

U.S. DEPARTMENT OF TRANSPORTATION
GRANT AGREEMENT GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2021 INFRA PROGRAM:
MARAD PROJECTS

November 7, 2022

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GENERAL TERMS AND CONDITIONS

The FAST Act authorized the INFRA program at \$4.5 billion for fiscal years (FY) 2016 through 2020, and the Continuing Appropriations Act, 2021 and Other Extensions Act authorizes \$1 billion for FY 2021, to be awarded by the United States Department of Transportation (the “USDOT”) on a competitive basis to projects of national or regional significance that meet statutory requirements. The USDOT program administering those funds is the INFRA grant program.

The USDOT published a “Notice of Funding Opportunity for the Department of Transportation’s Infrastructure for Rebuilding America (INFRA) Program for Fiscal Year 2021,” 86 Fed. Reg. 11572 (February 25, 2021) (the “NOFO”) to solicit applications for Federal financial assistance.

These general terms and conditions are incorporated by reference in a project-specific fund-obligating agreement under the FY 2021 INFRA grant program. Articles 1–8 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 G are project-specific attachments.

ARTICLE 9 PURPOSE

9.1 Purpose. The purpose of this award is to advance freight and highway projects of national or regional significance. 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 Application, as modified by section 3.3 and Attachment B.

ARTICLE 10 USDOT ROLE

10.1 Division of USDOT Responsibilities.

- (a) The Office of the Secretary of Transportation is responsible for the USDOT’s overall administration of the INFRA program.
- (b) The Maritime Administration (“MARAD”) will develop and administer all fund obligating agreements, administer the reimbursement process, collect and review

progress reports from the Recipient submitted in accordance with section 16, coordinate oversight activities, and administer close-out activities.

10.2 USDOT 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

**ARTICLE 11
RECIPIENT ROLE**

11.1 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 “INFRA 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 11 and in section 26.7 on behalf of the Recipient.

11.2 USDOT Reliance. The Recipient acknowledges that:

- (1) the USDOT relied on statements of fact in the Application to select the Project to receive this award;
- (2) the USDOT relied on statements of fact in both the Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;

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

11.3 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 located on a Federal-aid highway, in addition to applicable Federal laws, regulations, and policies of MARAD.

11.4 Rights and Powers Affecting the Project.

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

ARTICLE 12 AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

- 12.1 Federal Award Amount** The USDOT hereby awards an INFRA Grant to the Recipient in the amount listed in section 2.2 as the INFRA Grant Amount.
- 12.2 Federal Obligation.** This agreement obligates for the budget period the amount listed in section 2.2 as the INFRA Grant Amount.
- 12.3 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.
- 12.4 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 13
STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 13.1 Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 5.3 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 13.1 is separate from any requirements under this article 13 that the Recipient request modification of this agreement.
- 13.2 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.
- 13.3 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 follow the applicable procedures of MARAD and document the changes in writing.

13.4 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) the USDOT 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 “Non-Federal Funds” amount decreases;

- (2) the “Total Eligible Project Cost” amount decreases;
 - (3) the “Other Federal Funds” amount increases; or
 - (4) the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” changes.
- (c) For budget changes that are not identified in section 13.4(b), the Recipient shall follow the applicable procedures of MARAD and document the changes in writing.
- (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 the USDOT, in writing consistent with MARAD’s requirements, specific additional activities that are within the scope of this award, as defined in sections 9.1 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 13.4(d) or the USDOT does not accept the Recipient’s proposal under section 13.4(d), then:
- (1) in a request under section 13.4(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 the USDOT had reimbursed costs exceeding the revised award, the Recipient shall refund to the USDOT the difference between the reimbursed costs and the revised award.

In this agreement, “**Federal Share**” means the sum of the “INFRA 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 13.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

13.5 USDOT Acceptance of Changes. The USDOT may accept or reject modifications requested under this article 13, and in doing so may elect to consider only the interests of the INFRA grant program and the USDOT. The Recipient acknowledges that requesting a modification under this article 13 does not amend, modify, or supplement this agreement unless the USDOT accepts that modification request and the parties modify this agreement under section 25.1.

ARTICLE 14 PROJECT-SPECIFIC ACCOUNTABILITY TERMS

14.1 Project-Specific Accountability Terms. If article 7 includes project-specific accountability provisions, then:

- (a) The USDOT may reduce the INFRA Grant by the lesser of ten percent or \$10,000,000 if the USDOT determines that:
 - (1) the Project does not meet all project delivery milestones enumerated in article 7 by the corresponding dates stated for those milestones;
 - (2) the Project does not meet an indicator of project success enumerated in article 7 of this agreement; or
 - (3) the Recipient has not provided information that is sufficient to determine if the Project meets an indicator of project success enumerated in article 7 of this agreement.
- (b) If the USDOT had reimbursed costs exceeding the reduced amount, the Recipient shall refund to the USDOT the difference between the reimbursed costs and the reduced amount.
- (c) The Recipient acknowledges that amounts that are required to be refunded under this article 14 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**ARTICLE 15
GENERAL REPORTING TERMS**

15.1 Report Submission. The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 5.3 and all USDOT contacts who are listed in section 10.2.

15.2 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.

**ARTICLE 16
PROGRESS AND FINANCIAL REPORTING**

16.1 Quarterly Project Progress Reports and Recertifications. On or before the 20th day of January, April, July, and October of each year until the Project is complete and the Grant Agreement is closed out, the Recipient shall submit to the USDOT a Quarterly Project

Progress Report and Recertification in the format and with the content described in exhibit C.

16.2 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 17
CLIMATE CHANGE AND RESILIENCY REPORTING REQUIREMENTS

17.1 Climate Change and Resiliency. Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), Attachment E documents the consideration of climate change and resiliency actions in the Project.

17.2 Reporting Requirements.

- (1) If one or more planning or policy documents are identified in section 1 of Attachment E, then the Recipient shall submit to the USDOT a report describing how the Project aligns with each of those documents.
- (2) If the Recipient identified climate and resiliency-related actions in section 2 of Attachment E, then the Recipient shall carry out those actions on the Project and describe the progress of those actions in the reports required under article 16.
- (3) If the Recipient did not identify any climate and resiliency-related actions in Attachment E, then the Recipient shall submit to the USDOT a report describing the actions considered and explaining how each of the actions considered did not satisfy the conditions under section 8(b) of the Term Sheet General Terms and Conditions (as defined in the project-specific fund-obligating agreement).
- (4) The Recipient shall submit reports required under section 17.2(1) and (3) not later than the later of (1) the 180th day after the date of the Term Sheet and (2) the 30th day after the Office of Management and Budget (“OMB”) approves an information collection titled “Discretionary Grants for Nationally Significant Freight and Highway Projects (FASTLANE/INFRA) Program.” The reports identified in subsections (1) and (3) are not required unless OMB approves the information collection described in this section. After OMB assigns a control number for that collection, MARAD will notify the Recipient of that number.

ARTICLE 18

EQUITY REPORTING REQUIREMENTS

18.1 Equity. Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Attachment F documents activities related to the Project to improve equity and reduce barriers to opportunity.

18.2 Reporting Requirements.

- (1) The Recipient shall submit to the USDOT either an equity impact analysis for the Project or a report explaining why completing that analysis would be inappropriate.
- (2) The Recipient shall submit to the USDOT either an equity and inclusion plan for the Project or a report explaining why adopting that plan for the Project would be inappropriate. In this subsection, an “equity and inclusion plan for the Project” is a plan to ensure equity in the Project, and that plan may address procurement, material sourcing, construction, inspection, or other activities.
- (3) The Recipient shall consider use of local hire preferences in the Project and submit to the USDOT a report describing either the plan to use local hire preferences or explaining why using those preferences would be inappropriate.
- (4) If the Recipient identified equity-related actions in Attachment F, then the Recipient shall carry out those actions on the Project and describe the progress of those actions in the reports required under article 16.
- (5) If the Recipient does not identify any equity-related actions in Attachment F, then the Recipient shall submit to the USDOT a report describing the actions considered and describing how each of the actions considered did not satisfy the conditions under section 9(d) of the Term Sheet General Terms and Conditions (as defined in the project-specific fund-obligating agreement).
- (6) The Recipient shall submit reports required under section 18.2(1)-(3) and (5) not later than the later of (1) the 180th day after the date of the Term Sheet and (2) the 30th day after OMB approves an information collection titled “Discretionary Grants for Nationally Significant Freight and Highway Projects (FASTLANE/INFRA) Program.” The reports identified in this section are not required unless OMB approves the information collection described in this section. After OMB assigns a control number for that collection, MARAD will notify the Recipient of that number.

ARTICLE 19
NONCOMPLIANCE AND REMEDIES

19.1 Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT 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 the USDOT notifies the Recipient of a proposed determination of noncompliance under section 19.1(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) The USDOT may make a final determination of noncompliance only:
 - (1) after considering the Recipient's response under section 19.1(b); or
 - (2) if the Recipient fails to respond under section 19.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the bases for that determination.

19.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 19.1, the USDOT 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 USDOT; 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, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
 - (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 19.2(a), before making a final determination of noncompliance under section 19.1. If it does so, then the notice provided under section 19.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
 - (d) In imposing a remedy under this section 19.2 or making a public interest determination under section 19.2(c), the USDOT may elect to consider the interests of only the USDOT.
 - (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 19.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).
- 19.3 Other Oversight Entities.** Nothing in this article 19 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 20 AGREEMENT TERMINATION

20.1 USDOT Termination.

- (a) The USDOT 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-INFRA Grant contribution or alternatives approved by the USDOT 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 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) the USDOT determines that termination of this agreement is in the public interest, or that the Recipient's use of the INFRA Grant funds under this agreement would not advance the purposes of the INFRA program.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
- (c) This section 20.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 19.2.
- (d) The Recipient may request that the USDOT terminate the agreement under this section 20.1.

20.2 Closeout Termination.

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, "**Project Closeout**" means the date that the USDOT 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.

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

20.4 Non-Terminating Events.

- (a) The end of the budget period described under section 12.3 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The end of the period of performance described under section 12.4 does not terminate this agreement or the Recipient's obligations under this agreement.

20.5 Other Remedies. The termination authority under this article 20 supplements and does not limit the USDOT's remedial authority under article 19 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

ARTICLE 21
MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

21.1 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.

21.2 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 21.2(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 INFRA 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”).

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

21.4 USDOT Record Access. The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.

ARTICLE 22 CONTRACTING AND SUBAWARDS

22.1 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.

22.2 Buy America.

- (a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
- (b) Construction materials used in the Project are subject to the domestic preference requirement at section 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and MARAD. The Recipient acknowledges that this agreement is neither a waiver of section 70914(a) nor a finding under section 70914(b).
- (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.

22.3 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 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”).
- (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 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).

- 22.4 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 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT.
- 22.5 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.
- 22.6 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.
- 22.7 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.

ARTICLE 23 COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 23.1 Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated under section 12.2. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 23.2 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.
- 23.3 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 D 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 and/or 23 U.S.C. 117(k). This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this

award for the Project. Attachment D is the exclusive USDOT approval of costs incurred before the date of this agreement.

23.4 Recipient Recovery of Federal Funds. The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT 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 the USDOT.

23.5 Unexpended Federal Funds. Any Federal funds that are awarded at section 12.1 but not expended on allocable, allowable costs remain the property of the United States.

23.6 Timing of Payments to the Recipient.

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

23.7 Payment Method.

- (a) If the USDOT Payment System identified in section 6.1 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/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, the USDOT 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 5.3 or 10.2. A request to establish access will be sent once the External User Access Request form is received.

- (b) The USDOT may deny a payment request that is not submitted using the method identified in this section 23.7.

23.8 Information Supporting Expenditures.

- (a) If the USDOT Payment System identified in section 6.1 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 the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

23.9 Reimbursement Request Timing and Frequency.

- (a) If the USDOT Payment System identified in section 6.1 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, the USDOT may deny the request for being untimely.
- (b) If the USDOT Payment System identified in section 6.1 is “Delphi eInvoicing System,” then the Recipient shall not request reimbursement more frequently than monthly.

**ARTICLE 24
LIQUIDATION AND ADJUSTMENTS**

24.1 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 25
AGREEMENT MODIFICATIONS**

- 25.1 Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.

25.2 Unilateral Contact Modifications.

- (a) The Recipient may update the contacts who are listed in section 5.2 by written notice to all of the USDOT contacts who are listed in sections 5.3 and 10.2.
- (b) The USDOT may update the contacts who are listed in sections 5.3 and 10.2 by written notice to all of the Recipient contacts who are listed in section 5.2.

25.3 USDOT Unilateral Modifications.

- (a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
- (b) To unilaterally modify this agreement under this section 25.3, the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

25.4 Other Modifications. The parties shall not amend, modify, or supplement this agreement except as permitted under sections 25.1, 25.2, or 25.3. If an amendment, modification, or supplement is not permitted under section 25.1, not permitted under section 25.2, or not permitted under section 25.3, it is void.

ARTICLE 26 FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

26.1 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.

26.2 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.

26.3 Federal Freedom of Information Act.

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

26.4 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.

26.5 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.

26.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 31, 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).

26.7 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 27
ASSIGNMENT**

27.1 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 28
WAIVER**

28.1 Waivers.

- (a) A waiver granted by USDOT under this agreement will not be effective unless it is in writing and signed by an authorized representative of USDOT.
- (b) A waiver granted by USDOT under this agreement on one occasion will not operate as a waiver on other occasions.
- (c) If USDOT 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 29
ADDITIONAL TERMS AND CONDITIONS**

29.1 Effect of Large or Small Designation. Based on information that the Recipient provided to the USDOT, including the Application, at section 2.5 this agreement designates this award as a large project or a small project, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation, as outlined in the NOFO.

29.2 Disclaimer of Federal Liability. The USDOT 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.

29.3 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.

29.4 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), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 29.4 for all tiers of subawards under this award.

ARTICLE 30 MANDATORY AWARD INFORMATION

30.1 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 32.2;
- (2) the “Assistance Listings Number” is 20.934 and the “Assistance Listings Title” is “Nationally Significant Freight and Highway Projects”; and
- (3) this award is not for research and development.

30.2 Federal Award Identification Number. The Federal Award Identification Number is listed in section 2.6.

30.3 Recipient’s Unique Entity Identifier. The Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is listed in section 5.1.

**ARTICLE 31
CONSTRUCTION AND DEFINITIONS**

31.1 Attachments. This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Budget
Attachment C	Safety Requirements
Attachment D	Approved Pre-Award Costs
Attachment E	Climate Change and Resiliency Requirements
Attachment F	Equity Requirements
Attachment G	Changes from Application

31.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to MARAD Grant Agreements Under the Fiscal Year 2021 INFRA Grant Program,” dated November 2, 2022, and available at <https://www.maritime.dot.gov/grants-finance/federal-grant-assistance/marad-fy-2021-infra-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

31.3 Construction. If a provision in the exhibits or the attachments conflicts with a provision in articles 1–32, then the provision in articles 1–32 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

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

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

“**Application**” means the application identified in section 2.1 of the project-specific fund-obligating agreement, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

“**Program Statute**” means the statutory text under 23 U.S.C. 117, “Nationally Significant Multimodal Freight and Highway Projects,” and all provisions of any appropriations acts that apply to amounts appropriated under that statute.

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

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

ARTICLE 32 AGREEMENT EXECUTION AND EFFECTIVE DATE

- 32.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- 32.2 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 an INFRA Grant when the USDOT’s authorized representative signs it.