

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

**GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2023 PORT INFRASTRUCTURE DEVELOPMENT PROGRAM
GRANTS**

January 29, 2024

Table of Contents

Article 1 Purpose.....	6
1.1 Purpose.....	6
Article 2 MARAD Role.....	6
2.1 Administration.....	6
2.2 MARAD Program Contacts.....	6
Article 3 Recipient Role.....	7
3.1 Statements on the Project.....	7
3.2 Statements on Authority and Capacity.....	7
3.3 MARAD Reliance.....	7
3.4 Project Delivery.....	8
3.5 Rights and Powers Affecting the Project.....	8
3.6 Notification of Changes to Key Personnel.....	8
Article 4 Award Amount, Obligation, and Time Periods.....	8
4.1 Federal Award Amount.....	8
4.2 Federal Funding Source.....	8
4.3 Federal Obligations.....	9
Article 5 Statement of Work, Schedule, and Budget Changes.....	9
5.1 Change Notification Requirement.....	9
5.2 Scope and Statement of Work Changes.....	9
5.3 Schedule Changes.....	10
5.4 Budget Changes.....	10
5.5 MARAD Acceptance of Changes.....	11
Article 6 General Reporting Terms.....	11
6.1 Report Submission.....	11
6.2 Alternative Reporting Methods.....	11
6.3 Paperwork Reduction Act Notice.....	11
Article 7 Progress and Financial Reporting.....	12
7.1 Quarterly Project Progress Reports and Recertifications.....	12
7.2 Final Progress Reports and Financial Information.....	12
Article 8 Performance Reporting.....	12
8.1 Baseline Performance Measurement.....	12
8.2 Post-construction Performance Measurement.....	12
8.3 Project Outcomes Report.....	13
Article 9 Climate Change and Environmental Justice.....	13
9.1 Climate Change and Environmental Justice.....	13
Article 10 Racial Equity and Barriers to Opportunity.....	14
10.1 Racial Equity and Barriers to Opportunity.....	14
Article 11 Labor and Work.....	14
11.1 Labor and Work.....	14
Article 12 Civil Rights and Title VI.....	14
12.1 Civil Rights and Title VI.....	14
12.2 Legacy Infrastructure and Facilities.....	15
Article 13 Critical Infrastructure Security and Resilience.....	15
13.1 Critical Infrastructure Security and Resilience.....	15
Article 14 PIDP Designations.....	16

14.1	Effect of Urban or Rural Designation.	16
14.2	Effect of Historically Disadvantaged Community.	16
Article 15	Contracting and Subawards	16
15.1	Minimum Wage Rates.	16
15.2	Buy America.	17
15.3	Small and Disadvantaged Business Requirements.	17
15.4	Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	17
15.5	Pass-through Entity Responsibilities.	18
15.6	Disclosing Conflict of Interest.	19
Article 16	Noncompliance and Remedies.	19
16.1	Noncompliance Determinations.	19
16.2	Remedies.	20
16.3	Other Oversight Entities.	20
Article 17	Agreement Termination.	21
17.1	MARAD Termination.	21
17.2	Closeout Termination.	21
17.3	Post-Termination Adjustments.	21
17.4	Non-Terminating Events.	22
17.5	Other Remedies.	22
Article 18	Costs, Payments, and Unexpended Funds	22
18.1	Limitation of Federal Award Amount.	22
18.2	Projects Costs.	22
18.3	Timing of Project Costs.	22
18.4	Recipient Recovery of Federal Funds.	23
18.5	Unexpended Federal Funds.	23
18.6	Timing of Payments to the Recipient.	23
18.7	Payment Method.	23
18.8	Information Supporting Expenditures.	24
18.9	Reimbursement Request Timing Frequency.	24
Article 19	Liquidation, Adjustments, and Funds Availability	24
19.1	Liquidation of Recipient Obligations.	24
19.2	Funds Cancellation.	24
Article 20	Agreement Modifications	25
20.1	Bilateral Modifications.	25
20.2	Unilateral Contact Modifications.	25
20.3	MARAD Unilateral Modifications.	25
20.4	Other Modifications.	25
Article 21	Federal Financial Assistance, Administrative, and National Policy Requirements	26
21.1	Uniform Administrative Requirements for Federal Awards.	26
21.2	Federal Law and Public Policy Requirements.	26
21.3	Federal Freedom of Information Act.	26
21.4	History of Performance.	26
21.5	Whistleblower Protection.	26
21.6	External Award Terms and Obligations.	26
21.7	Incorporated Certifications.	27

Article 22 Monitoring, Financial Management, Controls, and Records.....	27
22.1 Recipient Monitoring and Record Retention.	27
22.2 Financial Records and Audits.	28
22.3 Internal Controls.....	28
22.4 MARAD Record Access.	28
Article 23 Notices	28
23.1 Form of Notice.	28
23.2 Method of Notice to MARAD.	28
23.3 Method of Notice to Recipient.	29
23.4 Recipient Contacts for Notice.	29
23.5 Additional Mandatory Notices to MARAD.	29
23.6 Scope of Notice Requirements.	30
Article 24 Information Requests.....	30
24.1 MARAD Information Requests.	30
Article 25 Assignment	30
25.1 Assignment Prohibited.	30
Article 26 Waiver.....	30
26.1 Waivers.....	30
Article 27 Additional Terms and Conditions.....	31
27.1 Disclaimer of Federal Liability.	31
27.2 Relocation and Real Property Acquisition.	31
27.3 Real Property and Equipment Disposition.	31
27.4 Environmental Review.....	32
Article 28 Mandatory Award Information.....	33
28.1 Information Contained in a Federal Award.....	33
28.2 Federal Award Identification Number.	33
28.3 Recipient’s Unique Entity Identifier.	33
28.4 Budget Period.	33
28.5 Period of Performance.....	33
Article 29 Construction and Definitions.....	33
29.1 Schedules.....	33
29.2 Exhibits.....	34
29.3 Construction.	34
29.4 Integration.	34
29.5 Definitions.....	34
29.6 References to Times of Day.	35
Article 30 Agreement Execution and Effective Date	35
30.1 Counterparts.	35
30.2 Effective Date.....	35

Index of Definitions

Federal Share 11

General Terms and Conditions 34

MARAD..... 6

NOFO..... 6

OMB 12

PIDP Grant..... 35

Program Statute..... 34

Project 35

Project Closeout 20

Project Cost Savings 10

Recipient Project-Specific Recitals

Technical Application..... 35

Title VI..... 15

USDOT 6

GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), and the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022) appropriated funds to the United States Department of Transportation (the “USDOT”) Maritime Administration (“MARAD”) for fiscal year (FY) 2023 under the heading “Port Infrastructure Development Program.” The funds are available 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).

On February 10, 2023, MARAD posted a funding opportunity at Grants.gov with funding opportunity title “2023 Port Infrastructure Development Program Grants” and funding opportunity number MA-PID-23-001. The notice of funding opportunity posted at Grants.gov (the “NOFO”) solicited applications for Federal financial assistance under the FY 2023 PIDP. On November 7, 2023, MARAD announced application selections under the NOFO.

These general terms and conditions are incorporated by reference in a project-specific agreement under the FY 2023 PIDP. The term “Recipient” is defined in the project-specific portion of the agreement. The project-specific portion of the agreement includes schedules A through K. The project-specific portion of the agreement may include special terms and conditions in project-specific articles.

ARTICLE 1 PURPOSE

- 1.1 Purpose.** The purpose of this award is to make grants to improve port facilities at coastal seaports, inland river ports, or Great Lakes ports. The parties will accomplish that purpose by achieving the following objectives:
- (1) timely completing the Project; and
 - (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by schedule D.

ARTICLE 2 MARAD ROLE

- 2.1 Administration.** MARAD will administer this agreement.
- 2.2 MARAD Program Contacts.**

David Bohnet
Supervisory Grant Management Specialist

DOT – Maritime Administration
1200 New Jersey Ave, SE
Washington, DC 20590
MAR-510
W21-226
Mailstop 3
(202) 366-0586
david.bohnet@dot.gov

ARTICLE 3 RECIPIENT ROLE

3.1 Statements on the Project. The Recipient states that:

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

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

- (1) it has the authority to receive Federal financial assistance under this agreement;
- (2) it has the legal authority to complete the Project;
- (3) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
- (4) not less than the difference between the total eligible project costs listed in section 3 of schedule D and the PIDP Grant Amount listed in section 1 of schedule D is committed to fund the Project;
- (5) it has sufficient funds available to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and
- (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 3 and in section 21.7 on behalf of the Recipient.

3.3 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.

3.4 Project Delivery.

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

3.5 Rights and Powers Affecting the Project.

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

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

ARTICLE 4 AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

4.1 Federal Award Amount. MARAD hereby awards a PIDP Grant to the Recipient in the amount listed in section 1 of schedule D as the PIDP Grant Amount.

4.2 Federal Funding Source.

- (a) If section 4 of schedule F identifies the Funding Act as "IIJA," then the PIDP Grant is from PIDP grant funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021).

- (b) If section 4 of schedule F identifies the Funding Act as “FY2023,” then the PIDP Grant is from PIDP grant funding that was appropriated in the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022).
- (c) If section 4 of schedule F contains a table that lists separate amounts for “IIJA” and “FY2023,” then the amount listed for “IIJA” is from PIDP grant funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) and the amount listed for “FY2023” is from PIDP grant funding that was appropriated in the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022).
- (d) If section 4 of schedule F identifies the Funding Act as something other than “FY2023” or “IIJA”, then the PIDP Grant includes PIDP grant funding that was appropriated under a different funding act than “FY2023” or “IIJA”.

4.3 Federal Obligations.

- (a) This agreement obligates for the budget period the amount listed in section 1 of schedule D as the PIDP Grant Amount.
- (b) If section 1 of schedule D contains an “Other Federal Funds Grant Amount”, then MARAD was transferred other Federal funds from another Federal agency, and, therefore, in addition to the PIDP Grant Amount, this agreement also obligates the Other Federal Funds Grant Amount for the budget period. The total amount of Federal funds obligated is the total of the PIDP Grant Amount and the Other Federal Funds Grant Amount listed in section 1 of schedule D. Unless otherwise stated in the project-specific agreement, the Federal Award Date, period of performance start and end date, and the budget period start and end date will be the same for the PIDP Grant Amount and Other Federal Funds Grant Amount obligated by this agreement.

ARTICLE 5 STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

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

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

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

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

5.4 Budget Changes.

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

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

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

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

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

5.5 MARAD Acceptance of Changes. MARAD may accept or reject modifications requested under this article 5, and in doing so may elect to consider only the interests of the PIDP grant program and MARAD. The Recipient acknowledges that requesting a modification under this article 5 does not amend, modify, or supplement this agreement unless MARAD accepts that modification request and the parties modify this agreement under section 20.1.

ARTICLE 6 GENERAL REPORTING TERMS

- 6.1 Report Submission.** The Recipient shall send all reports required by this agreement to all MARAD contacts who are listed in section 5 of schedule A and all MARAD contacts who are listed in section 2.2.
- 6.2 Alternative Reporting Methods.** MARAD may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by MARAD.
- 6.3 Paperwork Reduction Act Notice.** Under 5 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 7 PROGRESS AND FINANCIAL REPORTING

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

ARTICLE 8 PERFORMANCE REPORTING

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

- (1) for each performance measure that is identified in the Performance Measure Table in schedule G with quarterly measurement frequency, for each of 12 consecutive calendar quarters, beginning with the first calendar quarter that begins after the Project substantial completion date, at least once during the quarter, the Recipient shall collect data for that performance measure;
- (2) for each performance measure that is identified in the Performance Measure Table in schedule G with annual measurement frequency, the Recipient shall collect data for that performance measure on at least three separate occasions: (i) once during the four consecutive calendar quarters that begin after the Project substantial completion date; (ii) once during the fourth calendar quarter after the first collection; and (iii) once during the eighth calendar quarter after the first collection; and
- (3) not later than January 31 of each year that follows a calendar year during which data was collected under this section 8.2, the Recipient shall submit to MARAD a Post-construction Performance Measurement Report containing the data collected under this section 8.2 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 8.2, then the Recipient shall identify that external factor in the Post-construction Performance Measurement Report and discuss its influence on the performance measure.

8.3 Project Outcomes Report. If the Capital-Planning Designation in section 2 of schedule F 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 8.2, 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.

ARTICLE 9 CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

9.1 Climate Change and Environmental Justice. Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), schedule H

documents the consideration of climate change and environmental justice impacts of the Project.

ARTICLE 10 RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

- 10.1 Racial Equity and Barriers to Opportunity.** Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), schedule I documents activities related to the Project to improve racial equity and reduce barriers to opportunity.

ARTICLE 11 LABOR AND WORK

- 11.1 Labor and Work.** Consistent with Executive Order 14025, “Worker Organizing and Empowerment” (Apr. 26, 2021), and Executive Order 14052, “Implementation of the Infrastructure Investment and Jobs Act” (Nov. 15, 2021), schedule J documents the consideration of job quality and labor rights, standards, and protections related to the Project.

ARTICLE 12 CIVIL RIGHTS AND TITLE VI

12.1 Civil Rights and Title VI.

- (a) Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Feb. 16, 2023), and DOT Order 1000.12C, “The U.S. Department of Transportation Title VI Program” (June 11, 2021), the purpose of sections 12.1(b)–12.1(c) is to ensure that the Recipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 C.F.R. part 21.
- (b) If the Recipient Type Designation in section 1 of schedule K is “Existing,” then the Recipient shall submit to MARAD either:
 - (1) not later than one month after the date of this agreement, documentation showing that the Recipient has complied with all reporting requirements under MARAD’s implementation of Title VI; or

- (2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.
- (c) If the Recipient Type Designation in section 1 of schedule K is “New,” then MARAD completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C, before entering this agreement, as documented in section 2 of schedule K.
- (d) In this section 12.1, “**Title VI**” means Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. 2000d to 2000d-4a).

12.2 Legacy Infrastructure and Facilities. In furtherance of the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336 (codified at 42 U.S.C. 12101–12213), and Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified at 29 U.S.C. 794), not later than one year after the date of this agreement, the Recipient shall develop a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards and are involved in, or closely associated with, the Project. Consistent with 49 C.F.R. part 27, even in the absence of prior discriminatory practice or usage, a Recipient administering a program or activity receiving Federal financial assistance is expected to take action to ensure that no person is excluded from participation in or denied the benefits of the program or activity on the basis of disability.

ARTICLE 13 CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

13.1 Critical Infrastructure Security and Resilience.

- (a) Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient shall consider physical and cybersecurity and resilience in planning, design, and oversight of the Project.
- (b) If the Security Risk Designation in section 5 of schedule F is “Elevated,” then the Recipient shall:
 - (1) in the first Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, identify a cybersecurity Point of Contact for the transportation infrastructure being improved in the Project; and
 - (2) in the second Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, provide a plan for completing the requirements in section 13.1(c).

- (c) If the Security Risk Designation in section 5 of schedule F is “Elevated,” then not later than the eighth Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, the Recipient shall include each of the following in a Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1:
- (1) a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project or a summary of that plan;
 - (2) a cybersecurity incident response plan for the transportation infrastructure being improved in the Project or a summary of that plan;
 - (3) the results of a self-assessment of the Recipient’s cybersecurity posture and capabilities or a summary of those results; and
 - (4) a description of any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 14 PIDP DESIGNATIONS

- 14.1 Effect of Urban or Rural Designation.** Based on information that the Recipient provided to MARAD, including the Technical Application, section 1 of schedule F designates this award as an urban award or a rural award, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on geographic location and cost sharing.
- 14.2 Effect of Historically Disadvantaged Community.** If section 3 of schedule F lists “Yes” for the “HDC Designation,” then based on information that the Recipient provided to MARAD, including the Technical Application, MARAD determined that the Project will be carried out in a historically disadvantaged community, as defined in the NOFO. The Recipient shall incur a majority of the costs under this award in historically disadvantaged communities.

ARTICLE 15 CONTRACTING AND SUBAWARDS

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

15.2 Buy America.

- (a) For the purpose of the award term at exhibit B, term B.5, the Project is “an infrastructure project.” The Recipient acknowledges that iron, steel, manufactured products, and construction materials used in the Project are subject to the Buy America preference in that award term and this agreement is not a waiver of that preference. All noninfrastructure spending is subject to the Buy American Act, 41 U.S.C. chapter 83.
- (b) If the Recipient uses iron, steel, manufactured products, or construction materials that are not produced in the United States in violation of the award term at exhibit B, term B.5, MARAD may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 16 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 (including but not limited to iron, aluminum, steel, cement, and other manufactured products). 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.
- (d) For all iron, steel, manufactured products, or construction materials incorporated into the Project and to which a Buy America preference applies, the manufacturer or supplier of the item(s) should provide to the Recipient a signed certification statement attesting that each item procured under this award meets the applicable Buy America preference requirements. The Recipient must maintain on file any certifications received under this section 15.2(d) and provide to MARAD copies of any such certifications or other documentation supporting compliance upon request of MARAD pursuant to article 24 and 2 C.F.R. 200.334-200.338.

15.3 Small and Disadvantaged Business Requirements.

- (a) If any funds under this award are administered by 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 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”).

15.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 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.

15.5 Pass-through Entity Responsibilities.

- (a) If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.
- (b) By accepting this award, the Recipient certifies that it either has systems in place to comply with the requirements set forth at 2 C.F.R. 200.331-333 and described in this section 15.5(b)(1)-(9) or will refrain from making subawards until the systems are designed and implemented:
 - (1) The Recipient is responsible for selecting subrecipients using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 C.F.R. 200.331.
 - (2) The Recipient must establish and follow a system that ensures all subaward agreements are in writing and contain all the elements required by 2 C.F.R. 200.332(a).
 - (3) Prior to making subawards under this award, the Recipient must ensure that each subrecipient has a Unique Entity Identifier.
 - (4) The Recipient must ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's PIDP award, as required by 2 C.F.R. 200.332(a)(2), including but not limited to, applicable Buy America requirements, procurement standards, reporting subawards and executive compensation under the Federal Funding Accountability and Transparency Act, certifications regarding lobbying, and Title VI of the Civil Rights Act of 1964 requirements.
 - (5) The Recipient must establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward as required by 2 C.F.R. 200.332(b) and document that evaluation.
 - (6) The Recipient must establish and follow a system for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 C.F.R. 200.332(c).
 - (7) The Recipient must establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 C.F.R. 200.332(d) and report the results of the monitoring in the quarterly progress reports referenced in article 7 of this agreement.
 - (8) The Recipient must verify that every subrecipient is audited as required by subpart F of 2 C.F.R. 200 when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. 200.501.

- (9) The Recipient may not make a fixed amount subaward without prior approval from MARAD.

15.6 Disclosing Conflict of Interest.

- (a) The Recipient must establish and maintain written Standards of Conduct to address, resolve, and disclose to MARAD conflicts of interest affecting any contract or subaward and governing the performance of its employees that are engaged in or otherwise involved in the award or administration of third-party contracts. Additionally, the Recipient must be aware of conflict of interest issues a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage.
- (b) If the Recipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the Recipient must also maintain written standards of conduct covering organizational conflicts of interest.
- (c) The Recipient must disclose in a timely manner, in writing, any potential or real conflicts of interest described in section 15.6(a)-(b) to MARAD in accordance with 2 C.F.R. 200.112, including the Recipient's approach for resolving or mitigating the conflict of interest.

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 schedule D;
 - (2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient fails to meet that milestone by six months after the date listed in section 2 of schedule C;
 - (3) the Recipient fails to meet a milestone listed in section 3 of schedule C by the deadline date listed in that section for that milestone;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the project schedule in schedule C even if it is beyond the reasonable control of the Recipient;
 - (5) circumstances cause changes to the Project that MARAD determines are inconsistent with MARAD's basis for selecting the Project to receive a PIDP Grant; or
 - (6) MARAD determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, MARAD may elect to consider only the interests of MARAD.
- (c) This section 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 28.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The end of the period of performance described under section 28.5 does not terminate this agreement or the Recipient's obligations under this agreement.
- (c) The cancellation of funds under section 19.2 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 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
COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

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

18.2 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.

18.3 Timing of Project Costs.

- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
- (b) Except as permitted under section 18.3(d)–(e), the Recipient shall not charge to this award costs that were incurred before the date of this agreement.
- (c) This agreement hereby terminates and supersedes any previous MARAD approval for the Recipient to incur costs under this award for the Project. Section 5 of schedule D is the exclusive MARAD approval of costs incurred before the date of this agreement.
- (d) If section 5 of schedule D identifies a pre-award approval under 2 C.F.R. 200.458 that will be reimbursed with Federal funds, then the Recipient may charge to this award, for payment from the PIDP Grant or other Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the budget period.

- (e) If MARAD approves a request from the Recipient under 46 U.S.C. 54301(a)(10)(B) and section 5 of schedule D describes that approval, then the Recipient may charge to this award, for payment from non-Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the budget period.

18.4 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.

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

18.6 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.

18.7 Payment Method.

- (a) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” then the Recipient shall complete all applicable forms and attach supporting documents, including the SF 270, in Delphi eInvoicing System, which is on-line and paperless, to request reimbursement. To obtain the latest version of these standard forms, visit <https://www.grants.gov/forms/>. The Recipient shall review the training on using Delphi eInvoicing System before submitting a request for reimbursement. To guide the Recipient when reviewing this training, MARAD provides the following additional information, which may change after execution of this agreement:

- (1) The Recipient may access the training from the MARAD “Delphi eInvoicing System” webpage at <https://einvoice.esc.gov>. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training.
- (2) A username and password are not required to access the on-line training. It is currently available, will be accessible 24/7, and will take approximately 10 minutes to review.
- (3) Once the above referenced training has been reviewed, Recipients must request and complete the External User Access Request form. Recipients can request the External User Access Request form by sending an email to a Grants/Contracting

Officer who is identified in in section 5 of schedule A or section 2.2. A request to establish access will be sent once the External User Access Request form is received.

- (b) MARAD may deny a payment request that is not submitted using the method identified in this section 18.7.

18.8 Information Supporting Expenditures.

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

18.9 Reimbursement Request Timing Frequency.

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

ARTICLE 19 LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

19.1 Liquidation of Recipient Obligations.

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory funds cancellation date identified in section 19.2.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

19.2 Funds Cancellation.

- (a) PIDP grant funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) for fiscal year 2023, is canceled by statute after September 30, 2038, and then unavailable for any purpose, including adjustments.
- (b) PIDP grant funding that was appropriated in the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), or a previous annual appropriations act, remains available until expended.
- (c) Section 4.2 identifies the specific source or sources of funding for this award.

ARTICLE 20 AGREEMENT MODIFICATIONS

20.1 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.

20.2 Unilateral Contact Modifications.

- (a) The Recipient may update the contacts who are listed in section 3 of schedule A by written notice to all of the MARAD contacts who are listed in section 5 of schedule A and section 2.2.
- (b) MARAD may update the contacts who are listed in section 5 of schedule A and section 2.2 by written notice to all of the Recipient contacts who are listed in section 3 of schedule A.

20.3 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 20.3, MARAD must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

20.4 Other Modifications. The parties shall not amend, modify, or supplement this agreement except as permitted under sections 20.1, 20.2, or 20.3. If an amendment, modification, or supplement is not permitted under section 20.1, not permitted under section 20.2, or not permitted under section 20.3, it is void.

ARTICLE 21
FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL
POLICY REQUIREMENTS

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 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.

21.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 29, 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).

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

- (1) Appendix A to 49 C.F.R. part 20 (Certification Regarding Lobbying).

ARTICLE 22 MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

22.1 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) and section 15.5 of this agreement.
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

22.2 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 22.2(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 FY 2023 PIDP Grants in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including “FY 2023” 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 2023” in column c (“Additional Award Identification”).

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

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

ARTICLE 23 NOTICES

23.1 Form of Notice.

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

23.2 Method of Notice to MARAD.

- (a) For a notice to MARAD under this agreement to be valid, it must be sent by one or more of the following: (1) email; (2) a national transportation company with all fees prepaid

and receipt of delivery; or (3) by registered or certified mail with return receipt requested and postage prepaid.

- (b) For a notice to MARAD under this agreement to be valid, it must be addressed to all of the MARAD contacts who are listed in section 5 of schedule A and section 2.2.
- (c) Except as specified in section 23.2(d), a valid notice to MARAD under this agreement will be deemed to have been received on the earliest of (1) when the email is received by MARAD, as recorded by MARAD's email systems, and (2) when indicated on the receipt of delivery by national transportation company or mail.
- (d) If a valid notice or other communication to MARAD under this agreement is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

23.3 Method of Notice to Recipient.

- (a) Except as specified in section 23.3(d), for a notice to the Recipient under this agreement to be valid, it must be sent by one or more of the following: (1) email; (2) a national transportation company with all fees prepaid and receipt of delivery; or (3) registered or certified mail with return receipt requested and postage prepaid.
- (b) For a notice to the Recipient under this agreement to be valid, it must be addressed to all of the Recipient contacts who are listed in section 3 of schedule A.
- (c) A valid notice to the Recipient under this agreement is effective when received by the Recipient. It will be deemed to have been received:
 - (1) for email, on receipt; and, for other delivery, when indicated on the receipt of delivery by national transportation company or mail; or
 - (2) if the Recipient rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address or representatives for which no notice was given, then on that rejection, refusal, or inability to deliver.
- (d) For a notice to the Recipient under article 16 to be valid, it must be sent by one or more of the following: (1) a national transportation company with all fees prepaid and receipt of delivery or (2) registered or certified mail with return receipt requested and postage prepaid.

23.4 Recipient Contacts for Notice. If a Recipient contact who is listed in section 3 of schedule A is unable to receive notices under this agreement on behalf of the Recipient, then the Recipient shall promptly identify one or more replacement contacts under section 20.2(a).

23.5 Additional Mandatory Notices to MARAD. The Recipient shall notify MARAD if any one of the following conditions is satisfied, not later than 5 business days after that condition is satisfied:

- (1) the Recipient receives a communication related to this award or this agreement from the United States Comptroller General, a Federal Inspector General, or any other oversight entity; or
- (2) the Recipient becomes aware of waste, fraud, abuse, or potentially criminal activity related to this agreement.

23.6 Scope of Notice Requirements. The form and method requirements of this article 23, including sections 23.1, 23.2, and 23.3, apply only to communications for which this agreement expressly uses one or more of the following words: “notice”; “notification”; “notify”; or “notifying.” This article 23 does not control or limit other communication between the parties about the Project or this agreement.

ARTICLE 24 INFORMATION REQUESTS

24.1 MARAD Information Requests.

- (a) By notice, MARAD may request from the Recipient any information that MARAD determines is necessary to fulfill its oversight responsibilities under the Program Statute or other Federal law.
- (b) If MARAD requests information from the Recipient under section 24.1(a), the Recipient shall respond in the form and at the time detailed in the notice requesting information.
- (c) This section 24.1 does not limit the Recipient’s obligations under section 22.4 or 2 C.F.R. 200.337 to provide access to Recipient records.

ARTICLE 25 ASSIGNMENT

25.1 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 26 WAIVER

26.1 Waivers.

- (a) A waiver of a term of this agreement granted by MARAD will not be effective unless it is in writing and signed by an authorized representative of MARAD.

- (b) A waiver of a term of this agreement granted by MARAD on one occasion will not operate as a waiver on other occasions.
- (c) If MARAD fails to require strict performance of a term of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that term or breach.

ARTICLE 27

ADDITIONAL TERMS AND CONDITIONS

27.1 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.

27.2 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.

27.3 Real Property and Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.311, when real property is no longer needed for the originally authorized purpose, the Recipient or subrecipient must obtain disposition instructions from the Federal awarding agency or pass-through entity.
- (b) In accordance with 2 C.F.R. 200.313 and 1201.313, equipment acquired under this award must be used by the Recipient or subrecipient in the Project as long as needed, whether or not the Project continues to be supported by the Federal award. When no longer needed for the originally awarded Project or another Federal award:
 - (1) if the entity that acquired the equipment is a State 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 within 120 days after that entity determines that the equipment is no longer needed.

- (c) 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.
- (d) The Recipient shall ensure compliance with this section 27.3 for all tiers of subawards under this award.

27.4 Environmental Review.

- (a) The Recipient shall not begin final design, begin construction, or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
 - (1) MARAD complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, Section 7 of the Endangered Species Act, 16 U.S.C. 1531, and any other applicable environmental laws and regulations; and
 - (2) MARAD provides the Recipient with written communication stating that the environmental review process is complete.
- (b) The Recipient acknowledges that:
 - (1) MARAD’s actions under section 27.4(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary environmental documents to MARAD; and
 - (2) applicable environmental statutes and regulations may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (c) To the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (d) The activities described in schedule B and other information described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with schedule B or other information in this agreement, then:
 - (1) the parties may amend this agreement under section 20.1 for consistency with the selected build alternative; or
 - (2) if MARAD determines that the condition at section 17.1(a)(5) is satisfied, MARAD may terminate this agreement under section 17.1(a)(5).
- (e) The Recipient shall complete any mitigation activities described in the environmental documents and correspondence for the Project, including the terms and conditions contained in the required permits and authorizations for the Project. Section 3 of schedule B identifies environmental documents and correspondence describing mitigation

activities, but the absence of a document or correspondence from that section does not relieve the Recipient of any compliance obligations. MARAD may determine that any failure to complete the mitigation activities within the Project environmental documents is non-compliance of the grant agreement subject to the remedies identified in article 16.

- (f) The Recipient acknowledges that, unless MARAD indicates otherwise in writing, upon termination of an agreement for the Project entered into under 36 C.F.R. 800.6(c) or 36 C.F.R. 800.14(b), the Recipient shall immediately cease all Project activities related to the “undertaking” as defined in that agreement, pending MARAD’s determinations under 36 C.F.R. 800 and applicable law.

ARTICLE 28 MANDATORY AWARD INFORMATION

28.1 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 30.2;
- (2) the “Assistance Listings Number” is 20.823 and the “Assistance Listings Title” is “Port Infrastructure Development Program”; and
- (3) this award is not for research and development.

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

28.3 Recipient’s Unique Entity Identifier. The Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is listed in section 2 of schedule A.

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

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

ARTICLE 29 CONSTRUCTION AND DEFINITIONS

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

Schedule A	Administrative Information
Schedule B	Project Activities
Schedule C	Award Dates and Project Schedule
Schedule D	Award and Project Financial Information
Schedule E	Changes from Application
Schedule F	PIDP Designations
Schedule G	PIDP Performance Measurement Information
Schedule H	Climate Change and Environmental Justice Impacts
Schedule I	Racial Equity and Barriers to Opportunity
Schedule J	Labor and Work
Schedule K	Civil Rights and Title VI

29.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to MARAD Grant Agreements Under the Fiscal Year 2023 Port Infrastructure Development Program Grants,” dated January 2, 2024, and available at <https://www.maritime.dot.gov/grants-finances/federal-grant-assistance/marad-fy-2023-pidp-exhibits-january-2-2024>, 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

29.3 Construction.

(a) In these General Terms and Conditions:

- (1) unless expressly specified, a reference to a section or article refers to that section or article in these General Terms and Conditions;
- (2) a reference to a section or other subdivision of a schedule listed in section 29.1 will expressly identify the relevant schedule; and
- (3) there are no references to articles or sections in project-specific portions of the agreement that are not contained in schedules listed in section 29.1.

(b) If a provision in these General Terms and Conditions or the exhibits conflicts with a provision in the project-specific portion of the agreement, then the project-specific portion of the agreement prevails. If a provision in the exhibits conflicts with a provision in these General Terms and Conditions, then the provision in these General Terms and Conditions prevails.

29.4 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.

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

“General Terms and Conditions” means this document, including articles 1–30.

“Program Statute” means the collective statutory text:

- (1) at 46 U.S.C. 54301;
- (2) under the heading “Port Infrastructure Development Program” in title VIII of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading; and
- (3) under the heading “Port Infrastructure Development Program” in title I of division L of the Consolidated Appropriations Act, 2023 Pub. L. No. 117-328 (Dec. 29, 2022), and all other provisions of that act that apply to amounts appropriated under that heading.
- (4) If a Funding Act not described in (1)-(3) above is identified in section 4 of schedule F, then all provisions of that act that apply to amounts appropriated under that heading for the PIDP shall also apply.

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

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

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

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

ARTICLE 30 AGREEMENT EXECUTION AND EFFECTIVE DATE

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

30.2 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.