

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

**GRANT AGREEMENT UNDER THE
FISCAL YEAR 2019 PORT INFRASTRUCTURE DEVELOPMENT PROGRAM (PIDP)
GRANTS**

MARAD FY 2019 PIDP Grant No.693JF72040028

70X17130DG 2021 1DM2040028 0000150002 41010 61006600 — \$11,000,000

This agreement is between the United States Department of Transportation Maritime Administration (“**MARAD**”) and the Cleveland-Cuyahoga County Port Authority (the “**Recipient**”).

This agreement reflects the selection of the Recipient to receive a PIDP Grant for the Dock 24 and 26 Master Modernization and Rehabilitation Project.

The parties therefore agree to the following:

**Article 1
GENERAL TERMS AND CONDITIONS**

1.1 General Terms and Conditions.

- (a) In this agreement, “**General Terms and Conditions**” means the content of the document titled “General Terms and Conditions Under The Fiscal Year 2019 Port Infrastructure Development Program Grants,” dated September 1, 2020, which is available at <https://maritime.dot.gov/sites/marad.dot.gov/files/2020-09/FINAL.FY2019%20PIDP%20Grant%20Agreement%20template%20general%20terms%20and%20conditions.pdf>. Articles 8 – 24 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (b) The Recipient states that it has knowledge of the General Terms and Conditions.
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, terminating of the PIDP Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to MARAD the PIDP Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

Article 2
APPLICATION, PROJECT, AND AWARD

2.1 Application. The application for funding was dated September 16, 2019, and titled “Dock 24 and 26 Master Modernization and Rehabilitation Project.” It contained Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

2.2 Project. In this agreement, the “**Project**” means the project proposed in the application identified in Section 2.1 as modified by the negotiated provisions of this agreement, including Article 3 and Attachments A-E.

2.3 Federal Award and Federal Obligation.

MARAD hereby awards a PIDP Grant to the Recipient in the amount of \$11,000,000 and obligates that amount for the budget period.

2.4 Award Dates.

Budget Period End Date: October 1, 2023

Period of Performance End Date: July 30, 2026

Estimated Closeout Date: July 30, 2027

2.5 Federal Award Identification Number. MARAD identifies this award with the following federal award identification number:

693JF72040028

Article 3
SUMMARY PROJECT INFORMATION

3.1 Summary of Project’s Statement of Work. (See Attachment A for additional details).

The project rehabilitates two of the Port of Cleveland's main docks. The project will raise and reconstruct Docks 24 and 26 West; rehabilitate the rail spur adjacent to Dock 24; install a new stormwater treatment system; regrade and repave the uplands area adjacent to the docks; and deploy a wireless network throughout the facility.

3.2 Project’s Estimated Schedule.

Milestone	Schedule Date
Actual Plan, Specification, & Estimate (PS&E) Approval Date:	April 16, 2021
Planned Construction Start Date:	July 1, 2021
Planned Construction Substantial Completion Date:	November 30, 2022

3.3 Project’s Estimated Budget. (See Attachment B for additional details).

Eligible Project Costs	
PIDP Grant Amount:	\$11,000,000
State Funds (State of Ohio):	\$6,259,000
Local Funds (Cleveland-Cuyahoga County Port Authority) :	\$1,241,000
Total Eligible Project Cost:	\$18,500,000

**Article 4
CRITICAL MILESTONE DEADLINES**

4.1 Critical Milestone Deadlines.

Milestone	Deadline Date
Begin construction	January 1, 2022
Execution of a Port Performance Data Sharing Agreement with USDOT	Within 30 days of the execution of this grant agreement.
MARAD receives first reimbursement request	April 1, 2022
Construction substantially completed	June 1, 2023

Article 5
PARTY INFORMATION

5.1 Recipient's Unique Entity Identifier.

Recipient's Unique Entity Identifier: 0745353030000

5.2 Recipient Contact(s).

Nicholas Lapointe
Director, Planning & Capital Development
Cleveland-Cuyahoga County Port Authority
1100 West 9th Street, Suite 300
Office: (216) 377-1342
Cell: (419) 349-7553
Nicholas.LaPointe@portofcleveland.com

and

Carly Beck
GIS/Environmental Specialist
Cleveland-Cuyahoga County Port Authority
1100 West 9th Street, Suite 300
Office: (216) 377-1341
Cell: (419) 386-6095
Carly.Beck@portofcleveland.com

and

William Friedman
President & CEO
Cleveland-Cuyahoga County Port Authority
1100 West 9th Street, Suite 300
Office: (216) 377-1339
William.Friedman@portofcleveland.com

and

Margaret Rivalsky
Controller
Cleveland-Cuyahoga County Port Authority
1100 West 9th Street, Suite 300
Office: (216) 377-1346
Cell: (440) 590-3854
Margaret.Rivalsky@portofcleveland.com

5.3 Recipient Key Personnel.

None. The parties have not identified any individuals as key personnel for this award.

5.4 MARAD Project Contact(s).

Wilbur Turner
Grants/Contracting Officer, Office of Acquisition
DOT Maritime Administration
1200 New Jersey Ave, SE
Washington, DC 20590
MAR-380
W26-435
Mailstop 5
(202) 366-0700
wilbur.turner@dot.gov

and

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 6
MARAD ADMINISTRATIVE INFORMATION**

6.1 Payment System.

MARAD Payment System: Delphi eInvoicing System

6.2 Office for Subaward and Contract Authorization.

MARAD Office for Subaward and Contract Authorization: None

Article 7
SPECIAL GRANT TERMS

7.1 Mitigation Measures

The Recipient shall complete the mitigation activities described in Categorical Exclusion, dated September 22, 2020, and including the terms and conditions contained in the required permits and authorizations for the project.

ATTACHMENT A STATEMENT OF WORK

The project will be completed in a single component with the following scope elements:

Element 1: Reconstruct Dock 26W Bulkhead with New Standardized Fender and Bollards, and 2.5 Foot Elevation Raise

- Placement of new 70-foot long steel sheet pile wall approximately 3.5 feet waterward of the existing wall and backfill the void. Approximately 682 feet of Dock 26 western bulkhead, 205 feet of Dock 26 northern bulkhead, and 223 feet of the bulkhead between Dock 26 and Dock 24 will be rehabilitated.
- Raise top-of-cap elevation of Dock 26 from 578 feet to 580.5 feet.
- Regrade to slope away from cap and divert stormwater to detention vault south of Warehouse 26 and then to treatment device before releasing back into Lake Erie.
- New fender system common to other areas of Terminal to create a standard fendering detail.

Element 2: Reconstruct Dock 24 Entire Pile Cap, Bollards, and Raise 2.5 Feet; Rehabilitate Dock 24 Rail Spur; Rehabilitate Dock 24 with New Standardized Fender System

- Raise top-of-cap elevation of Dock 24 from 578 feet to 580.5 feet.
- Rehabilitate and upgrade fendering systems and bollards to standard detail.
- Regrade to slope away from cap and divert stormwater to detention vault south of Warehouse 24 and then to treatment device before releasing back into Lake Erie.
- Demolish existing 1,440-foot split rail spur along Dock 24W and replace with 720 foot new single rail at new elevation.

Element 3: Consolidate Drainage at Dock 24 and Dock 26; Install Filter Treatment System

- Regrade Dock 24 and 26 to eliminate sheet flow of stormwater into the lake.
- Install 12 inch trench drain behind the new sheet pile wall to divert stormwater to underground detention vaults (replacing existing loading docks) south of Warehouses 24 and 26, and then to water treatment devices before being released into the lake.
- Consolidate drainage to reduce the number of outfalls.

Element 4: Install Fiber Optic Backbone Down Erieside Avenue; Connect to Warehouse A, Warehouse 24, and Warehouse 26, and the Cement Silos

Element 5: Regrade and Repave Dock 24 and Dock 26W from Erieside Avenue to the northern end of to the Dock with Structural Pavement (Excludes Interior Warehouses)

- Remove approximately 49,250 Square Yards (SY) of existing pavement on Dock 24 and Dock 26 from Erieside Avenue going north to the end of the dock.

- Replace pavement area with 8,200 Cubic Yards (CY) of aggregate base and 49,250 SY of 15 inch non-reinforced concrete pavement using ODOT pavement standards and appropriately designed to withstand heavy loading equipment.
- Regrade Dock 24 and Dock 26 to eliminate the sheetflow of stormwater into the lake and tie into new cap elevations.

**ATTACHMENT B
ESTIMATED PROJECT BUDGET**

1. Supplementary Fund Source Table(s)

Reserved. This Attachment B does not contain any supplementary fund source tables.

2. Cost Classification Table

Cost Classification	Total Costs	Non-PIDP Previously Incurred Costs	Eligible Costs
Site work	\$832,072.38		\$832,072.38
Demolition and removal	\$553,587.16		\$553,587.16
Construction	\$17,114,340.46		\$17,114,340.46
Project Total	\$18,500,000		\$18,500,000

**ATTACHMENT C
OUTCOME PERFORMANCE MEASUREMENT TABLE**

Study Area: Cleveland-Cuyahoga County Port Authority Docks 24 and 26

Pre-project Measurement Date: July 1, 2020 to June 30, 2021

Pre-project Report Date: August 30, 2021

Project Outcomes Report Date: September 30, 2026

Table 1: Outcome Performance Measurement Table

Measure	Description and Category of Measure	Measurement Period	Reporting Period
Gross Tons	Economic Competitiveness The movement of gross tonnage of freight in the area defined by the project study area by Terminal docks (Secondary variables: Types of Freight, Types of Intermodal transport)	Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date Post-construction Performance Measures: Accurate as of the first full quarter after Construction Substantial Completion Date	Baseline Measurement: Pre-project Report Date Post-construction Performance Measures: For a period of 3 years (12 consecutive quarters), beginning the first full quarter after Construction Substantial Completion Date
Vessel Calls	Economic Competitiveness Vessel type and/or freight capacity of the vessels calling to each dock defined in the project study area.	Baseline Measurement: Annual average, accurate as of the Pre-project	Baseline Measurement: Pre-project Report Date

		<p>Measurement Date</p> <p>Post-construction Performance Measures:</p> <p>Accurate as of the first full quarter after Construction Substantial Completion Date</p>	<p>Post-construction Performance Measures:</p> <p>For a period of 3 years (12 consecutive quarters), beginning the first full quarter after Construction Substantial Completion Date</p>
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**ATTACHMENT D
MATERIAL CHANGES FROM APPLICATION**

Scope: N/A

Schedule: The application listed the construction start date as November 2020 and the duration of construction as 18 months. The current project schedule extends the duration of construction to 20 months with a construction start date in July 2021. The Port approached MARAD and explained that the schedule in the application did not take common adverse weather into consideration. As result of the winter weather in Cleveland and the breadth of the scope of work, it was agreed that it would be advantageous for the Contractor to complete all work (specifically the concrete pavement work) prior to the winter. Therefore, the Port of Cleveland was advised to added two months to the estimated schedule duration to make up for unfinished work that may be attributed to a severe winter.

Budget: While the overall budget remains the same at \$18,500,000, the distribution amounts listed in the application have changed. The state’s contribution has increased from \$5,000,000 to \$6,259,000 due to additional unused funds that were not available at the time of the application. Therefore the Port’s contribution will be decreased proportionally from \$2,500,000 to \$1,241,000.

The table below provides a summary comparison of the project budget.

Fund Source	Application		Section 3.3 and Attachment B	
	\$	%	\$	%
Total Project Cost	18,500,000	100%	18,500,000	100%
Non-PIDP Previously Incurred Cost				
Federal Funds				
Non-Federal Funds				
Total Eligible Project Cost	\$18,500,000	100%	\$18,500,000	100%
PIDP Funds	\$11,000,000	59%	\$11,000,000	59%
Other Federal Funds	0	0%	0	0%
Non-Federal Funds	\$7,500,000	41%	\$7,500,000	41%

ATTACHMENT E
APPROVED PRE-AWARD COSTS

None. MARAD has not approved under this award any pre-award costs under 2 C.F.R. 200.458. Because unapproved costs incurred before the date of this agreement are not allowable costs under this award, MARAD will neither reimburse those costs under this award nor consider them as a non-Federal cost sharing contribution to this award. Costs incurred before the date of this agreement are allowable costs under this award only if approved in writing by MARAD before being included the project costs and documented in this Attachment E. See Section 19.2(b).

RECIPIENT SIGNATURE PAGE

The Recipient, intending to be legally bound, is signing this agreement on the date stated opposite that party's signature.

**CLEVELAND-CUYAHOGA COUNTY PORT
AUTHORITY**

Date

By: _____
Signature of Recipient's Authorized Representative

William D. Friedman

Name

President & CEO

Title

MARAD SIGNATURE PAGE

MARAD, intending to be legally bound, is signing this agreement on the date stated opposite that party's signature.

UNITED STATES DEPARTMENT OF
TRANSPORTATION MARITIME
ADMINISTRATION

Date

By: _____
Signature of MARAD's Authorized Representative

Name

Title

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

**GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2019 PORT INFRASTRUCTURE DEVELOPMENT
PROGRAM GRANTS**

September 1, 2020

The Consolidated Appropriations Act, 2019, Pub. L. No. 116-6 (Feb. 15, 2019) appropriated funds to the United States Department of Transportation Maritime Administration (“**MARAD**”) under the heading “Port Infrastructure Development Program.” The funds are available to provide Federal financial assistance to make grants to improve port facilities at coastal seaports. The MARAD program administering those funds is the Port Infrastructure Development Program (PIDP).

The United States Department of Transportation (the “**USDOT**”) published a “Notice of Funding Opportunity for Department of Transportation’s Port Infrastructure Development Program Under the Consolidated Appropriations Act, 2019,” 84 Fed. Reg. 28386 (June 18, 2019) (the “**NOFO**”) to solicit applications for Federal financial assistance. In these general terms and conditions, “**PIDP Grant**” means an award of funds that were made available under the NOFO.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal year 2019 PIDP Grants. Articles 1 – 7 are in the project-specific portion of the agreement. The terms “Project” and “Recipient” are defined in those articles. Attachments A through E are project-specific attachments.

**Article 8
PURPOSE**

- 8.1 Purpose.** The purpose of this award is to make grants to improve port facilities at coastal seaports. The parties will accomplish that purpose by achieving the following objectives:
- (1) timely completing the Project; and
 - (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by Section 3.3 and Attachment B.
- 8.2 Technical Application.** In this agreement, “**Technical Application**” means the application identified in Section 2.1.

**Article 9
USDOT ROLE**

9.1 Operating Administration. MARAD will administer this agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means MARAD.

9.2 MARAD Program Contacts.

Robert Bouchard
Director, Office of Port Infrastructure Development
DOT – Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
MAR-510
W21-308
Mailstop 3
(202) 366-5076
robert.bouchard@dot.gov

and

MARAD PIDP Grants Coordinator
DOT – Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
PIDPGrants@dot.gov

**Article 10
RECIPIENT ROLE**

10.1 Statements on the Project.

- (a) The Recipient states that:
 - (1) all material statements of fact in the Technical Application were accurate when that application was submitted; and
 - (2) Attachment D documents all material changes in the information contained in that application.
- (b) 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; and
- (3) MARAD's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

10.2 Statements on Capacity. The Recipient states that:

- (1) it has the legal authority to complete the Project;
- (2) not less than the difference between the "Total Eligible Project Cost" and the "PIDP Grant Amount" listed in Section 3.3 are committed to fund the Project; and
- (3) 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.

10.3 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 of MARAD.

10.4 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 MARAD.
- (b) The Recipient shall act, in a manner acceptable to MARAD, 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.

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

**Article 11
AWARD INFORMATION**

- 11.1 Limitation of Federal Award Amount.** Under this award, MARAD shall not provide funding greater than the amount obligated in Section 2.3. 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.
- 11.2 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 2.4.
- 11.3 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 2.4.
- 11.4 Catalog of Federal Domestic Assistance Information.** This award is under the program titled “Port Infrastructure Development Program,” with number 20.823 in the Catalog of Federal Domestic Assistance.
- 11.5 Research and Development Designation.** This award is not for research and development.

Article 12
STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 12.1 Notification Requirement.** The Recipient shall notify all MARAD representatives who are identified in Section 5.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this Section 12.1 is separate from any requirements under this Article 12 that the Recipient request modification of this agreement.
- 12.2 Statement of Work Changes.** If the Project’s activities differ from the Statement of Work that is described in Section 3.1 and Attachment A, then the Recipient shall request a modification of this agreement to update Section 3.1 and Attachment A.
- 12.3 Schedule Changes.** If the Project’s substantial completion date changes to a date that is more than six months after the Planned Construction Substantial Completion Date listed in Section 3.2, a schedule change would require the budget period to continue after the Budget Period End Date listed in Section 2.4, or a schedule change would require the period of performance to continue after the Period of Performance End Date listed in Section 2.4, then the Recipient shall request a modification of this agreement to update the relevant dates. For other schedule changes, the Recipient shall request a modification of this agreement unless MARAD has consented, in writing consistent with MARAD’s requirements, to the change.
- 12.4 Budget Changes.**

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient’s obligation under this agreement to complete the Project; and
 - (2) MARAD will not increase the amount of this award to address any funding shortfall.
- (b) If, in comparing the Project’s budget to the amounts listed in Section 3.3, the “Other Federal Funds” amount increases or one or more of the “State Funds,” “Local Funds,” “Other Funds,” or “Total Eligible Project Cost” amounts decrease, then the Recipient shall request a modification of this agreement to update Section 3.3 and Attachment B. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment B unless MARAD has consented, in writing consistent with MARAD’s requirements, to the change.
- (c) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in Section 3.3, then the Recipient may propose to MARAD, in writing consistent with MARAD’s requirements, specific additional activities that are within the scope of this award, as defined in Sections 3.1 and 8.1, 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.
- (d) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in Section 3.3 and either the Recipient does not make a proposal under Section 12.4(c) or MARAD does not accept the Recipient’s proposal under Section 12.4(c), then:
 - (1) in a request under Section 12.4(b), the Recipient shall reduce the Federal Share by the difference between the “Total Eligible Project Cost” that is listed in Section 3.3 and the actual eligible project costs; and
 - (2) if that modification reduces this award and MARAD had reimbursed costs exceeding the revised award, the Recipient shall refund to MARAD the difference between the reimbursed costs and the revised award.

In this agreement, “**Federal Share**” means the sum of the “PIDP Grant Amount” and the “Other Federal Funds” amounts that are listed in Section 3.3.

- (e) The Recipient acknowledges that amounts that are required to be refunded under Section 12.4(d)(2) constitute a debt to the Federal Government that MARAD may collect under 2 C.F.R. 200.345 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

12.5 MARAD Acceptance of Changes. MARAD may accept or reject modifications requested under this Article 12, and in doing so may elect to consider only the interests

of the PIDP Grants and MARAD. The Recipient acknowledges that requesting a modification under this Article 12 does not amend, modify, or supplement this agreement unless MARAD accepts that modification request and the parties modify this agreement under Section 21.1.

Article 13 GENERAL REPORTING TERMS

- 13.1 Report Submission.** The Recipient shall send all reports required by this agreement to all MARAD contacts who are listed in Sections 5.4 and 9.2.
- 13.2 Alternative Reporting Methods.** MARAD may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by MARAD.
- 13.3 Reporting as History of Performance.** Under 2 C.F.R 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this agreement requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.

Article 14 PROGRESS AND FINANCIAL REPORTING

- 14.1 Quarterly Project Progress Reports and Recertifications.** On or before the 20th day of the first month of each calendar year quarter and until the Budget Period End Date that is listed in Section 2.4, the Recipient shall submit to MARAD a Quarterly Project Progress Report and Recertification in the format and with the content described in Exhibit D. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.
- 14.2 Final Progress Reports and Financial Information.** No later than 90 days after the Budget Period End Date that is listed in Section 2.4, the Recipient shall submit
- (1) a Final Project Progress Report and Recertification in the format and with the content described in Exhibit D for each Quarterly Project Progress Report and Recertification, including a final Federal Financial Report (SF-425); and
 - (2) any other information required under MARAD's award closeout procedures.

Article 15

OUTCOME PERFORMANCE REPORTING, PORT PERFORMANCE REPORTING, AND ASSET MANAGEMENT REPORT

- 15.1 Outcome Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Outcome Performance Measurement Table in Attachment C.
- 15.2 Pre-project Outcome Performance Measurement Report.** The Recipient shall submit to MARAD, on or before the Pre-project Report Date that is stated in Attachment C, a Pre-project Outcome Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Outcome Performance Measurement Table in Attachment C, accurate as of the Pre-project Measurement Date that is stated in Attachment C; and
 - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 15.3 Post-construction Outcome Performance Measurement Reports.** After project completion, the Recipient shall submit to MARAD on or before each of the periodic reporting dates specified in the Outcome Performance Measurement Table in Attachment C, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table. If an external factor significantly affects the value of a performance measure during a measurement period, then in the Post-construction Performance Measurement Report the Recipient shall identify that external factor and discuss its influence on the performance measure.
- 15.4 Project Outcomes Report.** The Recipient shall submit to MARAD, on or before the Project Outcomes Report Date that is stated in Attachment C, 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 interim performance measurement data that the Recipient reported in the Pre-project Outcome Performance Measurement Report and the Interim Performance Measurement Reports; and
 - (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Outcome Performance Measurement Report.
- 15.5 Port Performance Reporting.**
- (a) The purpose of port performance reporting is for the USDOT to collect standardized data or validate publicly available data from Federal assistance recipients, to comply

with the Port Performance Freight Statistics Program.

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

15.6 Asset Management Report. A Recipient that does not, as of the Budget Period End Date identified in Section 2.4, have an asset management plan in place will be required to submit a post-construction report utilizing the Asset Management Tool developed by MARAD.

The report, which will be due not later than 120 calendar days after the Budget Period End Date identified in Section 2.4, will include an asset management plan for each capitalized asset that is a part of the Project. The report shall include each of the following:

- (1) asset description;
- (2) year of construction or fabrication;
- (3) replacement cost;
- (4) design service life;
- (5) anticipated annualized maintenance expenditures;
- (6) residual service life of rehabilitated assets (as applicable);
- (7) asset condition;
- (8) change in operating costs for replaced/refurbished asset(s); and
- (9) change in performance associated with the asset(s), referencing results from Section 15.5, Port Performance Reporting, as applicable.

Article 16 AGREEMENT TERMINATION

16.1 MARAD Termination.

- (a) MARAD may terminate this agreement and all of its obligations under this agreement if any of the following occurs:

- (1) the Recipient fails to obtain or provide any non-PIDP Grant contribution or alternatives approved by MARAD as provided in this agreement and consistent with Article 3;
 - (2) the Recipient fails to meet a milestone listed in Section 4.1 by the deadline date listed in that section for that milestone;
 - (3) 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,
 - (4) 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 the USDOT.

16.2 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. 200.343, Project Closeout should occur no later than one year after the Period of Performance End Date that is listed in Section 2.4.

16.3 Post-Termination Adjustments. The Recipient acknowledges that under 2 C.F.R. 200.344–200.345, 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.

16.4 Non-Terminating Events.

- (a) The end of the budget period described under Section 11.2 does not terminate this agreement or the Recipient’s obligations under this agreement.
- (b) The end of the period of performance described under Section 11.3 does not terminate this agreement or the Recipient’s obligations under this agreement.

16.5 Other Remedies. The termination authority under this Article 16 supplements and does not limit MARAD’s remedial authority under 2 C.F.R. part 200, including 2. C.F.R. 200.338–200.339.

Article 17 MONITORING, FINANCIAL MANAGEMENT, AND RECORDS

17.1 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. 200.331(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.333.

17.2 MARAD Record Access. MARAD may access Recipient records related to this award under 2 C.F.R. 200.336.

17.3 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 17.3(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 the Single Audit Act Amendments of 1996, 31 U.S.C. 7501–7506.
- (c) The Recipient shall make available to MARAD and the Comptroller General of the United States any books, documents, papers, and records of the Recipient that are related to this award for the purpose of audit and examination.
- (d) If an independent audit is made of the accounts of a Recipient relating to the Project or this award, the Recipient shall file a certified copy of that audit with the Comptroller General of the United States not later than six months following the close of the fiscal year for which the audit was made.
- (e) The Recipient shall separately identify expenditures under the fiscal year 2019 PIDP Grants in financial records required for audits under Single Audit Act Amendments of 1996, 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 E, including “FY 2019” 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 (March 25, 2019), including “FY 2019” in column c (“Additional Award Identification”).

Article 18

CONTRACTING AND SUBAWARDS

18.1 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.

18.2 Buy American.

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The Project is a public work of the Federal Government under 41 U.S.C. § 8301.
- (b) This Section 18.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
 - (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907, regardless of its components, if the item is manufactured in the United States;
 - (2) the Recipient may use information technology that is a commercial item;
 - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
 - (4) the Recipient may use foreign construction materials if MARAD has authorized their use under Section 18.2(d).
- (c) If the Recipient uses foreign construction material in violation of Section 18.2(b), 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. 200.338.
- (d) MARAD may authorize the Recipient to use foreign construction material, by modifying this agreement under Section 21.1, if MARAD determines that:

- (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
- (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (3) the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under Section 18.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (e) The Recipient may request that MARAD authorize the Recipient to use foreign construction material under Section 18.2(d). If the Recipient makes a request under this Section 18.2(e), the Recipient shall provide adequate information for MARAD to evaluate the request, including:

- (1) a description of the foreign and domestic construction materials;
- (2) unit of measure;
- (3) quantity;
- (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);
- (5) time of delivery or availability;
- (6) location of the construction project;
- (7) name and address of the proposed supplier;
- (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for an exception under Section 18.2(d);
- (9) if the Recipient requests authorization under Section 18.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
- (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.

- (f) The Recipient acknowledges that:

- (1) this agreement is not a Government procurement contract;

- (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and
- (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.

(g) In this Section 18.2, the following definitions apply:

“commercially available off-the-shelf (COTS) item”

- (1) means any item of supply (including construction material) that is: (A) a commercial item as defined by 48 C.F.R. 2.101; (B) sold in substantial quantities in the commercial marketplace; and (C) offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

“construction material” means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“cost of components” means—

- (1) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if: (A) the cost of its

components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or (B) the construction material is a COTS item.

“foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States, the District of Columbia, and outlying areas.

- 18.3 Small and Disadvantaged Business Requirements.** If any funds under this award are administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”). The Recipient shall expend all other funds under this award in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).
- 18.4 Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. § 1101-1104, or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by MARAD.
- 18.5 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.
- 18.6 Contractor Speech.** The Recipient shall ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment.
- 18.7 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. 200.330–200.332.
- 18.8 Subaward and Contract Authorization.** [Reserved]

Article 19

COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 19.1 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.

19.2 Timing of Project Costs.

- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
- (b) The Recipient shall not charge to this award costs that were incurred before the date of this agreement unless those costs are identified in Attachment E and would have been allowable if incurred during the budget period. This limitation applies to pre-award costs under 2 C.F.R. 200.458. This agreement hereby terminates and supersedes any previous MARAD approval for the Recipient to incur costs under this award for the Project. Attachment E is the exclusive MARAD approval of costs incurred before the date of this agreement.

19.3 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.

19.4 Unexpended Federal Funds. Any Federal funds that are awarded in Section 2.3 but not expended on allocable, allowable costs remain the property of the United States.

19.5 Timing of Payments to the Recipient.

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

19.6 Payment Method.

- (a) The Recipient shall complete forms in the Delphi eInvoicing System, which is on-line and paperless, to request reimbursement. The Recipient shall complete training on using the Delphi eInvoicing System before submitting a request for reimbursement. To guide the Recipient when completing this training, MARAD provides the following additional information, which may change after execution of this agreement:
 - (1) The Recipient may access the training from the USDOT “Delphi eInvoicing System” webpage at <https://einvoice.esc.gov>. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training.
 - (2) A user name 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 complete.

Once the above referenced training has been completed, Recipients must request and complete the External User Access Request form in order to receive a username and password. Recipients can request the External User Access Request form by sending an email to a Grants/Contracting Officer who is identified in Sections 5.4 and 9.2. A username and password 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 19.6.

19.7 Information Supporting Expenditures.

- (a) When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit 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.

19.8 Reimbursement Request Timing and Frequency.

- (a) The Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement for a cost more than 180 days after that cost was incurred, MARAD may deny the request for being untimely.
- (b) The Recipient shall not request reimbursement more frequently than monthly.

Article 20

LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

20.1 Liquidation of Recipient Obligations.

- (a) The Recipient shall liquidate all obligations under this award not later than 90 days after the Budget Period End Date that is listed in Section 2.4.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.343–200.345.

Article 21 AGREEMENT MODIFICATIONS

21.1 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.

21.2 Limited Unilateral Modifications.

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

21.3 Other Modifications. The parties shall not amend, modify, or supplement this agreement except as permitted under Section 21.1 or Section 21.2. If an amendment, modification, or supplement is not permitted under Section 21.1 and not permitted under Section 21.2, it is void.

Article 22 ADDITIONAL TERMS AND CONDITIONS

22.1 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.

22.2 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.

22.3 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.

22.4 Statutory and National Policy Requirements. The Recipient shall ensure that Federal funding is expended in full accordance with the U.S. 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.

Article 23 THIS AWARD AGREEMENT

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

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

23.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to MARAD Grant Agreements Under the Fiscal Year 2019 Port Infrastructure Development Program (PIDP) Grants,” dated July 10, 2020, and available at https://maritime.dot.gov/sites/marad.dot.gov/files/2020-07/FINAL.2019%20PIDP-marad-exhibits_0.pdf, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Grant Assurances
Exhibit C	Grant Requirements and Contract Clauses
Exhibit D	Quarterly Project Progress Reports and Recertifications: Format and Content

23.3 Construction. If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 24, then the provision in Articles 1 – 24 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

Article 24 AGREEMENT EXECUTION AND EFFECTIVE DATE

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

24.2 Effective Date. The agreement will become effective when all parties have signed it. The

date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a PIDP Grant when MARAD's authorized representative signs it.

U.S. DEPARTMENT OF TRANSPORTATION
EXHIBITS TO MARAD GRANT AGREEMENTS UNDER THE
FISCAL YEAR 2019 PORT INFRASTRUCTURE DEVELOPMENT
PROGRAM (PIDP) GRANTS

July 10, 2020

EXHIBIT A
APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this agreement for a FY 2019 PIDP Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act – 42 U.S.C. §§ 7401, et seq.
- i. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- j. Endangered Species Act – 16 U.S.C. §§ 1531 et seq.
- k. Coastal Zone Management Act – 16 U.S.C. §§ 1451 et seq.
- l. Flood Disaster Protection Act of 1973 – 42 U.S.C. §§ 4001 et seq.
- m. Age Discrimination Act of 1975 - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act, 42 U.S.C. 1996
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- w. Wild and Scenic Rivers Act – 16 U.S.C. §§ 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- y. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. § 1681 through § 1683, and § 1685 through § 1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- bb. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d *et seq.*
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101 -1104 541, et seq.

- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ee. Freedom of Information Act - 5 U.S.C. § 552, as amended
- ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
- gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. §§ 4201 et seq.
- hh. Noise Control Act of 1972 – 42 U.S.C. §§ 4901, et seq.
- ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. §§ 661 et seq.
- jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- kk. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – 42 U.S.C. §§ 9601 et seq.
- mm. Safe Drinking Water Act -- 42 U.S.C. §§ 300f et seq.
- nn. The Wilderness Act -- 16 U.S.C. §§ 1131 et seq.
- oo. Migratory Bird Treaty Act 16 U.S.C. §§ 703 et seq.
- pp. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- qq. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- rr. Buy American Act – 41 U.S.C. § 8301–8305

Executive Orders

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13788 – Buy American and Hire American

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity,

- Department of Labor (Federal and federally assisted contracting requirements) – 41
C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
 - i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
 - j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
 - k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
 - l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
 - m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
 - n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
 - o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
 - p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
 - q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
 - r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)
 - s. Preference for Privately Owned Commercial U.S. Flag Vessels – 46 C.F.R. Part 381

Specific assurances required to be included in the FY 2019 PIDP Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

EXHIBIT B
GRANT ASSURANCES

EXHIBIT B1
TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

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

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

49 C.F.R. Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into this agreement under the FY 2019 PIDP Grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Maritime Administration (MARAD), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

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

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

General Assurances

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

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including MARAD.

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

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2019 PIDP Grant program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2019 PIDP Grants and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

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

timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2019 PIDP Grants. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-Recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2019 PIDP Grants.

APPENDIX A

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

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Consolidated Appropriations Act, 2019 (Pub. L. 116-6, Feb. 15, 2019) the Regulations for the Administration of FY 2019 PIDP Grants, and the policies and procedures prescribed by the Maritime Administration (MARAD) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally- assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d- 4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

EXHIBIT B2
DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT B3
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN
THE PERFORMANCE OF THE FY 2019 PIDP GRANTS

49 C.F.R. PART 32

The Recipient certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Recipient's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Recipient's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1–6.
8. The Recipient may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to this agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Recipient does so, please insert in article 7 of this agreement the following:

Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of this agreement.

EXHIBIT B4
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Parts 180 and 1200

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

By signing and submitting the Technical Application and by entering into this agreement under the FY 2019 PIDP Grants, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2019 PIDP Grant, as set out below.

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms “covered transaction,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT B5
REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY
CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division D of the Consolidated Appropriations Act, 2019 (Pub. L. 116-66), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

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

The Recipient therefore agrees:

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

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

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

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

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

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

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

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

4. **Prohibition.** If

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

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

5. **Mandatory Notice to MARAD.**

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

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

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

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

EXHIBIT C
GRANT REQUIREMENTS AND CONTRACT CLAUSES

EXHIBIT C1
TRANSPARENCY ACT AWARD TERM

2 C.F.R. PART 170

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of

October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 C.F.R. part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133,¹ “Audits of States, Local Governments, and Non-Profit Organizations”).

¹ The language of this Exhibit C1 is required by 2 C.F.R. 170.220. After that rule was issued, OMB Circular A-133 was superseded by 2 C.F.R. Part 200. See 2 C.F.R. 200.104.

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. 229.402(c)(2)):

- i. *Salary and bonus.*
- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

EXHIBIT C2
SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER
REQUIREMENTS

2 C.F.R. PART 25

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 C.F.R. 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this award term:

1. *System for Award Management (SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;

- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward:*

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. 200.330).

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

EXHIBIT C3
AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND
PERFORMANCE MATTERS

APPENDIX XII TO 2 C.F.R. PART 200

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

**EXHIBIT C4
TRAFFICKING IN PERSONS**

2 C.F.R. PART 175

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

5. “Recipient” and “subrecipient” include for-profit entities for the purpose of this exhibit C4 only.

EXHIBIT C5
RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

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

For the purpose of this exhibit C5, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this exhibit C5, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this exhibit C5, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this exhibit C5, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

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

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

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

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

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

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

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

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

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

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

- 1. Purpose.** The purpose of the Quarterly Project Progress Reports and Recertifications under this agreement for the FY 2019 PIDP Grant program are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.
- 2. Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the MARAD, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and MARAD. Some projects will have a more extensive quarterly status than others. For smaller projects, MARAD may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.

 - (a) Project Overall Status.** This section provides an overall status of the project’s scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.
 - (b) Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.
 - (c) Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project’s scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.
 - (d) Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.
 - (e) Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is

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

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

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

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.

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

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

(h) Certifications.

- i. A certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements).
- ii. The certification required under 2 C.F.R. 200.415(a).