2) if MARAD determines that the condition at section 14.1(a)(5) is satisfied, MARAD may terminate this agreement under section 14.1(a)(5).
- (e) The Recipient shall complete any mitigation activities described in the environmental documents and correspondence for the Project, including the terms and conditions contained in the required permits and authorizations for the Project. Section 3 of schedule B identifies environmental documents and correspondence describing mitigation activities and permits, but the absence of a document or correspondence from that section does not relieve the Recipient of any compliance obligations. MARAD may determine that any failure to complete the mitigation activities and permits within the Project environmental documents is non-compliance of the grant agreement subject to the remedies identified in article 13.
- (f) The Recipient acknowledges that, unless MARAD indicates otherwise in writing, upon termination of an agreement for the Project entered into under 36 CFR 800.6(c) or 36 CFR 800.14(b), the Recipient shall immediately cease all Project activities related to the “undertaking” as defined in that agreement, pending MARAD’s determinations under 36 CFR 800 and applicable law.

ARTICLE 25

MANDATORY AWARD INFORMATION

25.1 Information Contained in a Federal Award. For 2 CFR 200.211:

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 27.2;
- (2) the “Assistance Listings Number” is 20.823 and the “Assistance Listings Title” is “Port Infrastructure Development Program”; and

(3) this award is not for research and development.

25.2 Federal Award Identification Number. The Federal Award Identification Number is listed in section 7 of schedule A.

25.3 Recipient's Unique Entity Identifier. The Recipient's Unique Entity Identifier, as defined at 2 CFR 25.415, is listed in section 2 of schedule A.

25.4 Budget Period. The budget period for this award begins on the date of this agreement and ends on the budget period end date that is listed in section 1 of schedule C. In this agreement, "budget period" is used as defined at 2 CFR 200.1.

25.5 Period of Performance. The period of performance for this award begins on the date of this agreement and ends on the period of performance end date that is listed in section 1 of schedule C. In this agreement, "period of performance" is used as defined at 2 CFR 200.1.

ARTICLE 26 CONSTRUCTION AND DEFINITIONS

26.1 Schedules. This agreement includes the following schedules as integral parts:

Schedule A	Administrative Information
Schedule B	Project Activities
Schedule C	Award Dates and Project Schedule
Schedule D	Award and Project Financial Information
Schedule E	Changes from Application
Schedule F	PIDP Designations
Schedule G	PIDP Performance Measurement Information
Schedule H	Labor and Work

26.2 Exhibits. The following exhibits, which are located in the document titled "Exhibits to MARAD Grant Agreements Under the Fiscal Year 2024 Port Infrastructure Development Program Grants," dated March 31, 2025, and available at <https://www.maritime.dot.gov/grants/federal-grant-assistance/federal-grant-assistance>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Additional Standard Terms
Exhibit C	Quarterly Project Progress Reports and Recertifications: Format and Content

26.3 Construction.

(a) In these General Terms and Conditions:

- (1) unless expressly specified, a reference to a section or article refers to that section or article in these General Terms and Conditions;
 - (2) a reference to a section or other subdivision of a schedule listed in section 26.1 will expressly identify the relevant schedule; and
 - (3) there are no references to articles or sections in project-specific portions of the agreement that are not contained in schedules listed in section 26.1.
- (b) If a provision in these General Terms and Conditions or the exhibits conflicts with a provision in the project-specific portion of the agreement, then the project-specific portion of the agreement prevails. If a provision in the exhibits conflicts with a provision in these General Terms and Conditions, then the provision in these General Terms and Conditions prevails.

26.4 Integration. This agreement constitutes the entire agreement of the parties relating to the PIDP grant program and awards under that program and supersedes any previous agreements, oral or written, relating to the PIDP grant program and awards under that program.

26.5 Definitions. In this agreement, the following definitions apply:

“General Terms and Conditions” means this document, including articles 1–27.

“Program Statute” means the collective statutory text:

- (1) at 46 U.S.C. 54301;
- (2) under the heading “Port Infrastructure Development Program” in title VIII of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading; and
- (3) under the heading “Port Infrastructure Development Program” in title I of division F of the Consolidated Appropriations Act, 2024 Pub. L. No. 118-42 (Mar. 9, 2024), and all other provisions of that act that apply to amounts appropriated under that heading.
- (4) If a Funding Act not described in (1)-(3) above is identified in section 4 of schedule F, then all provisions of that act that apply to amounts appropriated under that heading for the PIDP shall also apply.

“Project” means the project proposed in the Technical Application, as modified by the negotiated provisions of this agreement, including schedules A–H.

“PIDP Grant” means an award of funds that were made available under the NOFO or as specified for CPF in the table entitled “Community Project Funding/Congressionally

Directed Spending” included in the explanatory statement to the Consolidated Appropriations Act, 2024.

“**Technical Application**” means the application identified in section 1 of schedule A, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov, as applicable.

- 26.6 References to Times of Day.** All references to times of day in this agreement are deemed references to that time at the prevailing local time in Washington, DC.

ARTICLE 27

AGREEMENT EXECUTION AND EFFECTIVE DATE

- 27.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- 27.2 Effective Date.** The agreement will become effective when all parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a PIDP Grant when MARAD’s authorized representative signs it.

U.S. DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION

EXHIBITS TO MARAD GRANT AGREEMENTS UNDER THE
FISCAL YEAR 2024 PORT INFRASTRUCTURE DEVELOPMENT PROGRAM
GRANTS

March 31, 2025

EXHIBIT A

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this agreement for a FY 2024 PIDP Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act – 42 U.S.C. §§ 7401, et seq.
- i. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- j. Endangered Species Act – 16 U.S.C. §§ 1531 et seq.
- k. Coastal Zone Management Act – 16 U.S.C. §§ 1451 et seq.
- l. Flood Disaster Protection Act of 1973 – 42 U.S.C. §§ 4001 et seq.
- m. Age Discrimination Act of 1975, as amended - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act, 42 U.S.C. 1996
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. §§ 4151, et seq.
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. §§ 3701, et seq.
- t. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- u. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- v. Wild and Scenic Rivers Act – 16 U.S.C. §§ 1271, et seq.
- w. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- x. Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101, et seq.
- y. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- z. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- aa. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d, et seq.
- bb. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- cc. Freedom of Information Act - 5 U.S.C. § 552, as amended

- dd. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. §§ 1801, et seq.
- ee. Farmland Protection Policy Act of 1981 – 7 U.S.C. §§ 4201, et seq.
- ff. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. §§ 661, et seq.
- gg. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- hh. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and 23 U.S.C. § 138
- ii. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – 42 U.S.C. §§ 9601, et seq.
- jj. Safe Drinking Water Act – 42 U.S.C. §§ 300f, et seq.
- kk. The Wilderness Act – 16 U.S.C. §§ 1131, et seq.
- ll. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901 et seq.
- mm. Migratory Bird Treaty Act 16 U.S.C. §§ 703, et seq.
- nn. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. No. 109–282, as amended by section 6202 of Pub. L. No. 110–252)
- oo. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- pp. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232
- qq. Build America, Buy America Act – Pub. L. No. 117-58, div. G §§ 70901–70927
- rr. The Buy American Act, 41 U.S.C. chapter 83
- ss. Bringing in and harboring certain aliens – 8 U.S.C. 1324
- tt. Aiding or assisting certain aliens to enter – 8 U.S.C. 1327

Executive Orders

- a. Executive Order 11990 – Protection of Wetlands
- b. Executive Order 11988 – Floodplain Management
- c. Executive Order 12372 – Intergovernmental Review of Federal Programs
- d. Executive Order 12549 – Debarment and Suspension
- e. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- f. Executive Order 14025 – Worker Organizing and Empowerment
- g. Executive Order 14149 – Restoring Freedom of Speech and Ending Federal Censorship
- h. Executive Order 14154 – Unleashing American Energy
- i. Executive Order 14151 – Ending Radical and Wasteful Government DEI Programs and Preferencing
- j. Executive Order 14168 – Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- k. Executive Order 14173 – Ending Illegal Discrimination and Restoring Merit-Based Opportunity

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR Parts 200, 1201

- b. Non-procurement Suspension and Debarment – 2 CFR Parts 180, 1200
- c. Procedures for predetermination of wage rates – 29 CFR Part 1
- d. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 CFR Part 3
- e. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 CFR Part 5
- f. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 CFR Parts 60, et seq.
- g. New Restrictions on Lobbying – 49 CFR Part 20
- h. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 CFR Part 21, including any amendments thereto
- i. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 CFR Part 24
- j. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 CFR Part 25
- k. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 CFR Part 27
- l. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 CFR Part 35
- m. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 CFR Part 28
- n. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 CFR Part 30
- o. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 CFR Part 32
- p. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 CFR Parts 37 and 38
- q. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 CFR Part 26, including any amendments thereto (as applicable under section 12.3 of this agreement)
- r. Preference for Privately Owned Commercial U.S. Flag Vessels – 46 CFR Part 381
- s. Buy America Preferences for Infrastructure Projects – 2 CFR 184

Specific assurances required to be included in the FY 2024 PIDP Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

EXHIBIT B
ADDITIONAL STANDARD TERMS

[The remainder of this page intentionally left blank.]

TERM B.1
TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED
PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL
FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities
Act, as amended)

49 CFR Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into this agreement under the FY 2024 PIDP, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Maritime Administration (MARAD), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21, including any amendments thereto (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise

subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including MARAD.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2024 PIDP Grant:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2024 PIDP Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. Maintain records of Title VI, Title IX, and ADA investigations, complaints, and lawsuits alleging discrimination on the basis of race, color, national origin, sex, age, or disability that are attributed to the Recipient. To the extent permitted by law, the records shall include the date that the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the Recipient in response, or final findings related to, the investigation, lawsuit, or complaint. The Recipient must submit a summary of these records that includes de-identified aggregate data, upon request by MARAD, sufficient to determine whether the Recipient is in compliance with Federal non-discrimination requirements. If MARAD determines that the provided information is insufficient to determine whether the Recipient is in compliance with Federal non-discrimination requirements, then the parties will come to a mutually-agreed-to resolution about the information the Recipient should submit.

11. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing MARAD's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by MARAD. You must keep records, reports, and submit the material for review upon request to MARAD, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2024 PIDP. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2024 PIDP.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Maritime Administration (MARAD), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21, including any amendments thereto.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or MARAD to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or MARAD, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or MARAD may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant

thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or MARAD may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42 (Mar. 9, 2024), the regulations for the administration of the FY 2024 PIDP, and the policies and procedures prescribed by the Maritime Administration (MARAD) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, including any amendments thereto, pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, including any amendments thereto, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21, including any amendments thereto.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

TERM B.2
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 CFR Parts 180 and 1200

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring MARAD approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

By signing and submitting the Technical Application and by entering into this agreement under the FY 2024 PIDP, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2024 PIDP Grant, as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of

Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior MARAD approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered

transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

TERM B.3
REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY
CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division B of the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42 (March 9, 2024), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“Covered Transaction” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“Felony Conviction” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“Participant” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“Tax Delinquency” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.

3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

4 **Prohibition.** If

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless MARAD has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. **Mandatory Notice to MARAD.**

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify MARAD in writing of that entry.
- (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify MARAD in writing of that affirmative response.
- (c) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify MARAD in writing of that inaccuracy.

6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

- (1) require the SAM check in section 2;
- (2) require the certifications in section 3;
- (3) include the prohibition in section 4; and

- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify MARAD under section 5.

TERM B.4

RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While

Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts*. To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

TERM B.5
**REQUIRED USE OF AMERICAN IRON, STEEL, MANUFACTURED PRODUCTS,
AND CONSTRUCTION MATERIALS**

This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), Office of Management and Budget (OMB) Memorandum M-24-02, “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure”, and 2 CFR part 184.

Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.

The Recipient shall not use funds provided under this award for an infrastructure project unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

Incorporation into an infrastructure project.

The Buy America preference in this award term only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies.

An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the

location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category.

An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Waivers.

When necessary, the Recipient may apply for, and the USDOT may grant, a waiver from the Buy America preference in this award term.

A request to waive the application of the Buy America preference must be in writing. The USDOT will provide instructions on the waiver process and on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office.

When the USDOT has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America preference in any case in which the USDOT determines that:

- (1) applying the Buy America preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

Definitions

“Buy America preference” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

“Component” means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

“Infrastructure project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means:

- (1) Articles, materials, or supplies that have been:
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- (2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

“Manufacturer” means the entity that performs the final manufacturing process that produces a manufactured product.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Produced in the United States” means:

- (1) In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) In the case of manufactured products:
 - (i) The product was manufactured in the United States; and
 - (ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. The costs of components of a manufactured product are determined according to 2 CFR 184.5, as outlined above in this award term.

- (3) In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. *See* section 2 CFR 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.

“Section 70917(c) materials” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. *See* section 70917(c) of the Build America, Buy America Act.

EXHIBIT C
QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS:
FORMAT AND CONTENT

- 1. Purpose.** The purpose of the Quarterly Project Progress Reports and Recertifications under this agreement for the FY 2024 PIDP are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.
- 2. Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of MARAD, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and MARAD. Some projects will have a more extensive quarterly status than others. For smaller projects, MARAD may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.
 - (a) Project Overall Status.** This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.
 - (b) Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, environmental permit approvals, compliance with environmental mitigation measures, subrecipient monitoring, and other items of significance.
 - (c) Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.
 - (d) Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.

(e) Project Schedule. An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and MARAD. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(f) Project Cost. An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.

- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

(g) Federal Financial Report (SF-425). The Federal Financial Report (SF-425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Project Progress and Monitoring Report. The form is available at <https://www.grants.gov/forms/forms-repository/post-award-reporting-forms>.

(h) Certifications.

- i. A certification that the Recipient is in compliance with 2 CFR 200.303 (Internal Controls) and 2 CFR part 200, subpart F (Audit Requirements), as applicable.
- ii. The certification required under 2 CFR 200.415(a).
- iii. If the Recipient has made subawards under the grant, a certification affirming that the Recipient has established comprehensive monitoring plans and procedures for subrecipients benefiting from pass-through funds.