

U.S. DEPARTMENT OF TRANSPORTATION

GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2022

INFRASTRUCTURE FOR REBUILDING AMERICA (INFRA) PROGRAM:
FRA PROJECTS

Revision date: August 24, 2023

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GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) (the “**IJA**”) made funds available to the United States Department of Transportation (the “**USDOT**”) for fiscal year 2022 to carry out 23 U.S.C. 117 by providing Federal financial assistance for projects of national or regional significance. The USDOT program administering those funds is the INFRA program.

On March 22, 2022, the USDOT posted a funding opportunity at Grants.gov with funding opportunity title “INFRA Grants” and funding opportunity number NSMFHP-22-INFRA-22. The notice of funding opportunity posted at Grants.gov, as amended on May 18, 2022, (the “**NOFO**”) solicited applications for Federal financial assistance under the fiscal year 2022 INFRA program. Because the NOFO also made funding available for two other programs, DOT also collected INFRA applications under funding opportunity numbers NIPA-22-MEGA-22 and RSTGP-22-RURAL-22. On September 15, 2022, the USDOT announced application selections under the NOFO for the INFRA program.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal year 2022 INFRA program. The term “Recipient” is defined in the project-specific portion of the agreement. The project-specific portion of the agreement includes schedules A through J. 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 fund an eligible project of national or regional significance to help achieve the goals identified at 23 U.S.C. 117(a)(2). 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 USDOT ROLE

2.1 Division of USDOT Responsibilities.

- (a) The Office of the Secretary of Transportation is responsible for the USDOT’s overall administration of the INFRA program, the approval of this agreement, and any modifications to this agreement under section 15.1.

- (b) The Federal Railroad Administration (the “**FRA**”) will administer this agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means the FRA.

2.2 USDOT Program Contacts.

FRA Office of Rail Program Development
Federal Railroad Administration
1200 New Jersey Ave, SE
Washington, DC 20590
(202) 493-6381
FRA-Grants@dot.gov

and

OST INFRA Program Manager
United States Department of Transportation
Office of the Secretary
1200 New Jersey Avenue SE
Room W84-312
Washington, DC 20590
(202) 366-1092
MPDGrants@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 INFRA 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 20.7 on behalf of the Recipient.

3.3 USDOT Reliance. The Recipient acknowledges that:

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

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 the Administering Operating Administration.

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 the USDOT.
- (b) The Recipient shall act promptly, in a manner acceptable to the USDOT, 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 all USDOT representatives who are identified in section 5 of schedule A in writing 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.** The USDOT hereby awards an INFRA Grant to the Recipient in the amount listed in section 1 of schedule D as the INFRA Grant Amount.
- 4.2 Federal Funding Source.**
- (a) If section 3 of schedule F identifies the Funding Source as “Trust Fund,” then the INFRA Grant is from INFRA program funding that was made available at IJJA div. A § 11101(a)(5)(A).
 - (b) If section 3 of schedule F identifies the Funding Source as “General Fund,” then the INFRA Grant is from INFRA program funding that was appropriated in IJJA div. J for fiscal year 2022.
 - (c) If section 3 of schedule F contains a table that lists separate amounts for “Trust Fund” and “General Fund,” then the amount listed for “Trust Fund” is from INFRA program funding that was made available at IJJA div. A § 11101(a)(5)(A) and the amount listed for “General Fund” is from INFRA program funding that was appropriated in IJJA div. J for fiscal year 2022.
- 4.3 Federal Obligations.** This agreement obligates for the budget period the amount listed in section 1 of schedule D as the INFRA Grant Amount.
- 4.4 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 as the “Federal Funding Period” in ¶ 5 on the agreement cover sheet. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.
- 4.5 Period of Performance.** The period of performance for this award is listed as the “Project Performance Period” in ¶ 4 on the agreement cover sheet. In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

ARTICLE 5

STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 5.1 Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 5 of schedule A in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions

the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 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 end of the budget period defined in section 4.4; or
- (3) a schedule change would require the period of performance to continue after the end of the period of performance defined in section 4.5.

For other schedule changes, the Recipient shall follow the applicable procedures of the Administering Operating Administration 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) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request a modification of this agreement to update schedule D if, in comparing the Project’s budget to the amounts listed in the “Project Budget by Source” table in section 3 of schedule D:
 - (1) the “Non-Federal Funds” project contribution 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 the Administering Operating Administration and document the changes in writing.
- (d) If there are Project Cost Savings, then the Recipient may propose to the USDOT, in writing consistent with the Administering Operating Administration’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 that are listed in the “Project Budget by Source” table 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 the “Project Budget by Source” table 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 the “Project Budget by Source” table 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 the USDOT 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 Federal Share by the Project Cost Savings; and
- (2) if that modification reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall refund to the USDOT the difference between the reimbursed costs and the revised award.

In this agreement, “**Federal Share**” means the sum of the total “INFRA 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 the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

5.5 USDOT Acceptance of Changes. The USDOT may accept or reject modifications requested under this article 5, and in doing so may elect to consider only the interests of the INFRA program and the USDOT. The Recipient acknowledges that requesting a modification under this article 5 does not amend, modify, or supplement this agreement unless the USDOT accepts that modification request and the parties modify this agreement under section 15.1.

ARTICLE 6 GENERAL REPORTING TERMS

6.1 Report Submission. The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 5 of schedule A and all USDOT contacts who are listed in section 2.2.

6.2 Alternative Reporting Methods. The Administering Operating Administration 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 the Administering Operating Administration.

- 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”). Notwithstanding any other term of this agreement, the due date for any information collections required under this agreement, including the reporting requirements in article 7, is the later of (1) the due date stated with the requirement and (2) the 30th day after OMB approves that information collection.

ARTICLE 7 PROGRESS AND FINANCIAL REPORTING

7.1 Quarterly Project Progress Reports and Recertifications.

- (a) On or before the 30th day of the first month of each calendar year quarter and until the end of the period of performance, the Recipient shall submit to the USDOT a Quarterly Project Progress Report and Recertification that contains, for the previous quarter:
- (1) a complete FRA Form 34¹;
 - (2) a certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements); and
 - (3) the certification required under 2 C.F.R. 200.415(a).

If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.

- (b) On or before the 30th day of the first month of each calendar year quarter and until the end of the period of performance, the Recipient shall submit to the USDOT through GrantSolutions a Federal Financial Report (SF-425) covering the previous calendar year quarter.

7.2 Final Progress Reports and Financial Information. No later than 120 days after the end of the period of performance, the Recipient shall submit

- (1) a final Quarterly Project Progress Report and Recertification in the format and with the content described in section 7.1(a) for each Quarterly Project Progress Report and Recertification;

¹ FRA Form 34 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

- (2) a final SF-425 through GrantSolutions;
- (3) a Final Performance Report FRA Form 33 as provided by FRA²; and
- (4) any other information required under the Administering Operating Administration's award closeout procedures.

ARTICLE 8 [RESERVED]

ARTICLE 9 NONCOMPLIANCE AND REMEDIES

9.1 Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If the USDOT notifies the Recipient of a proposed determination of noncompliance under section 9.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
 - (1) accept the remedy;
 - (2) acknowledge the noncompliance, but propose an alternative remedy; or
 - (3) dispute the noncompliance.

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

- (c) The USDOT may make a final determination of noncompliance only:
 - (1) after considering the Recipient's response under section 9.1(b); or
 - (2) if the Recipient fails to respond under section 9.1(b), after the time for that response has passed.

² FRA Form 33 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

- (d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the bases for that determination.

9.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 9.1, the USDOT may impose a remedy, including:
 - (1) additional conditions on the award;
 - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to the USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
- (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 9.2(a), before making a final determination of noncompliance under section 9.1. If it does so, then the notice provided under section 9.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (d) In imposing a remedy under this section 9.2 or making a public interest determination under section 9.2(c), the USDOT may elect to consider the interests of only the USDOT.
- (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 9.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

- 9.3 Other Oversight Entities.** Nothing in this article 9 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 10 AGREEMENT TERMINATION

10.1 USDOT Termination.

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

- (1) the Recipient fails to obtain or provide any non-INFRA Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with 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 the USDOT determines are inconsistent with the USDOT's basis for selecting the Project to receive an INFRA Grant; or
 - (6) the USDOT determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
 - (c) This section 10.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 9.2.
 - (d) The Recipient may request that the USDOT terminate the agreement under this section 10.1.

10.2 Closeout Termination.

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

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

10.4 Non-Terminating Events.

- (a) The end of the budget period described under section 4.4 does not terminate this agreement or the Recipient's obligations under this agreement.

- (b) The end of the period of performance described under section 4.5 does not terminate this agreement or the Recipient's obligations under this agreement.
- (c) The cancellation of funds under section 14.2 does not terminate this agreement or the Recipient's obligations under this agreement.

10.5 Other Remedies. The termination authority under this article 10 supplements and does not limit the USDOT's remedial authority under article 9 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

ARTICLE 11

MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

11.1 Recipient Monitoring and Record Retention.

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

11.2 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 11.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303, 2 C.F.R. 200 subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year 2022 INFRA program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:

- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including “FY 2022” 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 2022” in column c (“Additional Award Identification”).
- 11.3 Internal Controls.** The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.
- 11.4 USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.
- 11.5 Oversight Responsibilities.** This award is subject to the oversight requirements of title 23, United States Code.

ARTICLE 12 CONTRACTING AND SUBAWARDS

- 12.1 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 23 U.S.C. 113, 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.
- 12.2 Buy America.**
- (a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
 - (b) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
 - (c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

- 12.3 Small and Disadvantaged Business Requirements.** The Recipient shall comply with 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”). For the purpose of 49 C.F.R. 26.3, that part applies to the Recipient.
- 12.4 Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. 1101-1104 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT.
- 12.5 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.
- 12.6 Pass-through Entity Responsibilities.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.
- 12.7 Subaward and Contract Authorization.** [Reserved]

ARTICLE 13

COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 13.1 Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated under section 4.3. The Recipient acknowledges that the USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 13.2 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.
- 13.3 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 13.3(d)–(e), the Recipient shall not charge to this award costs that were incurred before the date of this agreement.

- (c) This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this award for the Project. Section 5 of schedule D is the exclusive USDOT 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, then the Recipient may charge to this award, for payment from the INFRA 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 the USDOT approves a request from the Recipient under 23 U.S.C. 117(k)(2) 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.

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

13.5 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.

13.6 Timing of Payments to the Recipient.

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

13.7 Payment Method.

- (a) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System (<https://www.dot.gov/cfo/delphi-einvoicing-system.html>) to request reimbursement under this award. If the Recipient requires access to that system, the Recipient shall contact the USDOT contact listed in section 5 of schedule A.
- (b) The USDOT may deny a payment request that is not submitted using the method identified in this section 13.7.

13.8 Information Supporting Expenditures.

- (a) If the USDOT 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 the SF 270 (Request for Advance or Reimbursement) and shall submit supporting cost detail to document clearly all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred by task and by Federal and Non-Federal funds. The Recipient shall classify all costs by task described in section 2 of schedule B and by Federal and non-Federal shares.
- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

13.9 Reimbursement Request Timing Frequency. If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” the Recipient shall request reimbursement as needed to maintain cash flow sufficient to timely complete the Project. The Recipient shall not submit any single payment request exceeding \$99,999,999.99. The Recipient shall not submit a payment request exceeding \$50,000,000.00 unless the Recipient notifies the USDOT 5 days before submitting the request.

ARTICLE 14 LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

14.1 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 14.2.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

14.2 Funds Cancellation.

- (a) INFRA program funding that was made available at IIJA div. A § 11101(a)(5)(A) remains available until expended.
- (b) INFRA program funding that was appropriated in IIJA div. J for fiscal year 2022, is canceled by statute after September 30, 2030, and then unavailable for any purpose, including adjustments.
- (c) Section 4.2 identifies the specific source or sources of funding for this award.

ARTICLE 15

AGREEMENT MODIFICATIONS

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

15.2 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 USDOT contacts who are listed in section 5 of schedule A and section 2.2.
- (b) The USDOT 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.

15.3 USDOT Unilateral Modifications.

- (a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
- (b) To unilaterally modify this agreement under this section 15.3, the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

15.4 Other Modifications. The parties shall not amend, modify, or supplement this agreement except as permitted under sections 15.1, 15.2, or 15.3. If an amendment, modification, or supplement is not permitted under section 15.1, not permitted under section 15.2, and not permitted under section 15.3, it is void.

ARTICLE 16

CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

16.1 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 17
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

- 17.1 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 18
LABOR AND WORK

- 18.1 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.
- 18.2 OFCCP Mega Construction Project Program.** If the total eligible project costs that are listed in section 3 of schedule D are greater than \$35,000,000 and the Department of Labor’s Office of Federal Contract Compliance Programs (the “OFCCP”) selects this award for participation in the Mega Construction Project Program, then the Recipient shall partner with OFCCP, as requested by OFCCP.

ARTICLE 19
CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

19.1 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 cyber security and resilience in planning, design, and oversight of the Project.
- (b) If the Security Risk Designation in section 6 of schedule F is “Elevated,” then, not later than two years after the date of this agreement, the Recipient shall submit to the USDOT a report that:
 - (1) identifies a cybersecurity Point of Contact for the transportation infrastructure being improved in the Project;
 - (2) summarizes or contains a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project;

- (3) summarizes or contains a cybersecurity incident response plan for the transportation infrastructure being improved in the Project;
- (4) documents the results of a self-assessment of the Recipient's cybersecurity posture and capabilities; and
- (5) describes any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 20

FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

20.1 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.

20.2 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.

20.3 Federal Freedom of Information Act.

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

20.4 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.

20.5 Whistleblower Protection.

- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related this this award.

- (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

20.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 25, 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).

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

- (1) Appendix A to 49 CFR part 20 (Certification Regarding Lobbying).

ARTICLE 21 ASSIGNMENT

21.1 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 22 WAIVER

22.1 Waivers.

- (a) A waiver of a term of this agreement granted by the USDOT will not be effective unless it is in writing and signed by an authorized representative of the USDOT.
- (b) A waiver of a term of this agreement granted by the USDOT on one occasion will not operate as a waiver on other occasions.
- (c) If the USDOT 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 23 ADDITIONAL TERMS AND CONDITIONS

23.1 Effect of Urban or Rural Designation. Based on information that the Recipient provided to the USDOT, including the Technical Application, section 1 of schedule F designates this award as an award in an urban area or rural area, as defined in section C.6 of the NOFO. The Recipient shall incur costs a majority of costs under this award consistent with that designation.

23.2 Effect of Historically Disadvantaged Community or Area of Persistent Poverty Designation. If section 2 of schedule F lists “Yes” for the “HDC or APP Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project will be carried out in a historically disadvantaged community or an area of persistent poverty, as defined in section C.7 of the NOFO. The Recipient shall incur a majority of the costs under this award in historically disadvantaged communities or areas of persistent poverty.

23.3 Effect of Large or Small Designation.

- (a) If section 4 of schedule F lists “Large” for the “Large-Small Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project has eligible project costs that are reasonably anticipated to equal or exceed the threshold described at 23 U.S.C. 117(d)(1)(B).
- (b) If section 4 of schedule F lists “Small” for the “Large-Small Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project has eligible project costs that are reasonably anticipated to be less than the threshold described at 23 U.S.C. 117(d)(1)(B).

- (c) The Recipient states that the reasonably anticipated eligible costs of the Project on the date of this agreement, including costs incurred before that date, are consistent with the USDOT determination described in section 23.3(a)–(b).

23.4 Effect of State Incentives Pilot Designation. If section 5 of schedule F lists “Yes” for the “State Incentives Pilot Designation,” then:

- (1) the Recipient acknowledges that the USDOT selected the Project under the authority at 23 U.S.C. 117(q) and that authority limits the Recipient’s use of Federal funds in the Project;
- (2) the Recipient shall not request a shall request a modification of this agreement that would cause the Federal Share to exceed 50 percent of the total eligible project costs listed in section 3 of schedule D; and
- (3) the Recipient shall ensure the Federal Share at Project Closeout does not exceed 50 percent of the actual eligible project costs.

23.5 Use of Limited Non-Highway Funds.

- (a) The Recipient acknowledges that the USDOT selected the Project for award with the expectation that no more than the “Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in section 1 of schedule D would be subject to the limitation at 23 U.S.C. 117(d)(2).
- (b) The Recipient shall not request reimbursements that are subject to the limitation at 23 U.S.C. 117(d)(2) and, in aggregate, exceed the “Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in section 1 of schedule D.

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

23.7 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.

23.8 Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project:
 - (1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and
 - (2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from the Administering Operating Administration.
- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 23.8 for all tiers of subawards under this award.

23.9 Environmental Review.

- (a) In this section, “**Environmental Review Entity**” means:
 - (1) if the Project is located in a State that has assumed responsibilities for environmental review activities as may be authorized by law, including under 23 U.S.C. 327, and the Project is within the scope of the assumed responsibilities, the State; and
 - (2) for all other cases, the FRA.
- (b) Except as authorized under section 23.9(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
 - (1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
 - (2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.
- (c) If the Recipient is purchasing railroad components or materials that can be used for other projects or resold, then the Recipient shall comply with 23 C.F.R. 771.113(d)(4).

(d) The Recipient acknowledges that:

- (1) the Environmental Review Entity's actions under section 23.9(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
- (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.

(e) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.

(f) 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 15.1 for consistency with the selected build alternative; or
- (2) if the USDOT determines that the condition at section 10.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 10.1(a)(5).

(g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project. Section 3 of schedule B identifies documents describing mitigation activities, but the absence of a document from that section does not relieve the Recipient of any compliance obligations.

23.10 Project Maintenance Requirement. The Recipient shall ensure that the Project Property is maintained in good operating order and in accordance with 2 C.F.R. 200.310–200.316, 1201.313 and any guidelines, directives, or regulations that the USDOT, including FRA, may issue.

ARTICLE 24

MANDATORY AWARD INFORMATION

24.1 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 26.2;
- (2) the “Assistance Listings Number” is 20.934 and the “Assistance Listings Title” is “Nationally Significant Freight and Highway Projects”; and

(3) this award is not for research and development.

24.2 Federal Award Identification Number. The Federal Award Identification Number is listed in ¶ 2 on the agreement cover sheet as the “Agreement Number.”

24.3 Recipient’s Unique Entity Identifier. The Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is listed in ¶ 1B on the agreement cover sheet.

ARTICLE 25 CONSTRUCTION AND DEFINITIONS

25.1 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	INFRA Program Designations
Schedule G	Reserved
Schedule H	Climate Change and Environmental Justice Impacts
Schedule I	Racial Equity and Barriers to Opportunity
Schedule J	Labor and Work

25.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to FRA Grant Agreements Under the Fiscal Year 2022 INFRA Grant Program,” dated August 24, 2023, and available at <https://www.transportation.gov/grants/infra-grant-implementation>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Additional Standard Terms

25.3 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 25.1 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 25.1.

- (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.

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

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

“**General Terms and Conditions**” means this document, including articles 1–26.

“**Program Statute**” means the collective statutory text:

- (1) at 23 U.S.C. 117; and
- (2) at paragraph 3 under the heading “Department of Transportation—Federal Highway Administration—Highway Infrastructure Program” in IIJA div. J, tit. VIII, and all other provisions of that act that apply to amounts appropriated under that paragraph.

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

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

“**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.

ARTICLE 26

AGREEMENT EXECUTION AND EFFECTIVE DATE

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

26.2 Effective Date. The agreement will become effective when all parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes an INFRA Grant when the USDOT’s authorized representative signs it.