

U.S. DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT UNDER THE FISCAL YEAR 2023 RAISE PROGRAM

This agreement is between the United States Department of Transportation (the “**USDOT**”) and the Minnesota Department of Transportation (the “**Recipient**”). Also in FMIS.

This agreement reflects the selection of the Recipient to receive a RAISE Grant for the Coastal Transportation Infrastructure Rehabilitation Project. Also in FMIS.

If schedule A to this agreement identifies a Designated Subrecipient, that Designated Subrecipient is also a party to this agreement, and the parties want the Designated Subrecipient to carry out the project with the Recipient’s assistance and oversight.

The parties therefore agree to the following:

ARTICLE 1 GENERAL TERMS AND CONDITIONS.

1.1 General Terms and Conditions.

- (a) In this agreement, “**General Terms and Conditions**” means the content of the document titled “General Terms and Conditions Under the Fiscal Year 2023 RAISE Program: FHWA Projects,” dated June 23, 2023, which is available at <https://www.transportation.gov/policy-initiatives/raise/raise-grant-agreements>. The General Terms and Conditions reference the information contained in the schedules to this agreement. The General Terms and Conditions are part of this agreement.
- (b) The Recipient states that it has knowledge of the General Terms and Conditions.
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, terminating of the RAISE Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the USDOT the RAISE Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2 SPECIAL TERMS AND CONDITIONS.

There are no special terms for this award.

**SCHEDULE A
ADMINISTRATIVE INFORMATION**

1. Application.

Application Title: Coastal Transportation Infrastructure Rehabilitation Project Phase VI

Application Date: 02/28/2023

2. Recipient's Unique Entity Identifier.

See section 28.3 of the General Terms and Conditions.

3. Recipient Contact(s).

Kristine Elwood
State Aid Engineer
Minnesota Department of Transportation
395 John Ireland Blvd, MS 500
St. Paul, MN 55155
651-366-4831
kristine.elwood@state.mn.us

4. Recipient Key Personnel.

None.

5. USDOT Project Contact(s).

Jason Spilak
Local/Grants Program Manager
FHWA Minnesota Division
180 E 5th St, Suite 930
St Paul, MN 55101
(651) 291-6108
jason.spilak@dot.gov

6. Payment System.

USDOT Payment System: FMIS

7. Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: FHWA Division

8. Federal Award Identification Number.

See section 28.2 of the General Terms and Conditions.

9. Designated Subrecipient.

Designated Subrecipient: City of Duluth

SCHEDULE B PROJECT ACTIVITIES

1. General Project Description.

The project will rehabilitate a separated multimodal trail, increase connections to that trail, and complete revetment of the coastal barrier that protects the community.

2. Statement of Work.

Construction of Multimodal Transportation Enhancements:

Trails: trail will be paved and will conform to recommendations in the 2007 “MnDOT Bikeway Facility Design Manual.”

Bypass: The trail segment through Leif Erikson Park will be divided to separate bicyclists from pedestrians. A bypass trail will be constructed outside of, but adjacent to the park and routed along the railroad corridor to funnel commuters away from the busiest part of the park. The bypass will be based upon proximity to the rail corridor. New fencing will be installed to safely separate the trail from the rail corridor.

Slope reductions: Slopes will be reduced at three segments by redesigning the trail to provide more gradual slopes and increased turning radius.

Improved connections: Wayfinding and safety will be improved at five existing connections. A new connection at Essentia Health will include a new trail and safety crossing.

Other Infrastructure: Public E-bike charging stations (at least 2) and corrals will be provided based on specifications from applicable State and local codes along with manufacture’s requirements and consideration of confluence points. Railings, fences and lighting will increase safety, meet ABA standards, and include LED and dark-sky lighting technology.

Coastal Barrier Revetment

Stone revetment at a slope of 2:1 with stone toe protection, regrading, geotextile fabric, stone core fill, and stone armor layer that provides a stable slope and lateral stability for the Barrier.

Soil borings and geotechnical reports will be conducted.

Native plantings integrated into structural stabilization areas, geotextiles and soil stabilizing geosynthetics will be used to stabilize the soils while the vegetation establishes and holds the shoreline in place.

SCHEDULE C
AWARD DATES AND PROJECT SCHEDULE

1. Award Dates.

Budget Period End Date: 9/30/2028

Period of Performance End Date: See section 28.5 of the General Terms and Conditions.

2. Estimated Project Schedule.

Milestone	Schedule Date
Planned Construction Substantial Completion and Open to Traffic Date:	December 30, 2026

3. Special Milestone Deadlines.

None.

SCHEDULE D
AWARD AND PROJECT FINANCIAL INFORMATION

1. Award Amount.

RAISE Grant Amount: \$8,196,234

2. Federal Obligation Information.

Federal Obligation Type: Single

3. Approved Project Budget.

See FMIS.

4. Cost Classification Table

Reserved.

5. Approved Pre-award Costs

None. The USDOT has not approved under this award any costs incurred under an advanced construction authorization (23 U.S.C. 115), any costs incurred prior to authorization (23 C.F.R. 1.9(b)), or any pre-award costs under 2 C.F.R. 200.458.

SCHEDULE E CHANGES FROM APPLICATION

Scope: To keep the project on schedule, preliminary engineering was processed with local funds only.

Schedule: The regulatory review of project development documents and submittals have taken longer than originally scheduled.

Milestone	Application	Agreement
Planned Construction Substantial Completion and Open to Traffic Date:	12/31/2025	12/30/2026

Budget: The budget has been updated to show that the preliminary engineering activities that were included in the RAISE application have been moved to previously incurred, as they have already been completed and are no longer under the scope of this grant agreement. Overall, construction estimates have been increasing due to inflation and total future eligible costs are estimated to at least match the application amount. The recipient will maintain the Non-Federal funding amount stated in the grant application.

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

Fund Source	Application		Schedule D	
	\$	%	\$	%
Previously Incurred Costs				
Federal Funds				
Non-Federal Funds			546,600	
Total Previously Incurred Costs			546,600	
Future Eligible Project Costs				
RAISE Funds	8,196,234	80	8,196,234	80
Other Federal Funds				
Non-Federal Funds	2,052,524	20	2,052,524	20
Total Future Eligible Project Costs	10,248,758	100	10,248,758	100
Total Project Costs	10,248,758		10,795,358	

Other: N/A

**SCHEDULE F
RAISE PROGRAM DESIGNATIONS**

1. Urban or Rural Designation.

Urban-Rural Designation: Rural

2. Capital or Planning Designation.

Capital-Planning Designation: Capital

3. Historically Disadvantaged Community or Area of Persistent Poverty Designation.

HDC or APP Designation: Yes

4. Funding Act.

Funding Act: See FMIS.

5. Security Risk Designation.

Security Risk Designation: Low

SCHEDULE G
RAISE PERFORMANCE MEASUREMENT INFORMATION

Study Area: City of Duluth Lakewalk between the westernmost tip of Lake Superior to 26th Avenue East

Baseline Measurement Date: June 30, 2024

Baseline Report Date: August 30, 2024

Table 1: Performance Measure Table

Measure	Category and Description	Measurement Frequency
Bicycle and Pedestrian Volumes	Environmental Sustainability, Mobility and Community Connectivity, Quality of Life Average number of bicycles or pedestrians per day. Reporting can include both bicycles and pedestrians or be disaggregated by mode that best aligns with project purpose. Count collection should utilize industry standards, such as National Bicycle and Pedestrian Documentation Project methodology, Pedestrian and Bicycle Information Center resources, and protocols included in the FHWA Traffic Monitoring Guide.	annual
Closure from Natural Hazards	State of Good Repair Total Hours of Facility Closure per Year. A closure is defined as when a natural hazard prevents a facility from continuing daily operations or service.	annual

SCHEDULE H CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

1. Consideration of Climate Change and Environmental Justice Impacts.

The Recipient states that rows marked with “X” in the following table are accurate:

	The Project significantly reduces transportation-related pollution, like air pollution and greenhouse gas emissions. <i>(Describe the expected reductions and how they are achieved in the supporting narrative below.)</i>
	The Project aligns with an applicable State, regional, or local carbon-reduction plan. <i>(Identify the plan in the supporting narrative below.)</i>
	The Project addresses the disproportionate negative environmental impacts of transportation, such as exposure to elevated levels of air, water, and noise pollution. <i>(Describe how in the supporting narrative below.)</i>
	The Project implements transportation-efficient land use and design, such as drawing on the features of historic towns and villages that had a mix of land uses, compact and walkable development patterns, accessible green space, and neighborhood centers. <i>(Describe how in the supporting narrative below.)</i>
	The Project shifts freight to lower-carbon travel modes to reduce emissions. <i>(Describe how in the supporting narrative below.)</i>
X	The Project improves the resiliency of at-risk infrastructure to withstand extreme weather events and natural disasters caused by climate change, such as by using best-available climate data sets, information resources, and decision-support tools, and incorporating best practices identified by the USDOT. <i>(Identify the at-risk infrastructure and describe how the project improves its resiliency in the supporting narrative below.)</i>
	The Project incorporates energy efficient investments, such as electrification or zero emission vehicle infrastructure. <i>(Describe the energy efficient investments in the supporting narrative below.)</i>
	The Project redevelops brownfield sites. <i>(Identify the brownfield sites and describe the redevelopment in the supporting narrative below.)</i>
	The Project removes, replaces, or restores culverts to improve passage of aquatic species. <i>(Identify the affected culverts and describe how the changes will improve the passage of aquatic species in the supporting narrative below.)</i>
	The Project avoids adverse impacts to air or water quality, wetlands, and endangered species. <i>(Describe how in the supporting narrative below.)</i>

	The Project includes floodplain upgrades consistent with the Federal Flood Risk Management Standard in Executive Orders 14030 and 13690. <i>(Describe those floodplain upgrades in the supporting narrative below.)</i>
	The Recipient has taken other actions to consider climate change and environmental justice impacts of the Project. <i>(Describe those actions in the supporting narrative below.)</i>
	The Recipient has not yet taken actions to consider climate change and environmental justice impacts of the Project but, before beginning construction of the Project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
	The Recipient has not taken actions to consider climate change and environmental justice impacts of the Project and will not take those actions under this award.

2. Supporting Narrative.

The Project improves the resiliency of at-risk infrastructure to withstand extreme weather events and natural disasters caused by climate change, such as by using best-available climate data sets, information resources, and decision-support tools, and incorporating best practices identified by the USDOT.

Duluth experienced an increase in the number of heavy rain events from 1980 through 2010; annual precipitation increased 11% while heavy precipitation events increased 37%. From June 1997 to June 2007, St. Louis County experienced 293 storm events. From June 2007 to June 2017, St. Louis County experienced 462 storm events, an increase of 58%. Trends noted on Lake Superior itself include increasing wind speeds (~5% per decade) and climate variability and extremes, and more frequent and intense coastal storms. Portions of the coastal barrier have been impacted by increasingly severe storms resulting in three disaster declarations in 2018 and 2019 and an additional State declaration in late 2022.

Infrastructure at risk includes the Western Lake Superior Sanitary District sewer force main and other utilities; transportation and logistics infrastructure, including Interstate Highway 35 (I-35), which carries over 30,000 vehicles daily; the BNSF commercial railroad; the Lakewalk non- motorized commuter trail; residential homes; and hundreds of large and small businesses that depend on the waterfront for their livelihood.

Along the Barrier, living shoreline concepts have been applied where feasible and are complemented with native/pollinator plantings. and the design of the shoreline stabilization measures has considered future climate change impacts. Construction debris deposited in the 1980's forms the foundation of the Barrier. Continued degradation of the Barrier releases this debris into Lake Superior. The environmental risk of this material is unknown and it may impact a protected Lake Trout spawning area just off-shore as well.

The Project addresses actions called for in the City of Duluth's Climate Action Work Plan (2022 – 2027), including reducing emissions and strengthening community resilience. Nonmotorized commuting releases less carbon – a major impact on climate change. Construction components will use lower-carbon and sustainable materials where feasible, along with nature-based solutions. Wherever possible, native habitat will be created to improve the environment for birds and pollinators while providing quality green space for residents and visitors. Lighting will continue to employ dark sky technology.

SCHEDULE I
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.

The Recipient states that rows marked with “X” in the following table are accurate:

X	The Project increases affordable transportation choices. <i>(Describe how in the supporting narrative below.)</i>
X	The Project expands active transportation usage. <i>(Describe how in the supporting narrative below.)</i>
	The Project significantly reduces vehicle dependence. <i>(Describe how in the supporting narrative below.)</i>
	The Project reduces transportation and housing cost burdens by integrating mixed use development and a diversity of housing types (including affordable housing) with multimodal transportation infrastructure. <i>(Describe how in the supporting narrative below.)</i>
	The Project coordinates and integrates land use, affordable housing, and transportation planning to create more livable communities and expand travel choices. <i>(Describe how in the supporting narrative below.)</i>
	The Project reduces vehicle dependence and improves access to daily destinations, such as jobs, healthcare, grocery stores, schools, places of worship, recreation, or parks, such as by adding new facilities that promote walking or biking. <i>(Describe how in the supporting narrative below.)</i>
	The Project implements transit-oriented development that benefits existing residents and businesses. <i>(Describe how in the supporting narrative below, including a specific description of the benefits to <u>existing</u> residents and businesses.)</i>
	The Project mitigates urban heat islands to protect the health of at-risk residents, outdoor workers, and others. <i>(Describe how in the supporting narrative below.)</i>
	The Project proactively addresses racial equity. <i>(Describe how in the supporting narrative below.)</i>
	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity. <i>(Describe those actions in the supporting narrative below.)</i>

	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but, before beginning construction of the Project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

2. Supporting Narrative.

The Project increases affordable transportation choices.

The Project expands active transportation usage.

The Project connects and improves the entire Duluth waterfront creating a desirable and accessible non-motorized transit corridor through an 8.5 miles long lake shore park which functions as the Barrier. Non-motorized commuting reduces air pollution and greenhouse gas emissions. Public E-bike charging stations promote confidence that charging will be available for commuting.

Research shows that low-income and communities of color are disproportionately impacted by poor health outcomes. St. Louis County Health Dept and the Minnesota Department of Health documented significant health disparities across Duluth. Lincoln Park and the Central and East Hillside are home to residents that suffer the highest rates of poverty, un- and underemployment, low educational attainment, and poor health. Residents in these neighborhoods have significant health challenges: on average, their life span is 11 years shorter than residents of neighboring zip codes. Free, accessible, and safe outdoor areas are shown to improve health outcomes for these communities.

SCHEDULE J LABOR AND WORK

1. Efforts to Support Good-Paying Jobs and Strong Labor Standards

The Recipient states that rows marked with “X” in the following table are accurate:

	The Recipient or a project partner promotes robust job creation by supporting good-paying jobs directly related to the project with free and fair choice to join a union. <i>(Describe robust job creation and identify the good-paying jobs in the supporting narrative below.)</i>
	The Recipient or a project partner will invest in high-quality workforce training programs such as registered apprenticeship programs to recruit, train, and retain skilled workers, and implement policies such as targeted hiring preferences. <i>(Describe the training programs in the supporting narrative below.)</i>
X	The Recipient or a project partner implements targeted hiring preferences that will promote the entry and retention of underrepresented populations into those jobs including women, people of color, and people with convictions. <i>(Describe the use of targeted hiring preferences that will promote the entry and retention of underrepresented populations in jobs in the supporting narrative below.)</i>
	The Recipient or a project partner will partner with high-quality workforce development programs with supportive services to help train, place, and retain underrepresented communities in good-paying jobs or registered apprenticeships including through the use of local and economic hiring preferences, linkage agreements with workforce programs that serve underrepresented groups, and proactive plans to prevent harassment. <i>(Describe the supportive services provided to trainees and employees, preferences, and policies in the supporting narrative below.)</i>
	The Recipient or a project partner will partner and engage with local unions or other worker-based organizations in the development and lifecycle of the project, including through evidence of project labor agreements and/or community benefit agreements. <i>(Describe the partnership or engagement with unions and/or other worker-based organizations and agreements in the supporting narrative below.)</i>
X	The Recipient or a project partner will partner with communities or community groups representative of historically underrepresented groups to develop workforce strategies. <i>(Describe the partnership and workforce strategies in the supporting narrative below.)</i>

	The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i>
	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the Project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
	The Recipient has not taken actions related to the Project to improve good-paying jobs and strong labor standards and will not take those actions under this award.

2. Supporting Narrative.

The Recipient or a project partner implements targeted hiring preferences that will promote the entry and retention of underrepresented populations into those jobs including women, people of color, and people with convictions.

The Contractor, along with any subcontractors, will be required by the construction Contract to cause 15% of the total work hours to be performed by women, people of color, or other individuals who are considered socially disadvantaged as outlined in the City of Duluth's Community Benefits Program. The Notice to Proceed will be issued only after the Best Efforts Plan has been approved by the Workforce Development Department.

The Recipient or a project partner will partner with communities or community groups representative of historically underrepresented groups to develop workforce strategies.

The Workforce Development Department supports efforts to provide training and placement programs for underrepresented workers in a number of ways. The Department supports the Construction Working Group, a committee of the Duluth Workforce Development Board that works on eliminating barriers to entry into apprenticeships and employment in the construction industry. The Department conducts outreach to underrepresented populations, to raise awareness of construction career pathways and connect individuals to training programs and other resources available in the community. The Department, through the workforce center, assists individuals in connecting to apprenticeship programs and navigating application processes.

**SCHEDULE K
CIVIL RIGHTS AND TITLE VI**

1. Recipient Type Designation.

Recipient Type Designation: Existing

Existing Award Program: 20.205; Highway Planning and Construction

2. Title VI Assessment Information.

This section is not applicable because the Recipient Type Designation is “Existing.”

RECIPIENT SIGNATURE PAGE

See FMIS.

DESIGNATED SUBRECIPIENT SIGNATURE PAGE

See agreement between the State DOT and the Designated Subrecipient.

USDOT SIGNATURE PAGE

See FMIS.

U.S. DEPARTMENT OF TRANSPORTATION
EXHIBITS TO FHWA GRANT AGREEMENTS UNDER THE
FISCAL YEAR 2023 RAISE PROGRAM

JUNE 23, 2023

EXHIBIT A

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this agreement for a FY 2023 RAISE Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a. Davis-Bacon Act – 40 U.S.C. 3141, et seq., as applicable under 23 U.S.C. 113
- b. Federal Fair Labor Standards Act – 29 U.S.C. 201, et seq.
- c. Hatch Act – 5 U.S.C. 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. 4601, et seq.
- e. Section 106 of the National Historic Preservation Act of 1966 – 54 U.S.C. 306108
- f. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501, et seq.
- g. Native American Graves Protection and Repatriation Act – 25 U.S.C. 3001, et seq.
- h. Clean Air Act, Pub. L. No. 90-148, as amended – 42 U.S.C. 7401, et seq.
- i. Section 404 of the Clean Water Act, as amended – 33 U.S.C. 1344
- j. Section 7 of the Endangered Species Act, Pub. L. No. 93-205, as amended – 16 U.S.C. 1536
- k. Coastal Zone Management Act, Pub. L. No. 92-583, as amended – 16 U.S.C. 1451, et seq.
- l. Section 102 of the Flood Disaster Protection Act of 1973 – 42 U.S.C. 4012a
- m. Age Discrimination Act of 1975 – 42 U.S.C. 6101, et seq.
- n. American Indian Religious Freedom Act, Pub. L. No. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended – 21 U.S.C. 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. No. 91-616, as amended – 42 U.S.C. 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- s. Contract Work Hours and Safety Standards Act – 40 U.S.C. 3701, et seq.
- t. Copeland Anti-kickback Act, as amended – 18 U.S.C. 874 and 40 U.S.C. 3145
- u. National Environmental Policy Act of 1969 – 42 U.S.C. 4321, et seq.
- v. Wild and Scenic Rivers Act, Pub. L. No. 90-542, as amended – 16 U.S.C. 1271, et seq.
- w. Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- x. Single Audit Act of 1984 – 31 U.S.C. 7501, et seq.
- y. Americans with Disabilities Act of 1990 – 42 U.S.C. 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. 1681 through 1683 and 1685 through 1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. 794
- bb. Title VI of the Civil Rights Act of 1964 – 42 U.S.C. 2000d, et seq.

- cc. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352
- dd. Freedom of Information Act – 5 U.S.C. 552, as amended
- ee. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
- ff. Farmland Protection Policy Act of 1981 – 7 U.S.C. 4201, et seq.
- gg. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661, et seq.
- hh. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. 401 and 525
- ii. Section 4(f) of the Department of Transportation Act of 1966 – 49 U.S.C. 303 and 23 U.S.C. 138
- jj. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. 9601, et seq.
- kk. Safe Drinking Water Act – 42 U.S.C. 300f to 300j-26
- ll. Wilderness Act – 16 U.S.C. 1131-1136
- mm. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
- nn. Migratory Bird Treaty Act – 16 U.S.C. 703, et seq.
- oo. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. No. 109–282, as amended by section 6202 of Pub. L. No. 110–252)
- pp. Cargo Preference Act of 1954 – 46 U.S.C. 55305
- qq. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232
- rr. Build America, Buy America Act, Pub. L. No. 117-58, div. G §§ 70901–70927

Executive Orders

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- j. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- d. Contractors and subcontractors on public building or public work financed in whole or

- part by loans or grants from the United States – 29 C.F.R. Part 3
- e. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- f. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- g. New Restrictions on Lobbying – 49 C.F.R. Part 20
- h. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- i. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- j. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- k. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- l. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- m. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- n. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- o. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- p. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- q. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 15.3 of this agreement)

Highway Federal Legislation

- a. Highways – Title 23, U.S.C.
- b. Brooks Act (for FHWA projects, this incorporates Title IX of the Federal Property and Administrative Services Act of 1949 – 40 U.S.C. 1101-1104; 23 U.S.C. 112(b)(2))
- c. Letting of Contracts, 23 U.S.C. 112
- d. Highway Design and Construction Standards, 23 U.S.C. 109
- e. Prevailing Rate of Wage, 23 U.S.C. 113
- f. Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- g. Tolls, 23 U.S.C. 301 (to the extent the recipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.
- h. Size, Weight, and Length Limitations – 23 U.S.C. 127, 49 U.S.C. 31101 et seq.
- i. Buy America – 23 U.S.C. 313

(see http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm)

- j. Nondiscrimination – 23 U.S.C. 140
- k. Efficient Environmental Reviews - 23 U.S.C. 139

Federal Highway Regulations

- a. Highways – Title 23, C.F.R.
- b. Planning – 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- c. National Highway System Design Standards – 23 C.F.R. Part 625
- d. Preconstruction Procedures – 23 C.F.R. Part 630 Subparts A and B
- e. Construction and Maintenance – 23 C.F.R. Part 635
- f. Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655
- g. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- h. Procedures for Abatement of Highway Traffic and Construction Noise – 23 C.F.R. Part 772
- i. Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 C.F.R. Part 774
- j. Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122
- k. Required Contract Provisions – 23 C.F.R. Part 633 (Form 1273)
- l. External Programs – 23 C.F.R. Part 230

Specific assurances required to be included in the FY 2023 RAISE Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

EXHIBIT B
ADDITIONAL STANDARD TERMS

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TERM B.1
TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

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

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

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

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into this agreement under the FY 2023 RAISE Program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

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

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

General Assurances

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

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

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

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2023 RAISE Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2023 RAISE Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

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

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

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

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

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2023 RAISE Program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2023 RAISE Program.

APPENDIX A

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

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), 49 U.S.C. § 6702, the Regulations for the Administration of the FY 2023 RAISE Program, and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

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

TERM B.2
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Parts 180 and 1200

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

By signing and submitting the Technical Application and by entering into this agreement under the FY 2023 RAISE Program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2023 RAISE Grant, as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TERM B.3
REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY
CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

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

The Recipient therefore agrees:

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

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

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

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

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

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:
 - (1) Certify whether the entity has a Tax Delinquency; and
 - (2) Certify whether the entity has a Felony Conviction.
4. **Prohibition.** If
 - (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
 - (2) an entity provides an affirmative response to either certification in section 3; or
 - (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being madethen a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.
5. **Mandatory Notice to the USDOT.**
 - (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
 - (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
 - (c) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.
6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
 - (1) require the SAM check in section 2;
 - (2) require the certifications in section 3;
 - (3) include the prohibition in section 4; and

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

TERM B.4

RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

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

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

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

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

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

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

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

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

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

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

1. Purpose. The purpose of the Quarterly Project Progress Reports and Recertifications under this agreement for the FY 2023 RAISE Program are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.

2. Format and Content. The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the USDOT, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the USDOT. Some projects will have a more extensive quarterly status than others. For smaller projects, the USDOT may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.

(a) Project Overall Status. This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.

(b) Project Significant Activities and Issues. This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.

(c) Action Items/Outstanding Issues. This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(d) Project Scope Overview. The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.

(e) Project Schedule. An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate

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

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

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

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

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

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

(h) Certifications.

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

EXHIBIT D
FORM FOR SUBSEQUENT OBLIGATION OF FUNDS

The USDOT and **[recipient name]** entered a grant agreement for the **[project name]** that was executed by the USDOT on **[date of USDOT signature on original agreement]** (the “Agreement”).

As described in section 4.3(f) of the General Terms and Conditions, this instrument obligates **[\$XXX]** for **[insert portion of project listed in the Obligation Condition Table in section 2 of schedule D]**.

[Recipient name] states that:

- (1) schedule B of the Agreement accurately describe the Project’s activities;
- (2) for each completion date listed in section 2 of schedule C of the Agreement, the Recipient’s estimate for that milestone is not more than six months after the date listed in section 2 of schedule C of the Agreement;
- (3) comparing the Project’s current budget with the amounts listed in section 3 of schedule D of the Agreement, the “Non-Federal Funds” amount has not decreased and the total eligible project costs amount has not decreased; and
- (4) under the terms of article 5 of the General Terms and Conditions, the Recipient is not presently required to request a modification to the Agreement.

[Recipient name] acknowledges that USDOT is acting in reliance on the Recipient’s statements above.

_____	By:	_____
Date		Signature of Recipient’s Authorized Representative
		[insert name]

		Name
		[insert title]

		Title

The USDOT has determined that:

- (1) all conditions described in the Obligation Condition Table in section 2 of schedule D for this portion of the Project are satisfied; and

(2) all applicable Federal requirements for obligating these funds are satisfied.

	By:
Date	Signature of USDOT's Authorized Representative
	[insert name]
	Name
	[insert title]
	Title

U.S. DEPARTMENT OF TRANSPORTATION
GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2023 RAISE PROGRAM:
FHWA PROJECTS

Revision date: June 23, 2023

Table of Contents

Article 1 Purpose.....	7
1.1 Purpose.....	7
Article 2 USDOT Role.....	8
2.1 Division of USDOT Responsibilities.....	8
2.2 USDOT Program Contacts.....	8
Article 3 Recipient Role.....	8
3.1 Statements on the Project.....	8
3.2 Statements on Authority and Capacity.....	9
3.3 USDOT Reliance.....	9
3.4 Project Delivery.....	9
3.5 Rights and Powers Affecting the Project.....	9
3.6 Notification of Changes to Key Personnel.....	10
3.7 Subaward to Designated Subrecipient.....	10
3.8 Designated Subrecipient Statements and Responsibilities.....	10
3.9 Title 23 Oversight Responsibilities for Subawards.....	10
Article 4 Award Amount and Federal Obligation.....	10
4.1 Federal Award Amount.....	10
4.2 Federal Funding Source.....	10
4.3 Federal Obligations.....	11
Article 5 Statement of Work, Schedule, and Budget Changes.....	12
5.1 Change Notification Requirement.....	12
5.2 Scope and Statement of Work Changes.....	12
5.3 Schedule Changes.....	13
5.4 Budget Changes.....	13
5.5 USDOT Acceptance of Changes.....	14
Article 6 General Reporting Terms.....	14
6.1 Report Submission.....	14
6.2 Alternative Reporting Methods.....	14
6.3 Paperwork Reduction Act Information.....	14
Article 7 Progress and Financial Reporting.....	15
7.1 Quarterly Project Progress Reports and Recertifications.....	15
7.2 Final Progress Reports and Financial Information.....	15
Article 8 Performance Reporting.....	15
8.1 Baseline Performance Measurement.....	15
8.2 Post-construction Performance Measurement.....	15
8.3 Project Outcomes Report.....	16
8.4 Performance Reporting Survival.....	16
Article 9 Climate Change and Environmental Justice.....	17
9.1 Climate Change and Environmental Justice.....	17
Article 10 Racial Equity and Barriers to Opportunity.....	17
10.1 Racial Equity and Barriers to Opportunity.....	17
Article 11 Labor and Work.....	17
11.1 Labor and Work.....	17
11.2 OFCCP Mega Construction Project Program.....	17

Article 12 Civil Rights and Title VI	17
12.1 Civil Rights and Title VI.....	17
12.2 Legacy Infrastructure and Facilities.....	18
Article 13 Critical Infrastructure Security and Resilience.....	18
13.1 Critical Infrastructure Security and Resilience.	18
Article 14 RAISE Program Designations	19
14.1 Effect of Urban or Rural Designation.	19
14.2 Effect of Historically Disadvantaged Community or Area of Persistent Poverty Designation.	19
Article 15 Contracting and Subawards	20
15.1 Minimum Wage Rates.....	20
15.2 Buy America.	20
15.3 Small and Disadvantaged Business Requirements.....	20
15.4 Engineering and Design Services.....	20
15.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	21
15.6 Pass-through Entity Responsibilities.....	21
15.7 Subaward and Contract Authorization.	21
Article 16 Noncompliance and Remedies.....	21
16.1 Noncompliance Determinations.....	21
16.2 Remedies.	22
16.3 Other Oversight Entities.....	23
Article 17 Agreement Termination.....	23
17.1 USDOT Termination.....	23
17.2 Closeout Termination.....	24
17.3 Post-Termination Adjustments.....	24
17.4 Non-Terminating Events.....	24
17.5 Other Remedies.....	24
Article 18 Costs, Payments, and Unexpended Funds	24
18.1 Limitation of Federal Award Amount.....	24
18.2 Projects Costs.	24
18.3 Timing of Project Costs.....	24
18.4 Recipient Recovery of Federal Funds.	25
18.5 Unexpended Federal Funds.....	25
18.6 Timing of Payments to the Recipient.....	25
18.7 Payment Method.	25
18.8 Information Supporting Expenditures.....	25
18.9 Reimbursement Frequency.....	26
Article 19 Liquidation, Adjustments, and Funds Availability.....	26
19.1 Liquidation of Recipient Obligations.....	26
19.2 Funds Cancellation.....	26
Article 20 Agreement Modifications	26
20.1 Bilateral Modifications.....	26
20.2 Unilateral Contract Modifications.....	26
20.3 USDOT Unilateral Modifications.....	27
20.4 Other Modifications.....	27

Article 21 Federal Financial Assistance, Administrative, and National Policy Requirements	27
21.1 Uniform Administrative Requirements for Federal Awards.....	27
21.2 Federal Law and Public Policy Requirements.	27
21.3 Federal Freedom of Information Act.	27
21.4 History of Performance.	27
21.5 Whistleblower Protection.....	27
21.6 External Award Terms and Obligations.....	28
21.7 Incorporated Certifications.....	28
Article 22 Monitoring, Financial Management, Controls, and Records.....	29
22.1 Recipient Monitoring and Record Retention.	29
22.2 Financial Records and Audits.	29
22.3 Internal Controls.....	29
22.4 USDOT Record Access.....	30
Article 23 Notices	30
23.1 Form of Notice.	30
23.2 Method of Notice to USDOT.....	30
23.3 Method of Notice to Recipient.....	30
23.4 Recipient Contacts for Notice.	31
23.5 Additional Mandatory Notices to USDOT.....	31
23.6 Scope of Notice Requirements.....	31
Article 24 Information Requests	31
24.1 USDOT Information Requests.....	31
Article 25 Assignment	32
25.1 Assignment Prohibited.....	32
Article 26 Waiver.....	32
26.1 Waivers.....	32
Article 27 Additional Terms and Conditions.....	32
27.1 Disclaimer of Federal Liability.	32
27.2 Relocation and Real Property Acquisition.	32
27.3 Equipment Disposition.....	33
27.4 Environmental Review.....	33
27.5 Railroad Coordination.....	34
Article 28 Mandatory Award Information.....	34
28.1 Information Contained in a Federal Award.....	34
28.2 Federal Award Identification Number.	35
28.3 Recipient’s Unique Entity Identifier.	35
28.4 Budget Period.....	35
28.5 Period of Performance.....	35
Article 29 Construction and Definitions	35
29.1 Schedules.....	35
29.2 Exhibits.....	36
29.3 Construction.	36
29.4 Integration.	36
29.5 Definitions.....	36
29.6 References to Times of Day.	37
Article 30 Agreement Execution and Effective Date	37

30.1	Counterparts.	37
30.2	Effective Date.....	37

Index of Definitions

Administering Operating Administration	8
Designated Subrecipient	Schedule A, Section 9
Environmental Review Entity.....	33
Federal Share	14
FHWA.....	8
General Terms and Conditions	36
NOFO.....	7
OFCCP	17
OMB	14
Program Statute.....	37
Project	37
Project Closeout.....	24
Project Cost Savings	13
RAISE Grant.....	37
RAISE Program	7
Recipient	Project-Specific Recitals
Technical Application.....	37
Title VI.....	18
USDOT	7

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**”) for fiscal year 2023 under the heading “National Infrastructure Investments.” The funds are available to carry out 49 U.S.C. 6702 by providing Federal financial assistance for surface transportation infrastructure projects that will have a significant local or regional impact. The USDOT program administering those funds is the Rebuilding American Infrastructure with Sustainability and Equity Program (the “**RAISE Program**”).

On December 14, 2022, the USDOT posted a funding opportunity at Grants.gov with funding opportunity title “FY 2023 National Infrastructure Investments” and funding opportunity number DTOS59-23-RA-RAISE. The notice of funding opportunity posted at Grants.gov, as amended on January 5, 2023, and February 3, 2023, (the “**NOFO**”) solicited applications for Federal financial assistance under the fiscal year 2023 RAISE Program. On June 28, 2023, the USDOT announced application selections under the NOFO.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal year 2023 RAISE 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 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 fund an eligible project that will have a significant local or regional impact and improve transportation infrastructure. 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 RAISE Program, the approval of this agreement, and any modifications to this agreement under section 20.1.
- (b) The Federal Highway Administration (the "**FHWA**") will administer this agreement on behalf of the USDOT. In this agreement, the "**Administering Operating Administration**" means the FHWA.

2.2 USDOT Program Contacts.

FHWA RAISE Program Manager
Federal Highway Administration
Office of Freight Management and Operations
1200 New Jersey Avenue SE
Room E84-429
Washington, DC 20590
(202) 366-2639 or (202) 366-1200
FHWA-TIGER.Reports@dot.gov

and

OST RAISE Grants Coordinator
United States Department of Transportation
Office of the Secretary
1200 New Jersey Avenue SE
Room W84-227
Washington, DC 20590
(202) 366-8914
RAISEGrants@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 RAISE 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 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 USDOT within 30 calendar days of any change in key personnel who are identified in section 4 of schedule A.

3.7 Subaward to Designated Subrecipient. If section 9 of schedule A identifies a Designated Subrecipient:

- (1) the Recipient hereby awards a subaward to the Designated Subrecipient for the purpose described in section 1.1;
- (2) the Recipient and the Designated Subrecipient may enter into a separate agreement, to which the USDOT is not a party, assigning responsibilities, including administrative and oversight responsibilities, among the Recipient and the Designated Subrecipient; and
- (3) for the purpose of 2 C.F.R. parts 200 and 1201, the Recipient is a pass-through entity.

3.8 Designated Subrecipient Statements and Responsibilities. If section 9 of schedule A identifies a Designated Subrecipient:

- (1) the Designated Subrecipient affirms all statements and acknowledgments that are attributed to the Recipient under sections 3.1 and 3.2; and
- (2) the Designated Subrecipient assumes the Recipient's reporting obligations under articles 7 and 8.

3.9 Title 23 Oversight Responsibilities for Subawards. If section 9 of schedule A identifies a Designated Subrecipient, then for the purpose of 23 U.S.C. 106(g), the Recipient shall act as if funds under this award are Federal funds under title 23, United States Code.

ARTICLE 4 AWARD AMOUNT AND FEDERAL OBLIGATION

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

4.2 Federal Funding Source.

- (a) If section 4 of schedule F identifies the Funding Act as "IIJA," then the RAISE Grant is from RAISE Program 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 RAISE Grant is from RAISE Program 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 RAISE Program 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 RAISE Program funding that was appropriated in the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022).

4.3 Federal Obligations.

- (a) If the Federal Obligation Type identified in section 2 of schedule D is “Single,” then this agreement obligates for the budget period the amount listed in section 1 of schedule D as the RAISE Grant Amount and sections 4.3(c)–4.3(h) do not apply to this agreement.
- (b) If the Federal Obligation Type identified in section 2 of schedule D is “Multiple,” then an amount up to the RAISE Grant Amount listed in section 1 of schedule D will be obligated with one initial obligation and one or more subsequent, optional obligations, as described in sections 4.3(c)–4.3(h).
- (c) The Obligation Condition Table in section 2 of schedule D allocates the RAISE Grant among separate portions of the Project for the purpose of the Federal obligation of funds. The scope of each portion of the Project that is identified in that table is described in section 2 of schedule B.
- (d) This agreement obligates for the budget period only the amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table does not list an obligation condition.
- (e) This agreement does not obligate amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table lists an obligation condition. The parties may obligate the amounts allocated to those portions of the Project only as described in section 4.3(f) or by modifying this agreement under article 20.
- (f) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then for each portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, the amount allocated in that table to that portion of the Project is obligated if, not later than the statutory lapse date identified in section 4.3(h) for that portion of the Project, the parties execute an instrument, in the form provided in Exhibit D, documenting that:
 - (1) the USDOT determines that the obligation condition listed in that table for that portion of the Project is satisfied;
 - (2) the USDOT determines that all applicable Federal requirements for obligating the amount are satisfied; and

- (3) the Recipient states that it is not required to request a modification of this agreement under article 5.
- (g) The Recipient shall not request reimbursement of costs for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f).
- (h) RAISE Program funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), lapses and is unavailable for obligation, by statute, after September 30, 2026. RAISE Program funding that was appropriated in the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022) will not lapse and remains available for obligation until expended. Section 4.2 identifies the specific source or sources of funding for this award.
- (i) The Recipient acknowledges that:
 - (1) the USDOT is not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f);
 - (2) any portion of the RAISE Grant that is not obligated under this section 4.3 by the statutory lapse date identified in section 4.3(h) for those funds lapses on the day after that date and becomes unavailable for the Project; and
 - (3) the USDOT may consider the failure to obligate funds by the statutory lapse date identified in section 4.3(h) for those funds to be a basis for terminating this agreement under section 17.1.

ARTICLE 5

STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 5.1 Change Notification Requirement.** The Recipient shall notify USDOT 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) the USDOT Payment System identified in section 6 of schedule A is "DELPHI eInvoicing" and a schedule change would require the period of performance to continue after the period of performance listed on page 1, line 6 of the project-specific agreement.

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 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 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 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 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 "RAISE 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 RAISE 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 20.1.

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 Administering Operating Administration informs the Recipient of those processes in writing, the Recipient shall use the processes identified by the Administering Operating Administration.
- 6.3 Paperwork Reduction Act Information.** 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. 2105-0563.

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 period of performance, the Recipient shall submit to the USDOT a Quarterly Project Progress Report and Recertification in the format and with the content described in exhibit C. 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.
- 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 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 the Administering Operating Administration'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 the USDOT 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 the USDOT, 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.

8.4 Performance Reporting Survival. The data collection and reporting requirements in this article 8 survive the termination of this agreement.

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.
- 11.2 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 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 the USDOT 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 the Administering Operating Administration’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 the Administering Operating Administration 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 cyber security 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

RAISE PROGRAM DESIGNATIONS

- 14.1 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 urban award or a rural award, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.
- 14.2 Effect of Historically Disadvantaged Community or Area of Persistent Poverty Designation.** If section 3 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 the NOFO. The Recipient shall incur a majority of the costs under this award in historically disadvantaged communities or areas of persistent poverty.

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, or 23 U.S.C. 113, as applicable, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15.2 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.

15.3 Small and Disadvantaged Business Requirements.

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

15.4 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.

15.5 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.

15.6 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.

15.7 Subaward and Contract Authorization.

- (a) If the USDOT Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Division,” then the Recipient shall comply with subaward and contract authorization requirements under 23 C.F.R chapter I, subchapter G.
- (b) If the USDOT Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Office of Acquisition and Grants Management,” then the Recipient shall obtain prior written approval from the USDOT agreement officer for the subaward or contracting out of any work under this agreement. That approval will be contingent upon a fair and reasonable price determination on the part of the Recipient and the agreement officer’s concurrence on that determination.

ARTICLE 16 NONCOMPLIANCE AND REMEDIES

16.1 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 that notice to be effective, 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 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) The USDOT 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, the USDOT must provide to the Recipient a notice that states the bases for that determination.

16.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 16.1, 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 to the Recipient a notice 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 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), 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 16.2 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).

- 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 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 timely obtain or timely provide any non-RAISE 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 a RAISE 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 17.1 does not limit the USDOT’s ability to terminate this agreement as a remedy under section 16.2.
- (d) The Recipient may request that the USDOT 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 the USDOT informs 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 the USDOT’s authority to disallow costs, including costs that the USDOT 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 the USDOT’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, 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.

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) The Recipient shall not charge to this award costs that were incurred before the date of this agreement unless those costs are identified in section 5 of schedule D and would have been allowable if incurred during the budget period. This limitation applies to costs

incurred under an advance construction authorization (23 U.S.C. 115), costs incurred prior to authorization (23 C.F.R. 1.9(b)), and pre-award costs under 2 C.F.R. 200.458. 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.

18.4 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.

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 RAISE 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 USDOT Payment System identified in section 6 of schedule A is “FMIS,” then the Recipient shall follow FMIS procedures to request and receive reimbursement payments under this award.
- (b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System to request reimbursement under this award unless the USDOT agreement officer provides written approval for the Recipient to use a different request and payment method.
- (c) The USDOT 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 USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF 271 (Outlay Report and Request for Reimbursement for Construction Programs), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.

- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

18.9 Reimbursement Frequency. If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Recipient shall not request reimbursement more frequently than monthly.

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) RAISE Program funding that was appropriated in division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), is canceled by statute after September 30, 2032, and then unavailable for any purpose, including adjustments.
- (b) RAISE Program funding that was appropriated in the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022) 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 the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by 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 notice to USDOT.
- (b) The USDOT may update the contacts who are listed in section 5 of schedule A and section 2.2 by notice to the Recipient.

20.3 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 20.3, the USDOT must provide to the Recipient a notice 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, and 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) 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.

21.4 History of Performance. Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient's performance under this agreement, when evaluating the risks of making a future Federal financial assistance award to the Recipient.

21.5 Whistleblower Protection.

- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain

disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related this this award.

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

21.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:

- (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. 175.15(b): Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

- (b) The Recipient shall comply with:

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

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

- (1) Appendix A to 49 CFR 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).
- (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, 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 2023 RAISE 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 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 USDOT Record Access. The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.

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 USDOT 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 USDOT.

- (a) For a notice to USDOT 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 USDOT under this agreement to be valid, it must be addressed to all of the USDOT 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 USDOT under this agreement will be deemed to have been received on the earliest of (1) when the email is received by USDOT, as recorded by USDOT'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 USDOT 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 USDOT.** The Recipient shall notify the USDOT 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 USDOT Information Requests.

- (a) By notice, the USDOT may request from the Recipient any information that the USDOT determines is necessary to fulfill its oversight responsibilities under the Program Statute or other Federal law.
- (b) If the USDOT 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 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 27 ADDITIONAL TERMS AND CONDITIONS

27.1 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.

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 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 27.3 for all tiers of subawards under this award.

27.4 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 under 23 U.S.C. 326 or 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 FHWA.
- (b) Except as authorized under section 27.4(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 communication stating that the environmental review process is complete.
- (c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).

(d) The Recipient acknowledges that:

- (1) the Environmental Review Entity's actions under section 27.4(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 20.1 for consistency with the selected build alternative; or
- (2) if the USDOT determines that the condition at section 17.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 17.1(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.

27.5 Railroad Coordination. If section 3 of schedule C includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.

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 20.933 and the "Assistance Listings Title" is "National Infrastructure Investments"; and

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

28.2 Federal Award Identification Number.

- (a) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then the Federal Award Identification Number will be generated when the FHWA Division authorizes the project in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the FAIN from FMIS.
- (b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Federal Award Identification Number is listed on page 1, line 1 of the project-specific agreement.

28.3 Recipient’s Unique Entity Identifier.

- (a) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then the Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is available in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the unique entity identifier from FMIS.
- (b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is listed on page 1, line 4 of the project-specific agreement.

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.

- (a) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then the period of performance for this award begins on the date of this agreement and ends on project end date in FMIS.
- (b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the period of performance for this award is listed on page 1, line 6 of the project-specific agreement.
- (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	RAISE Program Designations
Schedule G	RAISE 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 FHWA Grant Agreements Under the Fiscal Year 2023 RAISE Program,” dated June 23, 2023, and available at <https://www.transportation.gov/policy-initiatives/raise/raise-grant-agreements>, 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
Exhibit D	Form for Subsequent Obligation of Funds

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 RAISE Program and awards under that program and supersedes any previous agreements, oral or written, relating to the RAISE 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 49 U.S.C. 6702;
- (2) under the heading “Department of Transportation—Office of the Secretary—National Infrastructure Investments” 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 “Department of Transportation—Office of the Secretary—National Infrastructure Investments” 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.

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

“RAISE 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 RAISE Grant when the USDOT’s authorized representative signs it.