

**U.S. DEPARTMENT OF TRANSPORTATION**

**GENERAL TERMS AND CONDITIONS UNDER THE**

**FISCAL YEAR 2021 PORT INFRASTRUCTURE DEVELOPMENT PROGRAM (PIDP)**

**GRANTS**

**June 14, 2022**

## **Table of Contents**

Article 8 Purpose.....	6
8.1 Purpose.....	6
Article 9 USDOT Role.....	6
9.1 Operating Administration. ....	6
9.2 MARAD Program Contacts. ....	6
Article 10 Recipient Role.....	7
10.1 Statements on the Project. ....	7
10.2 Statements on Authority and Capacity.....	7
10.3 MARAD Reliance. ....	8
10.4 Project Delivery.....	8
10.5 Rights and Powers Affecting the Project. ....	8
10.6 Notification of Changes to Key Personnel.....	8
Article 11 Award Amount, Obligation, and Time Periods .....	8
11.1 Federal Award Amount.....	8
11.2 Federal Obligation.....	9
11.3 Budget Period.....	9
11.4 Period of Performance.....	9
Article 12 Statement of Work, Schedule, and Budget Changes .....	9
12.1 Notification Requirement.....	9
12.2 Statement of Work Changes.....	9
12.3 Schedule Changes. ....	9
12.4 Budget Changes.....	9
12.5 MARAD Acceptance of Changes. ....	10
Article 13 General Reporting Terms.....	11
13.1 Report Submission. ....	11
13.2 Alternative Reporting Methods.....	11
13.3 Paperwork Reduction Act Notice.....	11
Article 14 Progress and Financial Reporting.....	11
14.1 Quarterly Project Progress Reports and Recertifications.....	11
14.2 Final Progress Reports and Financial Information.....	11
Article 15 Outcome Performance Measurement Reporting and Port Performance Reporting.....	12
15.1 Baseline Performance Measurement.....	12
15.2 Post-construction Performance Measurement.....	12
15.3 Project Outcomes Report. ....	12
15.4 Port Performance Reporting.....	13
Article 16 Noncompliance and Remedies.....	13
16.1 Noncompliance Determinations.....	13
16.2 Remedies. ....	14
16.3 Other Oversight Entities.....	15
Article 17 Agreement Termination.....	15
17.1 MARAD Termination. ....	15
17.2 Closeout Termination.....	16
17.3 Post-Termination Adjustments.....	166
17.4 Non-Terminating Events.....	16
17.5 Other Remedies.....	16

Article 18 Monitoring, Financial Management, Controls, and Records .....	16
18.1 Recipient Monitoring and Record Retention. ....	16
18.2 Financial Records and Audits. ....	17
18.3 Internal Controls.....	17
18.4 MARAD Record Access. ....	17
Article 19 Contracting and Subawards .....	17
19.1 Minimum Wage Rates.....	17
19.2 Buy America. ....	17
19.3 Small and Disadvantaged Business Requirements.....	18
19.4 Engineering and Design Services.....	18
19.5 Foreign Market Restrictions.....	18
19.6 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. ....	18
19.7 Pass-through Entity Responsibilities.....	18
19.8 Subaward and Contract Authorization. ....	18
Article 20 Costs, Payments, and Unexpended Funds .....	19
20.1 Limitation of Federal Award Amount.....	19
20.2 Projects Costs. ....	19
20.3 Timing of Project Costs.....	19
20.4 Recipient Recovery of Federal Funds. ....	19
20.5 Unexpended Federal Funds.....	19
20.6 Timing of Payments to the Recipient. ....	19
20.7 Payment Method. ....	19
20.8 Information Supporting Expenditures.....	20
20.9 Reimbursement Request Timing and Frequency. ....	20
Article 21 Liquidation and Adjustments.....	21
21.1 Liquidation of Recipient Obligations.....	21
Article 22 Agreement Modifications .....	21
22.1 Bilateral Modifications.....	21
22.2 Unilateral Contract Modifications.....	21
22.3 MARAD Unilateral Modifications.....	21
22.4 Other Modifications. ....	21
Article 23 Federal Financial Assistance, Administrative, and National Policy Requirements ....	22
23.1 Uniform Administrative Requirements for Federal Awards.....	22
23.2 Federal Law and Public Policy Requirements. ....	22
23.3 Federal Freedom of Information Act. ....	22
23.4 History of Performance. ....	22
23.5 Whistleblower Protection. ....	22
23.6 External Award Terms and Obligations.....	22
23.7 Incorporated Certifications.....	23
Article 24 Assignment .....	23
24.1 Assignment Prohibited. ....	23
Article 25 Waiver.....	23
25.1 Waivers.....	23
Article 26 Additional Terms and Conditions.....	24
26.1 Disclaimer of Federal Liability. ....	24

26.2	Relocation and Real Property Acquisition. ....	24
26.3	Equipment Disposition. ....	24
Article 27	Mandatory Award Information. ....	25
27.1	Information Contained in a Federal Award. ....	25
Article 28	Construction and Definitions. ....	25
28.1	Attachments. ....	25
28.2	Exhibits. ....	25
28.3	Construction. ....	25
28.4	Integration. ....	25
28.5	Definitions. ....	26
Article 29	Agreement Execution and Effective Date ....	26
29.1	Counterparts. ....	26
29.2	Effective Date. ....	26

## **Index of Definitions**

Federal Share .....	10
MARAD.....	6
NOFO.....	6
OMB .....	11
Program Statute.....	26
Project .....	26
Project Closeout.....	16
PIDP Grant.....	26
Recipient .....	Project-Specific Recitals
Technical Application.....	26
USDOT .....	6

## GENERAL TERMS AND CONDITIONS

The Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020) appropriated funds to the United States Department of Transportation (“USDOT”) Maritime Administration (“MARAD”) under the heading “Port Infrastructure Development Program.” The funds are available to provide Federal financial assistance to make grants to improve port facilities at coastal seaports, inland river ports, or Great Lakes ports. The MARAD program administering those funds is the Port Infrastructure Development Program (PIDP).

MARAD published a “Notice of Funding Opportunity for the Maritime Administration’s Port Infrastructure Development Program (PIDP) Under the Consolidated Appropriations Act, 2021,” 86 Fed. Reg. 20231 (April 16, 2021) (the “NOFO”) to solicit applications for Federal financial assistance.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal year 2021 PIDP grant program. Articles 1–7 are in the project-specific portion of the agreement. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through E are project-specific attachments.

### ARTICLE 8 PURPOSE

**8.1 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, as modified by section 3.3 and Attachment B.

### ARTICLE 9 USDOT ROLE

**9.1 Operating Administration.** MARAD will administer this agreement on behalf of the USDOT.

**9.2 MARAD Program Contacts.**

Robert Bouchard  
Director, Office of Port  
Infrastructure Development  
DOT – Maritime Administration

1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR-510  
W21-308  
Mailstop 3  
(202) 366-5076  
[robert.bouchard@dot.gov](mailto:robert.bouchard@dot.gov)

and

MARAD PIDP Grants Coordinator  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
[PIDPGrants@dot.gov](mailto:PIDPGrants@dot.gov)

## **ARTICLE 10 RECIPIENT ROLE**

### **10.1 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) Attachment D documents all material changes in the information contained in that application.

### **10.2 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 Cost” and the “PIDP Grant Amount” listed in section 3.3 are 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 10 and in section 23.7 on behalf of the Recipient.

**10.3 MARAD Reliance.** The Recipient acknowledges that:

- (1) 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;
- (3) MARAD relied on statements of fact in both the Technical Application and this agreement to establish the terms of this agreement; and
- (4) MARAD's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

**10.4 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.

**10.5 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, in a manner acceptable to MARAD, to promptly 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.

**10.6 Notification of Changes to Key Personnel.** The Recipient shall notify all MARAD representatives who are identified in section 5.4 in writing within 30 calendar days of any change in key personnel who are identified in section 5.3.

## **ARTICLE 11 AWARD AMOUNT, OBLIGATION, AND TIME PERIODS**

**11.1 Federal Award Amount** MARAD hereby awards a PIDP Grant to the Recipient in the amount listed in section 2.2 as the PIDP Grant Amount.



- 11.2 Federal Obligation.** This agreement obligates for the budget period the amount listed in section 2.2 as the PIDP Grant Amount.
- 11.3 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 2.3. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.
- 11.4 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 2.3. In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

## **ARTICLE 12**

### **STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 12.1 Notification Requirement.** The Recipient shall notify all MARAD representatives who are identified in section 5.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 12.1 is separate from any requirements under this article 12 that the Recipient request modification of this agreement.
- 12.2 Statement of Work Changes.** If the Project’s activities differ from the statement of work that is described in section 3.1 and Attachment A, then the Recipient shall request a modification of this agreement to update section 3.1 and Attachment A.
- 12.3 Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request a modification of this agreement to update the relevant dates:
- (1) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2;
  - (2) a schedule change would require the budget period to continue after the budget period end date listed in section 2.3; or
  - (3) a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.3.

For other schedule changes, the Recipient shall request a modification of this agreement unless MARAD has consented, in writing, to the change.

**12.4 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 section 3.3 and Attachment B if, in comparing the Project's budget to the amounts listed in section 3.3:
  - (1) the "Other Federal Funds" amount increases; or
  - (2) one or more of the "State Funds," "Local Funds," "Other Funds," or "Total Eligible Project Cost" amounts decrease.
- (c) For budget changes that are not identified in section 12.4(b), the Recipient shall request a modification of this agreement to update section 3.3 and Attachment B unless MARAD has consented, in writing, to the change.
- (d) If the actual eligible project costs are less than the "Total Eligible Project Cost" that is listed in section 3.3, then the Recipient may propose to MARAD, in writing, specific additional activities that are within the scope of this award, as defined in sections 8.1 and 3.1, and that the Recipient could complete with the difference between the "Total Eligible Project Cost" that is listed in section 3.3 and the actual eligible project costs.
- (e) If the actual eligible project costs are less than the "Total Eligible Project Cost" that is listed in section 3.3 and either the Recipient does not make a proposal under section 12.4(d) or MARAD does not accept the Recipient's proposal under section 12.4(d), then:
  - (1) in a request under section 12.4(b), the Recipient shall reduce the Federal Share by the difference between the "Total Eligible Project Cost" that is listed in section 3.3 and the actual eligible project costs; 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 "PIDP Grant Amount" and the "Other Federal Funds" amounts that are listed in section 3.3.

- (f) The Recipient acknowledges that amounts that are required to be refunded under section 12.4(e)(2) constitute a debt to the Federal Government that MARAD may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**12.5 MARAD Acceptance of Changes.** MARAD may accept or reject modifications requested under this article 12, 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 12 does not amend, modify, or supplement this agreement

unless MARAD accepts that modification request and the parties modify this agreement under section 22.1.

### **ARTICLE 13 GENERAL REPORTING TERMS**

- 13.1 Report Submission.** The Recipient shall send all reports required by this agreement to all MARAD contacts who are listed in section 5.4 and all MARAD contacts who are listed in section 9.2.
- 13.2 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.
- 13.3 Paperwork Reduction Act Notice.** Under 5 C.F.R. 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 14 PROGRESS AND FINANCIAL REPORTING**

- 14.1 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 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 and Recertification in the second calendar year quarter that begins after the date of this agreement.
- 14.2 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 15**  
**OUTCOME PERFORMANCE MEASUREMENT REPORTING AND PORT**  
**PERFORMANCE REPORTING**

**15.1 Baseline Performance Measurement.** If the Capital-Planning Designation in section 2.5 is “Capital,” then:

- (1) the Recipient shall collect data for each performance measure that is identified in the Outcome Performance Measure Table in Attachment C, accurate as of the Baseline Measurement Date that is identified in Attachment C; and
- (2) on or before the Baseline Report Date that is stated in Attachment C, the Recipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 15.1 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Outcome Performance Measure Table in Attachment C.

**15.2 Post-construction Performance Measurement.** If the Capital-Planning Designation in section 2.5 is “Capital,” then

- (1) 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 each performance measure that is identified in the Outcome Performance Measure Table in Attachment C; and
- (2) not later than January 31 of each year that follows a calendar year during which data was collected under this section 15.2, the Recipient shall submit to MARAD a Post-construction Performance Measurement Report containing the data collected under this section 15.2 in the previous calendar year and stating the dates when the data was collected.

If an external factor significantly affects the value of a performance measure collected under this section 15.2, then the Recipient shall identify that external factor in the Post-construction Performance Measurement Report and discuss its influence on the performance measure.

**15.3 Project Outcomes Report.** If the Capital-Planning Designation in section 2.5 is “Capital,” then the Recipient shall submit to MARAD, not later than January 31 of the year that follows the final calendar year during which data was collected under section 15.2, a Project Outcomes Report that contains:

- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;

- (2) all baseline and post-construction performance measurement data that the Recipient reported in the Baseline Performance Measurement Report and the Post-construction Performance Measurement Reports; and
- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Baseline Performance Measurement Report.

#### **15.4 Port Performance Reporting.**

- (1) The purpose of port performance reporting is for the USDOT to collect standardized data or validate publicly available data from Federal assistance recipients, to comply with the Port Performance Freight Statistics Program.
- (2) The Recipient shall enter into a Port Performance Data Sharing Agreement provided by the USDOT for Port Performance Reporting, and execution of a Port Performance Data Sharing Agreement with USDOT is a milestone in Section 4.1.
- (3) The schedule for reporting, the specific indicators to be measured and reported, and the confidentiality terms for each measure will be defined in the Port Performance Data Sharing Agreement. The terms of the Port Performance Data Sharing Agreement will include terms requiring that the Recipient shall:
  - i. ensure that all data it provides to USDOT is accurate and current;
  - ii. report required data to USDOT annually and quarterly (however, the measurement period for some indicators may be monthly);
  - iii. submit the initial port performance report no later than 90 days after grant agreement execution; and
  - iv. submit subsequent port performance reports on an annual and quarterly basis throughout the period of performance.

### **ARTICLE 16 NONCOMPLIANCE AND REMEDIES**

#### **16.1 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 16.1(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 16.1(b); or
- (2) if the Recipient fails to respond under section 16.1(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.

## **16.2 Remedies.**

(a) If MARAD makes a final determination of noncompliance under section 16.1, MARAD may impose a remedy, including:

- (1) additional conditions on the award;
- (2) any remedy permitted under 2 C.F.R. 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 C.F.R. 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 16.2(a), before making a final determination of noncompliance under section 16.1. If it does so, then the notice provided under section 16.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.

- (d) In imposing a remedy under this section 16.2 or making a public interest determination under section 16.2(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 16.2 constitute a debt to the Federal Government that MARAD may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**16.3 Other Oversight Entities.** Nothing in this article 16 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 17**

### **AGREEMENT TERMINATION**

#### **17.1 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 article 3;
  - (2) a construction start date for the Project or a component of the Project is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (3) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (4) the Recipient fails to meet a milestone listed in section 4.1 by the deadline date listed in that section for that milestone;
  - (5) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; 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 17.1 does not limit MARAD’s ability to terminate this agreement as a remedy under section 16.2.

- (d) The Recipient may request that MARAD terminate the agreement under this section 17.1.

## **17.2 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 C.F.R. 200.344, Project Closeout should occur no later than one year after the end of the period of performance.

**17.3 Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 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.

## **17.4 Non-Terminating Events.**

- (a) The end of the budget period described under section 11.3 does not terminate this agreement or the Recipient’s obligations under this agreement.
- (b) The end of the period of performance described under section 11.4 does not terminate this agreement or the Recipient’s obligations under this agreement.

**17.5 Other Remedies.** The termination authority under this article 17 supplements and does not limit the MARAD’s remedial authority under article 16 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

# **ARTICLE 18**

## **MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS**

## **18.1 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 C.F.R. 200.332(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.



## **18.2 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 18.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303 and 2 C.F.R. 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 fiscal year 2021 PIDP grants program 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 C.F.R. 200 subpart F, including “FY 2021” 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 2021” in column c (“Additional Award Identification”).

**18.3 Internal Controls.** The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.

**18.4 MARAD Record Access.** MARAD may access Recipient records related to this award under 2 C.F.R. 200.337.

## **ARTICLE 19 CONTRACTING AND SUBAWARDS**

**19.1 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, or 23 U.S.C. 113, as applicable, 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.

## **19.2 Buy America.**

- (a) For the purpose of the award term at exhibit B.5, the Project is “a project for infrastructure.” The Recipient acknowledges that iron, steel, manufactured products, and construction materials used in the Project are subject to the domestic content

procurement preference in that award term and this agreement is not a waiver of that preference.

- (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.5, MARAD may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 17 and 2 C.F.R. 200.339–200.340.
- (c) Under 2 C.F.R. 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. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

- 19.3 Small and Disadvantaged Business Requirements.** 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 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”). The Recipient shall expend all other funds under this award in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).
- 19.4 Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. 1101-1104, or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by MARAD.
- 19.5 Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 19.6 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 19.7 Pass-through Entity Responsibilities.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.
- 19.8 Subaward and Contract Authorization.** [Reserved]

**ARTICLE 20**  
**COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

- 20.1 Limitation of Federal Award Amount.** Under this award, MARAD shall not provide funding greater than the amount obligated under section 11.2. 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.
- 20.2 Projects Costs.** This award is subject to the cost principles at 2 C.F.R. 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- 20.3 Timing of Project Costs.**
- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
  - (b) The Recipient shall not charge to this award costs that were incurred before the date of this agreement unless those costs are identified in Attachment E and would have been allowable if incurred during the budget period. This limitation applies to pre-award costs under 2 C.F.R. 200.458. This agreement hereby terminates and supersedes any previous MARAD approval for the Recipient to incur costs under this award for the Project. Attachment E is the exclusive MARAD approval of costs incurred before the date of this agreement.
- 20.4 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.
- 20.5 Unexpended Federal Funds.** Any Federal funds that are awarded at section 11.1 but not expended on allocable, allowable costs remain the property of the United States.
- 20.6 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.
- 20.7 Payment Method.**
- (a) 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/post-award-reporting-forms.html/>. 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 USDOT “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 sections 5.4 or 9.2. 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 20.7.

## **20.8 Information Supporting Expenditures.**

- (a) 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.

## **20.9 Reimbursement Request Timing and Frequency.**

- (a) 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) The Recipient shall not request reimbursement more frequently than monthly.

## **ARTICLE 21 LIQUIDATION AND ADJUSTMENTS**

### **21.1 Liquidation of Recipient Obligations.**

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than 120 days after the end of the period of performance.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

## **ARTICLE 22 AGREEMENT MODIFICATIONS**

**22.1 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.

### **22.2 Unilateral Contact Modifications.**

- (a) The Recipient may update the contacts who are listed in section 5.2 by written notice to all of MARAD contacts who are listed in sections 5.4 and 9.2.
- (b) MARAD may update the contacts who are listed in sections 5.4 and 9.2 by written notice to all of the Recipient contacts who are listed in section 5.2.

### **22.3 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 22.3, MARAD must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

**22.4 Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 22.1, 22.2, or 22.3. If an amendment, modification, or supplement is not permitted under section 22.1, not permitted under section 22.2, and not permitted under section 22.3, it is void.

**ARTICLE 23**  
**FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL**  
**POLICY REQUIREMENTS**

**23.1 Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.

**23.2 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.
- (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.

**23.3 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.

**23.4 History of Performance.** Under 2 C.F.R 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.

**23.5 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 this 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.

**23.6 External Award Terms and Obligations.**

- (a) In addition to this document and the contents described in article 28, this agreement includes the following additional terms as integral parts:
  - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;

- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. 175.15(b): Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient shall comply with:

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

**23.7 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).

## **ARTICLE 24 ASSIGNMENT**

**24.1 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 25 WAIVER**

**25.1 Waivers.**

- (a) A waiver granted by MARAD under this agreement will not be effective unless it is in writing and signed by an authorized representative of MARAD.
- (b) A waiver granted by MARAD under this agreement on one occasion will not operate as a waiver on other occasions.

- (c) If MARAD fails to require strict performance of a provision 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 provision or breach.

## **ARTICLE 26**

### **ADDITIONAL TERMS AND CONDITIONS**

**26.1 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.

**26.2 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 C.F.R. 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 C.F.R. 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. 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 C.F.R. 24 subpart E.

**26.3 Equipment Disposition.**

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project:
  - (1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and
  - (2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from MARAD.
- (b) In accordance with 2 C.F.R. 200.443(d), under both (a)(1) and (a)(2), above, the distribution of proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.310 through 200.316.
- (c) The Recipient shall ensure compliance with this section 26.3 for all tiers of subawards under this award.



## **ARTICLE 27**

### **MANDATORY AWARD INFORMATION**

#### **27.1 Information Contained in a Federal Award.** For 2 C.F.R. 200.211:

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 29.2;
- (2) the “Assistance Listings Number” is 20.823 and the “Assistance Listings Title” is “Port Infrastructure Development Program”; and
- (2) this award is not for research and development.

## **ARTICLE 28**

### **CONSTRUCTION AND DEFINITIONS**

#### **28.1 Attachments.** This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Budget
Attachment C	Outcome Performance Measurement Information
Attachment D	Changes from Application
Attachment E	Approved Pre-Award Costs

#### **28.2 Exhibits.** The following exhibits, which are located in the document titled “Exhibits to MARAD Grant Agreements Under the Fiscal Year 2021 Port Infrastructure Development Program (PIDP) Grants,” dated June 14, 2022, and available at <https://www.maritime.dot.gov/grants-finance/federal-grant-assistance/marad-fy-2021-pidp-exhibits>, 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

#### **28.3 Construction.** If a provision in the exhibits or the attachments conflicts with a provision in articles 1–29, then the provision in articles 1–29 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

#### **28.4 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.

**28.5 Definitions.** In this agreement, the following definitions apply:

**“Program Statute”** means the statutory text at 46 U.S.C. 54301 and under the heading “Department of Transportation—Maritime Administration—Port Infrastructure Development Program” in title I of division L of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020), and all other provisions of that act that apply to amounts appropriated under that heading.

**“Project”** means the project proposed in the Technical Application, as modified by the negotiated provisions of this agreement, including article 3 and Attachments A–E.

**“PIDP Grant”** means an award of funds that were made available under the NOFO.

**“Technical Application”** means the application identified in section 2.1, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

## **ARTICLE 29**

### **AGREEMENT EXECUTION AND EFFECTIVE DATE**

**29.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.

**29.2 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.