



RESOLUTION NO. U-11500

1 A RESOLUTION relating to the Department of Public Utilities, Light Division;
2 authorizing the execution of a customer-funded construction service
agreement for the Husky Terminal Expansion Project.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division ("Tacoma Power") requests approval to execute a customer-funded
5 service agreement for the Husky Terminal Expansion Project("Agreement"), and

6
7 WHEREAS in the Port of Tacoma, the Northwest Seaport Alliance
8 ("NWSA") is configuring Terminals 3 and 4, which are leased to Husky Terminal
9 & Stevedoring, by adding refrigeration units, a new maintenance building,
10 lighting improvements, and gantry crane electrification, and

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12 WHEREAS these improvements represent approximately 13.5
13 megawatts of total new load, requiring new equipment at an existing substation
14 and two dedicated distribution feeders from the substation to Husky Terminal,
15 and

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17 WHEREAS Tacoma Power's work is planned to be contracted in two
18 phases – Phase 1, covered by the contract, includes the preliminary
19 engineering design and procurement services for long-lead time substation
20 equipment and Phase 2, under a future contract, will include the final design
21 and the construction of the electric upgrades, and

22
23 WHEREAS Phase 1, for preliminary engineering design and long-lead
24 time procurement activities for electric upgrades is estimated to cost
25 \$4,959,000, which will be paid for by the NWSA, and

26



WHEREAS Tacoma Power recommends approval of the Agreement;

1 Now, therefore,

2 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

3 That Tacoma Power's request to enter into a customer-funded
4 construction service agreement for Phase 1 of the Husky Terminal Expansion
5 Project, is hereby approved, and the proper officers of the City are authorized to
6 execute said agreement substantially in the form as on file with the Clerk and as
7 approved by the City Attorney's Office.
8

9 Approved as to form:

10 _____ Chair

11 /s/ Secretary
12 Chief Deputy City Attorney

13 _____ Adopted
14 Clerk

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Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Chris Robinson, Power Superintendent
MEETING DATE: December 11, 2024
DATE: November 20, 2024

GUIDING PRINCIPLE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- | | |
|--|--|
| <input type="checkbox"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom |
| <input type="checkbox"/> GP2 – Financial Sustainability | <input checked="" type="checkbox"/> GP9 – Economic Development |
| <input type="checkbox"/> GP3 – Rates | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement | <input type="checkbox"/> GP12 – Employee Relations |
| <input type="checkbox"/> GP5 – Environmental Sustainability | <input checked="" type="checkbox"/> GP13 – Customer Service |
| <input type="checkbox"/> GP6 – Innovation | <input type="checkbox"/> GP14 – Resource Planning |
| <input type="checkbox"/> GP7 – Reliability & Resiliency | |

SUMMARY:

This resolution will authorize Tacoma Power to complete the customer-funded Phase 1 preliminary engineering design and long-lead time procurement activities for electric utility upgrades necessary to serve the Husky Terminal Expansion Project in the Port of Tacoma. The Phase 1 cost is estimated to be \$4,959,000 which will be paid for by the Northwest Seaport Alliance (NWSA).

BACKGROUND:

In the Port of Tacoma, the NWSA is reconfiguring Terminals 3 and 4, which are leased to Husky Terminal & Stevedoring, by adding refrigeration units, a new maintenance building, lighting improvements, and gantry crane electrification. These improvements represent approximately 13.5 megawatts of total new load, requiring new equipment at an existing substation and two dedicated distribution feeders from the substation to Husky Terminal.

Tacoma Power's work is planned to be contracted in two phases. Phase 1, covered by this contract, includes the preliminary engineering design and procurement services for long-lead time substation equipment. Phase 2, under a future contract, will include the final design and the construction of the electric utility upgrades.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

All direct costs associated with this contract will be paid in advance by NWSA in its entirety. Any unused deposit will be refunded or applied to the future contract.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? Yes



Board Action Memorandum

ATTACHMENTS: Utility Installation Agreement

CONTACT:

Primary Contact: Ali Poldas; Projects & Standards, Manager; (206) 687-8602
Supervisor's Name: John Merrell; Engineering Manager; (253) 502-8714

UTILITY INSTALLATION AGREEMENT

Phase 1: Procurement and Preliminary Engineering Design Services for the Husky Terminal Expansion Project

This **UTILITY INSTALLATION AGREEMENT** ("Agreement" or "Phase I Contract") with an effective date as of December ____, 2024 ("Effective Date") is made by and between Northwest Seaport Alliance, a Washington port development authority (the "NWSA"), as licensee/agent for the Port of Tacoma and the City of Tacoma, Department of Public Utilities, Light Division, a municipal corporation of the State of Washington, ("Tacoma Power and/or City.") Tacoma Power and the NWSA each may be referred to as a "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, the Port of Tacoma and the Port of Seattle are the Managing Members of NWSA which was formed for the joint operation, management, and use of certain properties of each such port district by NWSA, including Terminals 3 and 4 located at 1011 Port of Tacoma Road, in Tacoma, Pierce County, Washington;

WHEREAS, the NWSA leases Terminals 3 and 4 to Husky Terminal & Stevedoring for the berthing of container ships and the trans loading of cargo in the form of containers;

WHEREAS, NWSA intends to modify and make improvements for additional refrigerated container units, a new maintenance building, lighting improvements, and RTG electrification ("Expansion of Terminals 3 & 4");

WHEREAS, the NWSA has requested Tacoma Power provide approximately 13.5MW to serve the planned load for the Expansion of Terminals 3 & 4;

WHEREAS, Tacoma Power completed a System Impact and Facilities Study that determined that modifications and improvements to Tacoma Power's existing Lincoln Substation and distribution system are required to serve the planned load for Expansion of Terminals 3 & 4;

WHEREAS, NWSA has requested Tacoma Power to perform the utility installation work and related services specified herein that is necessary to serve its expansion of Terminals 3 & 4, and Tacoma Power is prepared to perform said work and services, provided all new and modified facilities required for such new electrical service are designed, constructed, and completed as set forth in this Agreement;

WHEREAS, the Expansion of Terminals 3 & 4 to be constructed by the NWSA, together with the modifications and improvements to Tacoma Power's facilities and related utility installation work proposed to be built by Tacoma Power herein as necessary to provide electrical service to the NWSA, are collectively referred to herein as the "NWSA Project";

WHEREAS, Due to timing constraints and the scope of the installation activities involved, which include long lead times for procurement of necessary equipment, the Parties wish to proceed with the utility installation work in two (2) separate contract phases. The first phase, which is the subject of this Phase I Contract, pertains primarily to and governs performance and payment of the required preliminary engineering design and initial procurement services. The second phase, which is the subject of the Phase II Contract more fully described in Article 3 below, pertains primarily to the final design and construction services required to complete the utility installation work as currently contemplated by both Parties;

WHEREAS, NWSA will be solely responsible for, and pay, all developmental costs to complete the NWSA Project. Accordingly, all work performed, and materials and equipment supplied by Tacoma Power pursuant to this Phase I Contract, as well as the Phase II contract contemplated herein, shall be at the sole cost and expense of the NWSA including, but not limited to, the actual costs incurred by Tacoma Power. Such costs specifically include "**Direct Costs**" as defined in Section 1.5 a. below. Notwithstanding the foregoing, it is understood and agreed that Tacoma Power will own and operate all resulting Electrical Utility Infrastructure unless expressly noted otherwise herein.

IN CONSIDERATION OF the mutual promises set forth herein and the mutual benefits to be derived hereunder, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - SCOPE

1.1 Initial Procurement Services. Upon mutual execution of this Phase I Contract, and NWSA's tender of the Advance Payment as specified in Article 2 herein, Tacoma Power shall immediately proceed with bidding and ordering the long lead time equipment it deems will be necessary to complete utility installation work for the NWSA Project. Said procurement shall include ordering long lead time utility substation equipment items that meet Buy America, Build America grant requirements consisting of:

- 115kV Disconnect Switches
- 115kV Circuit Switcher
- 115Kv Circuit Breaker
- 15/20/25 MVA 115Kv-13.8KV Power Transformer
- 15KV walk in Distribution Switchgear

The estimated cost of long-lead time equipment to be procured by Tacoma Power will be included in the required Advance Payment as further described in Section 2.2 below.

The NWSA has applied for and received notification of federal funding via the 2023 Maritime Administration (MARAD) Port Infrastructure Development Program (PIDP) grant for this project ("Federal Grant"); therefore, all work and long lead time utility substation equipment items associated with the NWSA Project shall be subject to the Federal Terms and Conditions of the grant.

Tacoma Power has been designated a "Contractor" for the purposes of the Federal Grant.

The Federal Grant was awarded pursuant to U.S Department of Transportation Maritime Administration, General Terms and Conditions under the fiscal year 2023 Port Infrastructure Development Program grants. A copy of these terms and conditions is attached to this agreement and can also be found at:

<https://www.maritime.dot.gov/ports/office-port-infrastructure-development/fy-2023-pidp-general-terms-and-conditions>

A copy of the terms and conditions, **Exhibit C**, is attached hereto and fully incorporated herein by this reference.

1.2 Preliminary Engineering Design Services. Upon mutual execution of this Phase I Contract, and NWSA's tender of the required Advance Payment as specified in Article 2 herein, Tacoma Power shall immediately begin work to develop and prepare the 30% preliminary engineering design for the NWSA Project as described in Sections 1.2.1, 1.2.2, 1, and 1.2.3. It is mutually intended and agreed that said preliminary engineering design will be used by the Parties to develop cost estimates and a basis for the anticipated Phase II Contract final design and construction described in Exhibit A.

The estimated cost of the Preliminary Engineering Design services to be performed by Tacoma Power will be included in the required Advance Payment as further described in Section 2.2 below.

It is anticipated that Phase 1 preliminary design will begin immediately following execution of this agreement and, subject to NWSA's sufficient progress of the Husky Terminals 3 and 4 electrical design and NWSA providing to Tacoma Power the information described in Section 1.3, that Phase 1 activities will be completed within 240 days of the execution date.

Preliminary engineering design services shall include:

- 1.2.1 Electrical engineering for:
- Substation design
 - Protective relaying
 - Operational control
 - System integration
 - Transmission line design

1.2.2 Civil engineering for:

- Substation civil design for substation foundations, steel structures, conduit, vaults and geotechnical engineering

1.2.3 Distribution line engineering for:

- Design to accommodate new overhead 15kV distribution feeders from Lincoln substation on East 11th Street near termination points near Husky Terminal
- Design to extend underground 15kV distribution feeders from the overhead termination points on East 11th Street to primary metering points of delivery at locations to be determined by the NWSA. Tacoma Power underground distribution additions and improvements will be designed with 15kV utility class underground cable, and PVC conduit & pre-cast concrete vault systems with primary metering equipment and associated appurtenances. Tacoma Power shall collaborate with the NWSA to define how future terminal load additions will be connected, the scope of the underground distribution design and construction, and the specific placement and installation requirements of these systems
- Design modifications of existing 15kV distribution feeders within the terminal, adjacent to the terminal, and other locations impacted by the Project

1.3 Property Access and Information. As a prerequisite to the performance and completion of the Preliminary Engineering and Design Services, Tacoma Power requires the following information and access:

1.3.1 NWSA shall provide Terminal 3 and 4 electrical design drawings and information including planned modifications and additions to the existing NWSA electrical infrastructure.

1.3.2 NWSA shall provide a Right-of-Way survey and base map to aid Tacoma Power in the design of the proposed overhead distribution feeders from Tacoma Power's Lincoln Substation to a termination point near the Husky Terminal:

- From the existing Tacoma Power Lincoln substation including a portion of Lincoln Avenue proceeding northwest along Thorne Road to East 11th Street.
- From the intersection of Thorne Road proceeding northeast along East 11th Street to the Husky Terminal

- Survey to include features of a minimum of 20 feet beyond the right-of-way lines of adjoining private and public properties

Tacoma Power will provide a list of survey features to be included in the survey:

- The required electronic format
- The survey horizontal and vertical datums
- Right-of-way stationing per City of Tacoma Public Works Engineering

1.3.3 Tacoma Power requires ingress and egress access to the NWSA property to visually confirm conditions and work with the NWSA to identify any known restrictions applicable to Tacoma Power's preliminary design and proposed installation of electric utility infrastructure by Tacoma Power. Tacoma Power personnel shall follow the NWSA's notification and access requirements for such access.

1.4 **Incorporation of Recitals.** The Parties acknowledge that the above-stated Recitals are true and accurate and are incorporated as contractual provisions herein.

1.5 **Definitions.**

- (a) **"Direct Costs"** shall mean and include all costs and expenses incurred by Tacoma Power directly related to the NWSA Project as provided under this Agreement and shall include, without limitation,
 - (i) All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of this Agreement and any taxes, insurance, and interest expenses related thereto, including, without limitation, activity pricing for inspection, engineering, crews and equipment and the City's Utilities Gross Earnings Tax.
 - (ii) All labor costs and expenses incurred to date and pursuant to this Agreement for the design, inspection, and construction activities and/or tasks designated to be performed by Tacoma Power hereunder. Such costs are inclusive of payroll benefits and overhead for applicable labor classifications.
 - (iii) All costs and expenses incurred to date and during performance of this Agreement for any work performed by Tacoma Power consultants or contractors that pertains to the NWSA Project and as necessary to undertake and complete the Tacoma Power Work under this Agreement; and
 - (iv) All actual costs incurred in relation to the procurement and preliminary engineering design work of Phase I ("Actual Costs")

(b) **"Electrical Utility Infrastructure"** as a term in this agreement shall include all transmission lines, overhead and underground distribution feeders, substation equipment, conduit, vaults, cable, miscellaneous equipment, and related connecting devices and communications that will be installed to facilitate Tacoma Power delivery of electrical energy to the NWSA's facilities.

(c) **"Project Manager"** mean the respective persons designated by the Parties in Section 5.1 herein to be the point of contact for design and contract changes and/or updates.

(d) **"Tacoma Power Work"** means all labor, materials, equipment, services, supplies, overheads, applicable taxes and all other activities or items necessary to perform the services described in Article 1 herein.

(e) **"The City"** is used interchangeably with "Tacoma Power" in this Agreement.

ARTICLE 2 – PAYMENT AND INVOICING

2.1 **NWSA Payment Obligations.** NWSA agrees that it shall be responsible for, and shall fully pay, all of Tacoma Power's actual Direct Costs (as defined in Section 1.5 a. above) related or attributable to the NWSA Project. This obligation applies to any and all procurement and preliminary engineering design services performed by Tacoma Power hereunder (collectively the Services). The estimated total cost of this Phase I Contract is currently estimated at \$4,959,000 (the "Preliminary Cost Estimate"). This Preliminary Cost Estimate amount is based on Tacoma Power's good faith estimate of the total costs it will incur to fully perform its obligations under this Phase I Contract.

Item	Estimate
Preliminary Engineering	\$300,000
Long Lead Time Substation Equipment	\$3,692,000
Subtotal	\$3,992,000
External Overhead Billing Rate (14.2%)	\$567,000
Contingency 10%	\$400,000
TOTAL	\$4,959,000

It is expressly agreed that should the total Actual Costs incurred by Tacoma Power to fully perform the Services hereunder exceed the Preliminary Cost Estimate amount and Advance Payment funds are insufficient to cover the additional cost, Tacoma Power will notify NWSA, as soon as practicable, then invoice NWSA within 120 days of notice, and NWSA shall timely pay, such excess costs in advance and in accordance with the terms and conditions herein this Article 2.

2.2 Advance Payment and Invoices. Upon mutual execution of this Agreement, NWSA shall tender an Advance Payment to Tacoma Power in the total amount of \$4,959,000 ("Advance Payment"). For purposes of this Phase I Contract, said Advance Payment shall mean that portion of the total funded customer amount that must be paid by NWSA as a pre-condition to Tacoma Power's obligation to perform under this Phase I contract and is equal to the mutually agreed Preliminary Cost Estimate amount. Tacoma Power shall invoice NWSA for additional Actual Costs incurred.

In the event Tacoma Power incurs Actual Costs that exceed the Advance Payment, Tacoma Power shall be entitled to immediately invoice and be paid for those excess costs. Such invoices, if any, will include a detail of the excess Actual Costs incurred. It is mutually agreed that Tacoma Power may cease performance hereunder if any invoiced amount is not paid within thirty (30) days following issuance. It is further mutually agreed that Tacoma Power shall have no obligation to proceed with the Phase II Contract, or any related final design activities, if any amount invoiced and due hereunder has not been paid by NWSA.

At the end of Phase I, the Actual Costs will be compared to the estimated costs, invoice payments, and the remaining Advance Payment amount. Any remaining Advance Payment funds will, at NWSA's option, be (i) applied as credit towards its monetary obligations under the Phase II Contract, or (ii) refunded.

2.3. Records. Tacoma Power shall, in accordance with its standard processes and procedures, keep records of the Direct Costs using a work order accounting system.

2.4 Invoices shall be mailed to:

NWSA:

The Northwest Seaport Alliance
Accounts Payable
Attention: David Myers
Reference MID# 201201.01
1 Situm Plaza
PO Box 1837
Tacoma, WA 98401
(253) 405-5593 Mobile, (253) 428-8612 Office
dmyers@portoftacoma.com

2.5 Payment. Upon receipt of invoices from Tacoma Power checks &/or electronic forms of payment shall be made payable to the **Treasurer, City of Tacoma**. Physical checks shall be mailed to:

City of Tacoma
Department of Public Utilities, Power Division
Attn: Joseph Parris
T&D Business & Financial Management
3628 South 35th Street
Tacoma, WA 98409-3192
(253)-502-8040 Office
jparris@cityoftacoma.org

In the event NWSA fails to pay any monies to Tacoma Power as and when due hereunder, NWSA shall pay interest on such unpaid sum from thirty (30) calendar days after the date due at an annual rate equal to twelve percent (12%) per annum, or the maximum rate permitted by law, whichever is less. Tacoma Power reserves the right to suspend performance hereunder for non-payment.

Notwithstanding any contested invoice by NWSA, per Section 2.6 below, NWSA shall make full payment on all invoices issued by Tacoma Power.

2.6 Contested charges. NWSA may contest a charge for any Tacoma Power Work detailed in an invoice within 30 days of receipt of such invoice by providing written notice to Tacoma Power specifying the charges and/or documentation in dispute. Upon receipt of such notice, Tacoma Power will investigate items contested and make appropriate amendments to the invoice, if necessary. If warranted, Tacoma Power will arrange a meeting between the Parties to discuss NWSA concerns as specified in its written notice. The Parties shall attempt to resolve all disputes within 30 days of the date of notice of a contested invoice. At or before the end of said period, NWSA shall submit any outstanding items to Dispute Resolution as provided in **Article 7**. It is further agreed that at the time of a final audit, all required adjustments will be made and reflected in a final payment. Interest shall not accrue on the contested part of any billing until mutually resolved. NWSA will not unreasonably contest any bill.

2.7 Audit. During the progress of the Parties' work under this Agreement and for a period not less than three (3) years from the date of final payment to the City, the records and accounts pertaining to the Parties' work under this Agreement and accounting therefore are to be kept available for inspection and audit by either Party. Copies of all records, accounts documentation or other data pertaining to the NWSA Project will be made available for inspection, copying, or audit upon written request by either Party. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

In the event a written request to audit is received, the recipient Party agrees to cooperate fully with the auditor or independent auditor chosen, retained, and paid by the requesting Party. In the event the audit determines that NWSA has paid Tacoma Power in excess of the amounts properly due hereunder, Tacoma Power will promptly refund the excess amount to NWSA. In the event the audit determines that Tacoma Power has incurred costs for procurement and its Preliminary Engineering Design Services work that exceeds payment made by NWSA, NWSA shall promptly pay Tacoma Power the amount owed. In the event the Parties cannot agree on the results of the audit, or upon a method of refund or payment, the disagreement shall be dealt with in accordance with the Dispute Resolution provisions of **Article 7** below.

ARTICLE 3 – PHASE II CONTRACT

Final Engineering and Construction Services

3.1 Scope of Phase II Contract: The Parties contemplate and intend to enter into a second, supplemental, Utility Installation and Funding Agreement applicable to the final design and construction phase of the NWSA Project (the "Phase II Contract"). Under the Phase II Contract, NWSA expects that it will continue to assume all risk, cost, and expense of the NWSA Project with sole responsibility for payment of all Direct Costs incurred by Tacoma Power and Tacoma Power's estimated costs in advance, based on a preliminary cost estimate of same, or when otherwise due according to invoicing and payment provisions similar to those contained herein.

3.1.1 Expectations Regarding Phase II Contract Work and Responsibilities: Tacoma Power expects that it will perform the work of final design, inspection, relocation, and conversion of its existing overhead and underground electrical power facilities, electrical substation construction, and other electrical system modifications and connections in conjunction with certain underground utilities structure work to be performed by NWSA and/or its contractor(s). A further description of the currently and anticipated Phase II Contract work and responsibilities is set forth in **Exhibit A**, attached hereto and fully incorporated herein by this reference.

3.1.2 Expectations Regarding Phase II Contract Subject Matter and Material Provisions: It is mutually acknowledged that **Exhibit A** is not intended to be a complete description of the necessary work or their respective rights and obligations under the Phase II Contract. The Parties agree to further develop and negotiate final terms and conditions to fully address these and other pertinent subject matters.

It is expressly understood and agreed that Phase II Contract shall address each of the material subject matters identified in the attached **Exhibit B**, which is fully incorporated herein by this reference. Exhibit B shall be deemed to accurately reflect the Parties' current respective expectations and intent with respect to the subject matter and the material provisions to be included in the Phase II Contract. NWSA acknowledges and agrees that in the event a Phase II Contract is executed, it will

provide and be solely responsible for securing at no cost or expense to Tacoma Power:

- Real property access rights required by Tacoma Power for the construction, ownership, operation and maintenance of the contemplated Electrical Utility Infrastructure work of the Tacoma Power owned equipment located on the NWSA property.
- Acquire and convey to Tacoma Power permanent property rights, in the form of easements, which in Tacoma Power's sole opinion, is sufficient to adequately access, construct, operate and maintain 15kV distribution lines from Tacoma Power's existing Lincoln substation to the Husky Terminal.
- Tacoma Power may, in its sole discretion, procure additional access, easements, licenses, and/or rights-of-way as reasonably necessary to perform the Tacoma Power Work on property owned by persons or entities other than NWSA; in which event, all costs incurred by Tacoma Power shall be deemed Direct Costs hereunder and reimbursed by the NWSA. Tacoma Power will not be obligated to commence Tacoma Power Work on any property unless or until approved access and/or use rights have been established.

3.2 Negotiation and Execution of the Phase II Contract: Upon completion of preliminary design documents sufficient to support the Phase II Contract, but in no event later than 120 calendar days following the mutual execution of this Phase I Contract, the Parties shall commence good faith and commercially reasonable efforts to negotiate and finalize a mutually acceptable Phase II Contract. In the event the Phase II Contract has not been fully negotiated and mutually executed within 240 calendar days following mutual execution of this Phase I Contract, this Phase I Contract shall be deemed terminated unless both Parties agree to extend this time frame in writing; Provided however, that the Parties' respective rights and obligations with respect to initially procured materials as set forth in **Article 1** and the Miscellaneous provisions set forth in **Article 8** shall survive such termination and continue to be fully enforceable.

ARTICLE 4 - EXTRA WORK

In the event either Party identifies additional work or procurement items that requires an increase over the Advance Payment for the Tacoma Power Work as set forth in **Article 1**, the Party asserting such additional work will provide written notice thereof to the other Party. The Parties agree to negotiate in good faith to modify this Agreement to authorize any increased payment resulting from such additional work. For additional costs due to unforeseen conditions, NWSA shall be responsible for and pay such costs.

Actual Costs or proposed cost increases of less than \$10,000.00 over the Advance Payment will not require formal approval by NWSA to be chargeable by, and paid to, the City. Any necessary authorization(s) for payment shall be processed in a timely manner to avoid delaying work by Tacoma Power and/or the NWSA.

Actual Costs or proposed cost increases of \$10,000.00 or more over the Advance Payment, including payment for increased work and/or a substantial change in the scope of the Tacoma Power Work, shall be limited to Direct Costs allowed by written modification, change order, or extra work orders which are to be pre-approved by the Parties and pre-paid by NWSA.

ARTICLE 5 – PROJECT ADMINISTRATION AND REPRESENTATIVES

5.1 Administration. The following designated Project Managers shall be responsible for administering the joint and cooperative undertaking of the Project as described herein:

- (a) Tacoma Power's Project Manager shall be Ali Polda. All Project related work, including correspondence with Tacoma Power, review and approval of changes and other activities related to the Procurement and Preliminary Engineering Design Services shall be coordinated through said Project Manager.

Ali Polda - Project Manager
Tacoma Power
3628 South 35th Street, ABS-M
Tacoma WA, 98409-3192
(206) 687-8602 Mobile
Email: apolda@cityoftacoma.org

- (a) NWSA Project Manager shall be David Myers - All Project related work including, but not limited to, NWSA Work and Tacoma Power Work correspondence with NWSA regarding the administration of this Agreement shall be coordinated through said Project Manager.

David Myers
The Northwest Seaport Alliance
1 Sitcum Plaza
PO Box 1837
Tacoma, WA 98401
(253) 405-5593 Mobile (253) 428-8612 Office
dmyers@portoftacoma.com

- (b) The foregoing designation of Project Managers shall not modify or supersede the dispute escalation process or designated Party representatives set forth in **Article 7**.

5.2 Notices. Except for routine day to day communications, which may be provided by email, all notices which may be or are requested to be given pursuant to this Agreement shall be in writing and be deemed given when personally delivered, or when deposited in the United States mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties at the following addresses unless otherwise provided for herein:

To Tacoma Power:

Ali Polda – Manager, Power Systems Engineering
Tacoma Power
3628 South 35th Street, ABS-M
Tacoma, WA 98409-3192
(206) 687-8602 Mobile
Email: apolda@cityoftacoma.org

With a copy to:

City of Tacoma
Department of Public Utilities, Power Division
Attn: John Merrell, Assistant Section Manager, Power Utility
Tacoma Power
3628 South 35th Street, ABS-M
Tacoma, WA 98409-3192
(253) 320-5151 Mobile (253) 502-8714 Office

To The Northwest Seaport Alliance:

David Myers
The Northwest Seaport Alliance
1 Sitcum Plaza
PO Box 1837
Tacoma, WA 98401
(253) 405-5593 Mobile (253) 428-8612 Office
dmyers@portoftacoma.com

With a copy to:

Thais Howard, P.E., Director of Engineering
The Northwest Seaport Alliance
1 Sitcum Plaza
PO Box 1837
Tacoma, WA 98401
(253) 209-3086 Mobile (253) 888-4718 Office
thoward@nwseaportalliance.com

Either Party may change the address to which notices shall be sent by providing written notice of such change to the other Party.

ARTICLE 6 - INDEMNIFICATION AND INSURANCE

6.1 Mutual indemnification by NWSA and CITY. To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall fully indemnify, defend and hold the other Party, its directors, elected officials, officers, managers, employees, agents, representatives, and its affiliated companies, (the "Indemnified Party") harmless from and against any and all claims, demands, liability, losses, damage, costs or expenses (including attorneys' fees and other costs of defense), of any nature or kind whatsoever, including, but not limited to, claims, demands and/or liability for personal injury to (including death of) any person whomsoever (including payments and awards made to the Indemnified Party's employees or other under any workers' compensation law or under any plan for employees' disability and death benefits), and for damage to any property whatsoever including the NWSA's property and Tacoma Power's system arising or growing out of, or caused or occasioned, in whole or in part, by reason of the negligent acts or omissions of the Indemnifying Party, EXCEPT For the sole negligence or intentional wrongdoing of the Indemnified Party its agents or employees. The Parties recognize that they are waiving immunity under Washington Industrial Insurance law, Title 51 RCW solely as to the other Party hereto and further agree that this indemnification clause has been mutually negotiated. This indemnification shall extend to and include attorney's fees and the costs of establishing the right of indemnification hereunder in favor of either Party.

The indemnification shall survive the termination of the agreement.

6.2 Insurance. The NWSA shall be fully responsible for and shall pay and/or sufficiently insure against all claims, demands, liability, losses, damage, costs, and expenses (including attorney's fees and other costs of defense) of any nature or kind whatsoever arising out of or in connection with the NWSA Project, including, but not limited to, those related to (i) personal injuries, and/or death, of any person whomsoever (including payments and awards made to NWSA's employees or others under any worker's compensation law or under any plan for employee's disability and death benefits), and/or (ii) damage to any property whatsoever (including the real and/or personal property of either or both the NWSA and Tacoma Power.)

6.3 Limitation of Liability. Except as otherwise provided herein, it is understood and agreed that Tacoma Power shall not be liable pursuant to statute, contract, in tort (including negligence), strict liability, or otherwise to the NWSA, its agents, representatives, its affiliated and associated companies, and/or its assigns, for any indirect, incidental or consequential loss or damage whatsoever, including, but not limited to, loss of profits or revenue on work not performed, or loss of use of revenues or loss of anticipated profits, resulting from the preliminary engineering design, or Tacoma Power's performance or non-performance of any obligation imposed on it by this Agreement.

6.4 No Warranty. Tacoma Power makes no warranty or representation whatsoever regarding the accuracy, completeness, or usefulness of the preliminary engineering design, and Tacoma Power expressly disclaims any and all warranties, whether expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Tacoma Power's performance of the preliminary engineering shall not be construed as confirming or endorsing the suitability of the NWSA project or a connection between the NWSA or Port's facilities and Tacoma Power's facilities, or as any warranty of safety, durability, reliability or efficacy of any facility, or any connections or facilities thereto, for any use or purpose.

ARTICLE 7 - DISPUTE RESOLUTION

7.1 Preventing Conflicts. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict before they escalate into dispute, claims or legal actions.

7.2 Resolving Disputes Through Negotiation. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

- (a) Level One – The respective Project Managers of the Parties shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within ten (10) business days after the referral of that dispute to Level One, either party may refer the dispute to Level Two.
- (b) Level Two – An executive officer of NWSA or designee and the Superintendent of Tacoma Power or their designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- (c) Level Three - If the Parties are unable to resolve a dispute between them arising out of this Agreement, the Parties will refer the matter to mediation by an independent third -party mediator selected jointly by them for resolution. Completion of mediation, to be held in good faith by the Parties, shall be a condition precedent before any Party resorts to other remedies it may have, including commencement of suit.

At all times prior to resolution of the dispute, the Parties shall continue to perform their respective duties under this Agreement.

7.3 Venue. Venue for any alternative dispute proceedings and/or legal action shall be in Pierce County, Washington.

ARTICLE 8 – MISCELLANEOUS PROVISIONS

8.1 Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party. In performing work and services pursuant to this Agreement, NWSA, its employees, consultants, agents, and representatives shall be acting as agents of NWSA and shall not be deemed or construed to be employees or agents of the City in any manner whatsoever. NWSA shall not hold itself out as, nor claim to be, an officer or employee of the City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City. NWSA shall be solely responsible for any claims for wages or compensation by the respective employees, contractors, sub-contractors, agents, and representatives of NWSA and the NWSA Contractor, and shall defend, indemnify and hold the City harmless from these claims. In performing work and services pursuant to this Agreement, the City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of NWSA in any manner whatsoever.

8.2 Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between NWSA and the City relating to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced herein.

8.3 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless shall be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

8.4 Amendments. No waiver, modification, addition, or amendment to this Agreement shall be of any force or effect unless reduced to writing and signed by the authorized employees of each Party hereto.

8.5 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. No waiver by either Party hereto of any default shall affect or impair any right arising from any subsequent default. The failure of either Party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment of such right.

8.6 Force Majeure. Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by war, act of terrorism or an act of nature, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage. Tacoma Power has a responsibility to restore service after emergencies, including but not limited to storms, before returning to scheduled work. Emergency-related schedule delays shall not constitute liability.

8.7 Transfer/Assignment. Neither Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

8.8 Benefits. This Agreement is intended for the sole benefit of the Parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy, or claim under this Agreement.

8.9 Authorization to Execute Agreement. The undersigned, by their respective signatures below, represent and warrant that they are each duly authorized to execute this legally binding Agreement for and on behalf of the Party for whom they have signed. NWSA through its undersigned representative expressly acknowledges and agrees that the formal approval of this Agreement by Tacoma Power's Management is a required precondition to the effectiveness and enforceability of this Agreement. Tacoma Power shall have no legal or equitable liability hereunder and/or in connection with the NWSA Project unless or until such approval is obtained. Upon such approval, this Utility Installation Agreement shall become effective as of the Effective Date first above written.

8.10 Public Disclosure. Notwithstanding anything to the contrary in this Agreement, it is expressly recognized and understood that Tacoma Power is a public agency subject to the Washington State Public Records Act (Chapter 42.56, R.C.W.) and that disclosure of any confidential information or any information identified or marked as confidential information may be compelled by said Act. If NWSA provides Tacoma Power with records that NWSA considers confidential or proprietary, NWSA must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If NWSA fails to so mark record(s), then (1) Tacoma Power, upon request, may release said record(s) without the need to satisfy the notice requirements below; and (2) the NWSA expressly waives its right to allege any kind of civil action or claim against Tacoma Power pertaining to the release of said record(s). In the event Tacoma Power determines, in its reasonable legal judgment, that its disclosure of such marked records is required by Washington's Public Records Act, Tacoma Power agrees to provide NWSA at least ten (10) days prior written notice of impending release and, to the extent allowed by law, to reasonably cooperate with any legal action that may be initiated by NWSA to enjoin or otherwise prevent such release; provided, that all expense of any such action or litigation shall be borne solely by NWSA including any damages, attorneys' fees or costs or other judgment amounts awarded by reason of having opposed disclosure. Tacoma Power shall not be liable for any release of information where such notice was provided, and NWSA took no action to oppose said release. NWSA acknowledges that any nondisclosure, confidentiality, or similar agreement with Tacoma Power shall contain the above language.

Northwest Seaport Alliance

By _____
John Wolfe
CEO Northwest Seaport Alliance

**City of Tacoma
Department of Public Utilities**

By _____
Jackie Flowers
Public Utilities Director / CEO

Approved:

By _____
Chris Robinson
Power Superintendent / COO

Approved:

By _____
City of Tacoma Finance Director

Approved as to Form:

By _____
Deputy City of Tacoma Attorney

Exhibit A

Anticipated Phase II Contract Detailed Final Design Services and Construction Work

1. Tacoma Power Work and Services are expected to include:
 - A. Final design, procurement, warehouse materials reservations, permitting, and site construction for modifications and additions to Tacoma Power's existing Lincoln Substation:
 1. New or modified equipment foundations
 2. Environmental controls
 3. New and/or modified equipment support structures and equipment anchorages
 4. Reconfigured transmission line drop and new poles
 5. Grounding
 6. Underground conduits
 7. Lighting and security modifications
 8. Potential and current transformers
 9. Protective relays
 10. Integration/SCADA equipment
 11. Communications modifications
 12. Panels
 13. Battery system
 14. Conductors and control cabling
 15. Insulators
 16. Installation of long lead time equipment identified in Section 1 of the Phase 1 Contract
 - B. Procurement and construction for two new substation feeders and integration into Tacoma Power's existing distribution system.
 - C. Extension of Tacoma Power's Distribution Utility Infrastructure onto NWSA Property.
 - D. Surveying and Geotechnical Engineering
 - F. Commissioning and testing services
2. NWSA Work and Services are expected to include:
 - A. Final design of the Husky Terminals 3 and 4 Reconfiguration work and design documentation review and coordination with Tacoma Power as necessary to finalize Design Documents for Phase II Contract, including timely review and comments regarding preliminary design work and sufficiency relative to the reconfiguration of the Husky Terminals 3 and 4 and completion of the NWSA Project.
 - B. Potential NWSA activities on NWSA Property in preparation for Tacoma Power's installation, testing and commissioning of Tacoma Power Electrical Infrastructure:
 1. Civil design and site preparation for and installation of conduits, conduit connections, vaults and other infrastructure meeting Tacoma Power's Transmission and Distribution Construction Standards.
 2. Scheduling Tacoma Power inspection of all NWSA-installed conduits, vaults and other civil infrastructure necessary for installation of Tacoma Power Electrical infrastructure on NWSA property.

Exhibit B

Anticipated Phase II Contract Subject Matter

The following items are a preliminary list of subject matter to be included in Phase II Contract. Parties mutually understand and agree that further development of listed items is required, including confirmation of each Party's responsibility on each subject item, and that this Exhibit B is not intended to identify all material subject matters to be included in Phase II Contract. Parties expressly agree to further clarify, supplement, and assign responsibility for the following matters during negotiations of Phase II Contract.

- A. Obtain all required permits for work on Port/NWSA Property
- B. Coordination and performance of NWSA Project Work
 - 1. Project schedule and construction work scheduling
 - 2. Project administration, notices, and Party representatives, including Project Managers and Field Representatives
 - 3. Changes in Design Documents, including any approvals required, if any, and additional payment provisions
 - 4. Warranties and bonding
 - 5. Inspection requirements for all NWSA-installed conduits, vaults and other civil infrastructure for installation of Tacoma Power Electrical Infrastructure.
 - 6. All other matters identified by Tacoma Power during Phase I Contract Services

The Parties expressly agree the following material items and conditions are to be included in the contemplated Phase II Contract:

- 1. Access rights during Phase II Contract work scope activities and for operations and maintenance of Tacoma Power installed Electrical Infrastructure on Port/NWSA Property
- 2. Permanent property rights, in the form of easements, which are sufficient to adequately access, construct, operate and maintain 15kV distribution lines from Tacoma Power's existing Lincoln substation to the Husky Terminal.
- 3. Ownership of Utility Installation Facilities located on Port/NWSA Property

Exhibit C

U.S. Department of Transportation Maritime Administration, General Terms and Conditions under the fiscal year 2023 Port Infrastructure Development Program grants

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

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

January 29, 2024

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GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), and the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022) appropriated funds to the United States Department of Transportation (the “USDOT”) Maritime Administration (“MARAD”) for fiscal year (FY) 2023 under the heading “Port Infrastructure Development Program.” The funds are available to make grants to improve port facilities at coastal seaports, inland river ports, or Great Lakes ports. The MARAD program administering those funds is the Port Infrastructure Development Program (PIDP).

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

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

**ARTICLE 1
PURPOSE**

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

**ARTICLE 2
MARAD ROLE**

- 2.1 Administration.** MARAD will administer this agreement.
- 2.2 MARAD Program Contacts.**
- David Bohnet
Supervisory Grant Management Specialist

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

**ARTICLE 3
RECIPIENT ROLE**

- 3.1 Statements on the Project.** The Recipient states that:
- (1) all material statements of fact in the Technical Application were accurate when that application was submitted; and
 - (2) schedule E documents all material changes in the information contained in that application.
- 3.2 Statements on Authority and Capacity.** The Recipient states that:
- (1) it has the authority to receive Federal financial assistance under this agreement;
 - (2) it has the legal authority to complete the Project;
 - (3) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
 - (4) not less than the difference between the total eligible project costs listed in section 3 of schedule D and the PIDP Grant Amount listed in section 1 of schedule D is committed to fund the Project;
 - (5) it has sufficient funds available to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and
 - (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 3 and in section 21.7 on behalf of the Recipient.
- 3.3 MARAD Reliance.** The Recipient acknowledges that:

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

3.4 Project Delivery.

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

3.5 Rights and Powers Affecting the Project.

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

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

**ARTICLE 4
AWARD AMOUNT, OBLIGATION, AND TIME PERIODS**

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

4.2 Federal Funding Source.

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

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

4.3 Federal Obligations.

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

**ARTICLE 5
STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

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

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

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

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

5.4 Budget Changes.

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

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

(e) If there are Project Cost Savings and either the Recipient does not make a proposal under section 5.4(d) or MARAD does not accept the Recipient's proposal under section 5.4(d), then:

- (1) in a request under section 5.4(b), the Recipient shall reduce the PIDP award amount of the Federal Share by the Project Cost Savings; however, if the total eligible project costs that are listed in section 3 of schedule D are more than the total estimated project costs in the Technical Application, the Recipient may request to MARAD to only reduce the PIDP award amount of the Federal Share by the difference between the actual eligible project costs and the total estimated project costs in the Technical Application so long as the Recipient is providing under this agreement the non-Federal share amount committed to in the Technical Application; and
- (2) if that modification reduces this award and MARAD had reimbursed costs exceeding the revised award, the Recipient shall refund to MARAD the difference between the reimbursed costs and the revised award.

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

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

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

ARTICLE 6 GENERAL REPORTING TERMS

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

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

ARTICLE 7 PROGRESS AND FINANCIAL REPORTING

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

ARTICLE 8 PERFORMANCE REPORTING

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

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

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

8.3 Project Outcomes Report. If the Capital-Planning Designation in section 2 of schedule F is “Capital,” then the Recipient shall submit to MARAD, not later than January 31 of the year that follows the final calendar year during which data was collected under section 8.2, a Project Outcomes Report that contains:

- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;
- (2) all baseline and post-construction performance measurement data that the Recipient reported in the Baseline Performance Measurement Report and the Post-construction Performance Measurement Reports; and
- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Baseline Performance Measurement Report.

ARTICLE 9 CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

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

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

ARTICLE 10 RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

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

ARTICLE 11 LABOR AND WORK

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

ARTICLE 12 CIVIL RIGHTS AND TITLE VI

12.1 Civil Rights and Title VI.

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

(2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.

(c) If the Recipient Type Designation in section 1 of schedule K is “New,” then MARAD completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C, before entering this agreement, as documented in section 2 of schedule K.

(d) In this section 12.1, “**Title VI**” means Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. 2000d to 2000d-4a).

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

ARTICLE 13 CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

13.1 Critical Infrastructure Security and Resilience.

(a) Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient shall consider physical and cybersecurity and resilience in planning, design, and oversight of the Project.

(b) If the Security Risk Designation in section 5 of schedule F is “Elevated,” then the Recipient shall:

- (1) in the first Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, identify a cybersecurity Point of Contact for the transportation infrastructure being improved in the Project; and
- (2) in the second Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, provide a plan for completing the requirements in section 13.1(c).

(c) If the Security Risk Designation in section 5 of schedule F is “Elevated,” then not later than the eighth Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1, the Recipient shall include each of the following in a Quarterly Project Progress Report and Recertification that the Recipient submits under section 7.1:

- (1) a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project or a summary of that plan;
- (2) a cybersecurity incident response plan for the transportation infrastructure being improved in the Project or a summary of that plan;
- (3) the results of a self-assessment of the Recipient’s cybersecurity posture and capabilities or a summary of those results; and
- (4) a description of any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 14 PIDP DESIGNATIONS

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

14.2 Effect of Historically Disadvantaged Community. If section 3 of schedule F lists “Yes” for the “HDC Designation,” then based on information that the Recipient provided to MARAD, including the Technical Application, MARAD determined that the Project will be carried out in a historically disadvantaged community, as defined in the NOFO. The Recipient shall incur a majority of the costs under this award in historically disadvantaged communities.

ARTICLE 15 CONTRACTING AND SUBAWARDS

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

15.2 Buy America.

- (a) For the purpose of the award term at exhibit B, term B.5, the Project is “an infrastructure project.” The Recipient acknowledges that iron, steel, manufactured products, and construction materials used in the Project are subject to the Buy America preference in that award term and this agreement is not a waiver of that preference. All noninfrastructure spending is subject to the Buy American Act, 41 U.S.C. chapter 83.
- (b) If the Recipient uses iron, steel, manufactured products, or construction materials that are not produced in the United States in violation of the award term at exhibit B, term B.5, MARAD may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 16 and 2 C.F.R. 200.339–200.340.
- (c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.
- (d) For all iron, steel, manufactured products, or construction materials incorporated into the Project and to which a Buy America preference applies, the manufacturer or supplier of the item(s) should provide to the Recipient a signed certification statement attesting that each item procured under this award meets the applicable Buy America preference requirements. The Recipient must maintain on file any certifications received under this section 15.2(d) and provide to MARAD copies of any such certifications or other documentation supporting compliance upon request of MARAD pursuant to article 24 and 2 C.F.R. 200.334–200.338.

15.3 Small and Disadvantaged Business Requirements.

- (a) If any funds under this award are administered by a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”).
- (b) If any funds under this award are not administered by a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).

15.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

15.5 Pass-through Entity Responsibilities.

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

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

15.6 Disclosing Conflict of Interest.

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

ARTICLE 16 NONCOMPLIANCE AND REMEDIES

16.1 Noncompliance Determinations.

- (a) If MARAD determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, MARAD may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and MARAD must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If MARAD notifies the Recipient of a proposed determination of noncompliance under section 16.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
- (1) accept the remedy;
 - (2) acknowledge the noncompliance, but propose an alternative remedy; or
 - (3) dispute the noncompliance.

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

(c) MARAD may make a final determination of noncompliance only:

- (1) after considering the Recipient's response under section 16.1(b); or
 - (2) if the Recipient fails to respond under section 16.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, MARAD must provide a notice to the Recipient that states the bases for that determination.

16.2 Remedies.

- (a) If MARAD makes a final determination of noncompliance under section 16.1, MARAD may impose a remedy, including:
- (1) additional conditions on the award;
 - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to MARAD; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, MARAD must provide a written notice to the Recipient that describes the remedy, but MARAD may make the remedy effective before the Recipient receives that notice.
- (c) If MARAD determines that it is in the public interest, MARAD may impose a remedy, including all remedies described in section 16.2(a), before making a final determination of noncompliance under section 16.1. If it does so, then the notice provided under section 16.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (d) In imposing a remedy under this section 16.2 or making a public interest determination under section 16.2(c), MARAD may elect to consider the interests of only MARAD.
- (e) The Recipient acknowledges that amounts that MARAD requires the Recipient to refund to MARAD due to a remedy under this section 16.2 constitute a debt to the Federal Government that MARAD may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

16.3 Other Oversight Entities.

Nothing in this article 16 limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

**ARTICLE 17
AGREEMENT TERMINATION**

17.1 MARAD Termination.

- (a) MARAD may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
 - (1) the Recipient fails to obtain or provide any non-PIDP Grant contribution or alternatives approved by MARAD as provided in this agreement and consistent with schedule D;
 - (2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient fails to meet that milestone by six months after the date listed in section 2 of schedule C;
 - (3) the Recipient fails to meet a milestone listed in section 3 of schedule C by the deadline date listed in that section for that milestone;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the project schedule in schedule C even if it is beyond the reasonable control of the Recipient;
 - (5) circumstances cause changes to the Project that MARAD determines are inconsistent with MARAD's basis for selecting the Project to receive a PIDP Grant; or
 - (6) MARAD determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, MARAD may elect to consider only the interests of MARAD.
- (c) This section 17.1 does not limit MARAD's ability to terminate this agreement as a remedy under section 16.2.
- (d) The Recipient may request that MARAD terminate the agreement under this section 17.1.

17.2 Closeout Termination.

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

17.3 Post-Termination Adjustments. The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish MARAD's authority

to disallow costs, including costs that MARAD reimbursed before termination, and recover funds from the Recipient.

17.4 Non-Terminating Events.

- (a) The end of the budget period described under section 28.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The end of the period of performance described under section 28.5 does not terminate this agreement or the Recipient's obligations under this agreement.
- (c) The cancellation of funds under section 19.2 does not terminate this agreement or the Recipient's obligations under this agreement.

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

**ARTICLE 18
COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

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

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

18.3 Timing of Project Costs.

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

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

18.4 Recipient Recovery of Federal Funds. The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if MARAD determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by MARAD.

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

18.6 Timing of Payments to the Recipient.

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

18.7 Payment Method.

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

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

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

18.8 Information Supporting Expenditures.

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

18.9 Reimbursement Request Timing Frequency.

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

**ARTICLE 19
LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY**

19.1 Liquidation of Recipient Obligations.

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

19.2 Funds Cancellation.

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

**ARTICLE 20
AGREEMENT MODIFICATIONS**

- 20.1 Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by MARAD and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 20.2 Unilateral Contact Modifications.**
- (a) The Recipient may update the contacts who are listed in section 3 of schedule A by written notice to all of the MARAD contacts who are listed in section 5 of schedule A and section 2.2.
 - (b) MARAD may update the contacts who are listed in section 5 of schedule A and section 2.2 by written notice to all of the Recipient contacts who are listed in section 3 of schedule A.
- 20.3 MARAD Unilateral Modifications.**
- (a) MARAD may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
 - (b) To unilaterally modify this agreement under this section 20.3, MARAD must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.
- 20.4 Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 20.1, 20.2, or 20.3. If an amendment, modification, or supplement is not permitted under section 20.1, not permitted under section 20.2, or not permitted under section 20.3, it is void.

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

- 21.1 Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.
- 21.2 Federal Law and Public Policy Requirements.**
- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
 - (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.
- 21.3 Federal Freedom of Information Act.**
- (a) MARAD is subject to the Freedom of Information Act, 5 U.S.C. 552.
 - (b) The Recipient acknowledges that the Technical Application and materials submitted to MARAD by the Recipient related to this agreement may become MARAD records subject to public release under 5 U.S.C. 552.
- 21.4 History of Performance.** Under 2 C.F.R. 200.206, any Federal awarding agency may consider the Recipient's performance under this agreement, when evaluating the risks of making a future Federal financial assistance award to the Recipient.
- 21.5 Whistleblower Protection.**
- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related to this award.
 - (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.
- 21.6 External Award Terms and Obligations.**
- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:
 - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;

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

(b) The Recipient shall comply with:

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

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

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

**ARTICLE 22
MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS**

22.1 Recipient Monitoring and Record Retention.

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
 - (1) that those activities comply with this agreement; and
 - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(d) and section 15.5 of this agreement.
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

22.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the Project.
- (b) The Recipient shall keep accounts and records described under section 22.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303 and 2 C.F.R. 200 subpart F and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the FY 2023 PIDP Grants in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including “FY 2023” in the program name; and
 - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2023” in column c (“Additional Award Identification”).

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

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

**ARTICLE 23
NOTICES**

23.1 Form of Notice.

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

23.2 Method of Notice to MARAD.

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

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

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

23.3 Method of Notice to Recipient.

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

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

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

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

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

ARTICLE 24 INFORMATION REQUESTS

24.1 MARAD Information Requests.

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

ARTICLE 25 ASSIGNMENT

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

ARTICLE 26 WAIVER

26.1 Waivers.

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

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

**ARTICLE 27
ADDITIONAL TERMS AND CONDITIONS**

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

27.2 Relocation and Real Property Acquisition.

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

27.3 Real Property and Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.311, when real property is no longer needed for the originally authorized purpose, the Recipient or subrecipient must obtain disposition instructions from the Federal awarding agency or pass-through entity.
- (b) In accordance with 2 C.F.R. 200.313 and 1201.313, equipment acquired under this award must be used by the Recipient or subrecipient in the Project as long as needed, whether or not the Project continues to be supported by the Federal award. When no longer needed for the originally awarded Project or another Federal award:
 - (1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and
 - (2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from MARAD within 120 days after that entity determines that the equipment is no longer needed.

- (c) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (d) The Recipient shall ensure compliance with this section 27.3 for all tiers of subawards under this award.

27.4 Environmental Review.

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

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

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

**ARTICLE 28
MANDATORY AWARD INFORMATION**

28.1 Information Contained in a Federal Award. For 2 C.F.R. 200.211:

- (1) the "Federal Award Date" is the date of this agreement, as defined under section 30.2;
- (2) the "Assistance Listings Number" is 20.823 and the "Assistance Listings Title" is "Port Infrastructure Development Program"; and
- (3) this award is not for research and development.

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

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

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

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

**ARTICLE 29
CONSTRUCTION AND DEFINITIONS**

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

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

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

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

29.3 Construction.

(a) In these General Terms and Conditions:

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

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

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

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

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

“Program Statute” means the collective statutory text:

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

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

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

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

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

ARTICLE 30 AGREEMENT EXECUTION AND EFFECTIVE DATE

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