

**THE NORTHWEST SEAPORT ALLIANCE  
REQUEST FOR QUALIFICATIONS (RFQ)  
RFQ No. 072111  
NORTH INTERMODAL (NIM) YARD  
TOWER OPERATIONS RELOCATION**

Issued by  
Northwest Seaport Alliance  
One Sitcum Plaza  
P.O. Box 1837  
Tacoma, WA 98401-1837

RFQ INFORMATION	
Contact:	Jerry Clardy, Procurement
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Phone:	253-888-4751
Deadline for Questions	<b>APRIL 26, 2024 @ 2:00 PM (PST)</b>
Proposal Submittal Deadline	<b>MAY 21, 2024 @ 2:00 PM (PST)</b>

**PLEASE SUBMIT ALL QUESTIONS AND PROPOSALS VIA THE PROCUREMENT PORTAL (LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT PAGE)**

**THE NORTHWEST SEAPORT ALLIANCE**  
**Request for Qualifications (RFQ) # 072111**  
**North Intermodal (NIM) Yard Tower Operations Relocation**

The Northwest Seaport Alliance (**NWSA**) is soliciting Statements of Qualifications (SOQ) from firms qualified and interested in providing professional consulting services for the North Intermodal (**NIM**) Yard Tower Operations Relocation Project. This project will relocate the current operations located at the NIM tower to an alternate location either on the NIM rail yard or at an alternate off yard location. It is anticipated that the new facility will be fully operational by December 31, 2026. The submitting firm/team shall have experience in planning, preliminary and final architectural and engineering design including (architectural, civil, structural, mechanical, plumbing, electrical and audio/visual), geotechnical investigation and design, land survey, cost estimating, scheduling, permitting, project management, environmental support, bidding support, construction support and grant administration support. All aspects of these various professions will be components of this project.

The Northwest Seaport Alliance has applied for and received notification of federal funding via the 2023 Maritime Administration (**MARAD**) Port Infrastructure Development Program (**PIDP**) grant associated with this work; therefore, the contract that results from the RFQ and various work packages will be subject to the Federal Terms and Conditions of the grant.

**Under the federal grant, the contract will be subject to U.S Department of Transportation Maritime Administration, General Terms and Conditions under the fiscal year 2023 Port Infrastructure Development Program grants. A copy of these terms and conditions is attached to this proposal and can also be found at:**

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

**A. BACKGROUND**

The NWSA is an operating partnership of the ports of Seattle and Tacoma. Combined, the ports are the fourth-largest container gateway in the U.S. Regional marine cargo facilities also are a major center for bulk, breakbulk, project/heavy-lift cargoes, automobiles and trucks.

The NWSA is governed by the two ports as equal Managing Members, with each Managing Member consisting of the five commissioners in each port. Each port's commissioners are elected at large by the citizens of their respective counties.

To learn more about The Northwest Seaport Alliance, visit [www.nwseaportalliance.com](http://www.nwseaportalliance.com).

The NWSA anticipates awarding a single professional service contract for the North Intermodal (NIM) Yard Tower Operations Relocation Project. The selection will be based on the most qualified team that includes all key members whether from the prime consultant firm or subconsultants for all necessary project services and enter into negotiations with the intent to issue a professional service contract based upon the information provided herein. Following successful negotiation of rates and fees, the NWSA will execute the contract for the anticipated duration of the project with a not-to-exceed value as agreed

upon for the appropriate phase(s) of work. Additional funds may be added to accommodate subsequent phases of work and to meet the NWSA's projected service needs during the term of the contract.

Attachment A to this RFQ contains the Instructions and Information for proposing to the solicitation.

Attachment B to this RFQ contains the NWSA's Standard Terms and Conditions. By submitting a Proposal, the Proposer represents that it has carefully read and agrees to be bound by the NWSA's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language, and describe why it is in the NWSA's best interests to adopt the alternative language. Taking exceptions to these terms and conditions or conditioning your proposal on terms and conditions other than the NWSA's will render your proposal non-responsive.

Attachment C to this RFQ contains the U.S Department of Transportation Maritime Administration, General Terms and Conditions under the fiscal year 2023 Port Infrastructure Development Program grants. By submitting a Proposal, the Proposer represents that it has carefully read and agrees to be bound by the MARAD Standard Terms and Conditions. Taking exceptions to these terms and conditions or conditioning your proposal on terms and conditions other than the NWSA's will render your proposal non-responsive.

By submitting a proposal, the Proposer represents that it has carefully read all attachments. As applicable, proposers shall identify propose alternate wording, if any, to these documents as an appendix to their submitted proposal.

## **B. SCOPE OF SERVICES:**

The scope of services for this project is as follows:

1. Planning Phase
  - a. Develop conceptual plans (two to four options) for the relocation of the NIM Tower.
  - b. Several potential sites have been identified for the relocation. These include the potential remodel/redevelopment of two existing buildings.
  - c. At least one remote location has been identified. In order to provide impacted workers an opportunity to explore the potential of this option the team will model the work environment to show how cameras and other audio visual equipment could be utilized to mimic an on-site tower.
  - d. Multiple labor groups and a military component may be included in this development. Separation in function and work space will be essential.
2. Site Exploration
  - a. Complete topographic survey of the selected location
  - b. Complete geotechnical exploration and reporting necessary to secure permits

- c. Review existing as built documents to determine what other work may be necessary
    - i. Building and site drawings
    - ii. Remediation Reports
    - iii. Geotechnical Reports
- 3. Design Development phase
  - a. Provide design development packages at 30%, 60%, Permit, 90% and 100% or as required to meet project requirements
  - b. Provide Cost estimates and schedules with each development package submittal
- 4. Permitting Support
  - a. Provide document packages as required to obtain Federal, State and Local permits that may be required for the project
  - b. Provide support to respond to agency comments and questions
  - c. Attend meetings as required with agencies
  - d. Update bid set with applicable comments
- 5. Bidding Support
  - a. Prepare bid set of documents (Plans, Specifications, other as needed)
  - b. Attend pre bid meeting and respond to questions from bidders
  - c. Prepare addendum as necessary
- 6. Construction support
  - a. Provide Construction oversight including inspections where required
  - b. Review and respond to Shop Drawings
  - c. Review and respond to RFI's, Proposal Requests and Pay Applications
  - d. Attend Construction Meetings and prepare Meeting Minutes
  - e. Incorporate the contractors red line drawings into a Record Set of Documents
- 7. Grant Support
  - a. Provide staff member(s) that is familiar with and understands the requirements set forth in the PIDP grant
  - b. Assist NWSA staff in reviewing sub-recipient submittals for payment to ensure compliance with grant requirements
  - c. This person(s) should have an understanding of design and construction documents, construction activities and other documents associated with design and construction

- d. This person(s) should have a background with financial documentation associated with construction projects including pay applications, change orders and other financial obligations as well as other sub-recipient costs and charges.

### **C. DELIVERABLES:**

The deliverables for this project will include, but are not limited to, the following:

1. Planning phase – Concept drawings including site plan and floor plans for two to four potential locations, remote location full scale modeling to represent potential working conditions utilizing Audio Visual equipment as opposed to direct line of sight from windows.
2. Site Explorations – Stamped survey drawings, geotechnical and analytical reports necessary to support permitting and construction document preparation.
3. Basis of Design report to include selected Planning Phase option with cost estimate, schedule, survey and reports bound into one concise document.
4. Design submittals – Plans, Technical Specifications, probable construction cost estimates and project schedules. All items will be updated at each design iteration.
5. Permitting – Plans, specification, reports and any other documentation required to submit for permits including applications.
6. Bidding – Provide final bid documents including plans, specification, cost estimate, schedule, appendices and any other documentation required to bid the project,
7. Construction – Meeting minutes, reviewed shop drawings and responses to contractor questions, and other correspondence.
8. Project Close Out – Record drawings compiled from the contractor's as-built drawings and project change orders. Permit close out documentation and reports. Compilation of project warranties.

### **D. QUALIFICATIONS:**

Submitting firms must be licensed to practice in the State of Washington and must have a minimum of five (5) years of experience on similar projects. Key team members must have active State of Washington professional licenses.

### **E. SOQ ELEMENTS & EVALUATION CRITERIA:**

SOQ's should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime consultant's key team members and any major sub-consultants) and the team's ability to meet the requirement of this solicitation. Attention will be given to the technical competencies and completeness of content. The written SOQ should be prepared in the sequential order as outlined below.

SOQ's are limited to 8 numbered pages (8 ½ by 11 inch) **excluding** the cover letter, compensation information and any submitted appendices. All pages shall be in portrait

orientation with 1 inch margins. Font size shall be 11 point or larger. SOQ's that do not follow this format may be deemed nonresponsive.

The cover letter shall include the solicitation Title and Number, Name, Title, Email Address, Phone Number and Addresses of the Proposing Team's main contact and include the following information:

- Describe all claims submitted by any client against the firm within the past two years related to the personal services provided by the firm or its key personnel. For purposes of this request, "claim" means a sum of money in dispute in excess of 10% of the firm's fee for the services provided.
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.

**SOQ's are to address, and will be evaluated upon, the following criteria:**

**F. INITIAL EVALUATION PHASE:**

**1. Qualifications & Experience.....10 PTS**

- Identify the proposed team (to include working titles, degrees, certificates and licenses), demonstrate the team's experience in performing the requested services and describe how the team meets or exceeds the required qualifications. **(10 PTS)**
- Resumes of the key individuals may be included as an appendix and are not included in the total page count. Resumes are to be limited to one (1) single-sided, letter-size page. Resumes exceeding this limit will not be reviewed. **(0 PTS)**

**2. Experience of Key Personnel and Firm.....40 PTS**

- The NWSA will evaluate the experience, technical competence, and qualifications of the key personnel identified, their project specific roles and responsibilities, and overall organization of the Project Team. Emphasis will be placed on experience and expertise in performing work of similar scope and complexity. **(10 PTS)**
- Explain or demonstrate any unique experience or technical competence of individual team members that are a good fit for this scope of services, or subset thereof. **(10 PTS)**
- Include a list of recent contracts/projects in the last three (3) years, to include a point of contact, contact information (phone and email), and brief description, for services relevant to the items listed in the Scope of Services as performed by the key personnel. Only projects completed by key members of the project team will be considered. **(20 PTS)**

**3. Project Approach Narrative.....50 PTS**

SOQs should clearly outline the team's recommended approach and methodology for:

- Accomplishing the Scope of Services. Clearly describe the approaches and methods that will be used to accomplish the tasks required in the Scope of Services. Include a summary of innovative ideas and suggestions for enhancing the scope of services. **(25 PTS)**

- Schedule. Outline the team's strategy for completing requested services within the stated schedule and describe how the team would manage various projects that may have overlapping timelines. **(10 PTS)**
- Coordination & Communication. Provide a plan for communications and coordination between the Project Team, the NWSA's Project Manager, and the various Stakeholders. **(10 PTS)**
- What risks beyond your control do you see in providing this service, and how would you mitigate them? **(5 PTS)**

**4. References.....Pass/Fail**

Reference checks may be performed on the selected firm, if based directly on the SOQs received, or on shortlisted firms if interviews are being requested. The NWSA may evaluate the reference checks to assess the proposed firm's overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the SOQ.

**G. FINAL EVALUATION PHASE (if applicable)**

**5. Oral Presentations (as requested by the NWSA).....100 PTS**

If an award is not made based on the written evaluations alone, Oral Presentations may be conducted with at least the top two (2) ranked Proposers. Failure to participate in the interview process will result in the Proposer's disqualification from further consideration. Travel costs for the interview will not be reimbursed.

**Attachments:**

**ATTACHMENT A – SUBMITTAL INSTRUCTIONS**

**ATTACHMENT B – PROFESSIONAL SERVICES AGREEMENT & NWSA'S  
STANDARD TERMS AND CONDITIONS**

**ATTACHMENT C – U.S DEPARTMENT OF TRANSPORTATION MARITIME  
ADMINISTRATION, GENERAL TERMS AND CONDITIONS UNDER THE FISCAL  
YEAR 2023 PORT INFRASTRUCTURE DEVELOPMENT PROGRAM GRANTS**

## **PROCUREMENT PROCESS**

### **SOLICITATION TIMELINE:**

Issuance of Solicitation	APRIL 16, 2024
Last Day to Submit Questions	APRIL 26, 2024 @ 2:00 PM (PST)
<b>Submittal Packets Due</b>	<b>MAY 21, 2024 @ 2:00 PM (PST)</b>
Review/Shortlist*	MAY 30 , 2024
Interviews (if required)*	JUNE 03, 2024
Final Selection*	JUNE 06, 2024
Execute Contract*	JUNE 28, 2024

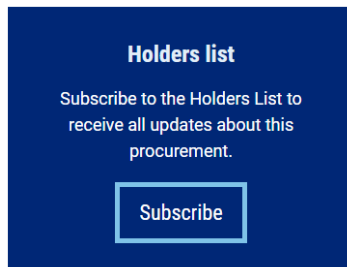
\*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the Port's website for this solicitation.

### **VENDOR OBLIGATION**

The Northwest Seaport Alliance and Port of Tacoma's (**PORT/NWSA**) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Business -> Contracting -> Procurement'.

When viewing the details page for this procurement on the Port's Website firms have the option of subscribing to the Holder's List.



By subscribing to the Holder's List, firms will automatically be notified when new documents or changes relating to this procurement occur.

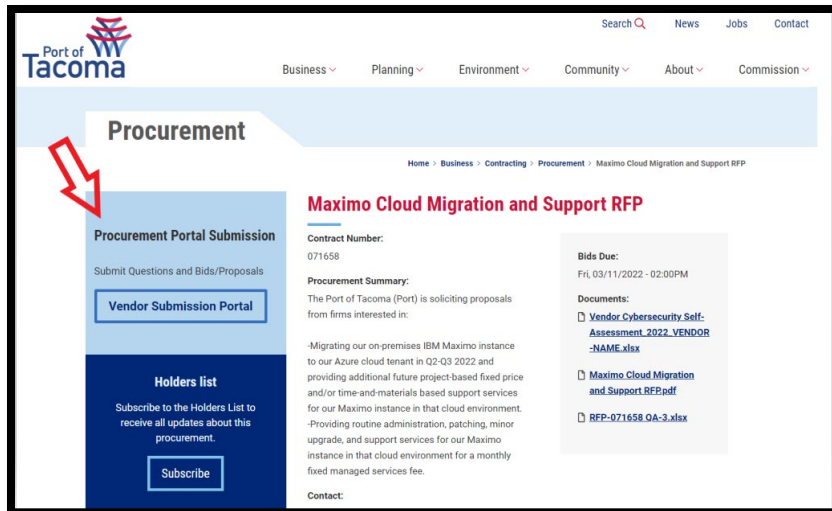
**\*Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

### **COMMUNICATION / INQUIRES**

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the NWSA or the PORT, other than the Procurement Representative listed on the solicitation may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (**Portal link is accessible via this specific procurements website. See left side of page.**).





Proposers who may have questions about provisions of these documents are to submit their questions by the date listed above. The NWSA will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

## ADDENDA

The NWSA may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. If at any time, the NWSA changes, revises, deletes, increases, or otherwise modifies the Solicitation, the NWSA will issue a written Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List.

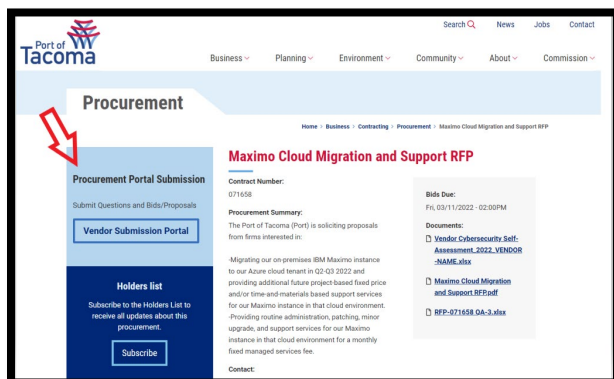
## SUBMITTAL PROCESS

### Electronic Submittal:

Proposals must be received via the procurement portal on or before the date and time outlined on the front page of this proposal.

### Procurement Submission Portal Instructions:

Navigate to this procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).



Full instructions on how to utilize the submission portal can be found on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Business -> Contracting -> Procurement'. See bold red heading above the bid search box "Bid and Question Submittal Instructions", to access the thorough instructions in PDF format.

Please submit proposal, including all appendices and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total email size**. It is the **Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided.**

**\*Late proposals will not be accepted by the NWSA. Proposals received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

All proposals submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

### **EVALUATION AND AWARD PROCESS**

An evaluation team, using the point method of award, will review each proposal and evaluate all responses received based upon the criteria listed herein. The NWSA may request clarifications or additional information, if needed. After the evaluation team individually scores each proposal, the scores are tallied and the firms are ranked based on the scores.

A selection may be made based on the proposals and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The NWSA intends to select the Proposer who represents the best value to the NWSA.

The NWSA reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the NWSA may require. The NWSA reserves the right to reject any or all Proposals submitted as non-responsive or non-responsible.

### **Procedure When Only One Proposal is received**

In the event that a single responsive proposal is received, the Proposer shall provide any additional data required by the NWSA to analyze the proposal. The NWSA reserves the right to reject such proposals for any reason.

### **GENERAL INFORMATION**

News releases pertaining to this RFQ, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the NWSA.

### **COSTS BORNE BY PROPOSERS**

All costs incurred in the preparation of a Proposal and participation in this RFQ and negotiation process shall be borne by the proposing firms.

### **PROTEST PROCESS**

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the NWSA's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with

the NWSA within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.) The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com)

Consideration. Upon receipt of the written protest, the NWSA will consider the protest. The NWSA may, within three (3) business days of the NWSA's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the NWSA, the Contracts Director of the NWSA or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the NWSA's receipt of the protest. (If more than one (1) protest is filed, the NWSA's decision will be provided within three (3), but no more than six (6) business days of the NWSA's receipt of the last protest.) If no reply is received from the NWSA during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived.

Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

## **SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES**

The Northwest Seaport Alliance encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

## **PUBLIC DISCLOSURE**

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the NWSA and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "TRADE SECRET" on each page for which the protection is sought. If a request is made for disclosure of such portion, the NWSA will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the NWSA by the stated deadline, the NWSA will release the

## ATTACHMENT A – SUBMITTAL INSTRUCTIONS

requested portions of the proposal. By submitting a response the vendor assents to the procedure outlined in this paragraph and shall have no claim against the NWSA on account of actions taken under such procedure.



## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

### **1. Relationship of the Parties**

Consultant and its employees are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

### **2. Subconsultant and Supplier Relations**

- a. Subconsultants at all tiers shall be approved by the NWSA prior to performing Services in support of this Agreement between Consultant and NWSA.
- b. The award of a subcontract does not create a contract between the NWSA and the subconsultant. Subconsultants shall have no rights whatsoever against the NWSA by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the NWSA for any breach in the performance of the Consultant's duties.

### **3. Conflicts of Interest**

Consultant warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the Services required under this Agreement. Consultant warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

### **4. Compliance with Laws**

- a. Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.

- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying NWSA-owned properties.
- c. The Consultant is responsible for ensuring that all personnel performing Services are paid wages in accordance with federal, state and local laws when applicable.

### **5. Records and other Tangibles**

- a. The NWSA is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the NWSA upon termination of the Agreement or otherwise as requested by the NWSA.
- b. The NWSA or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

### **6. Ownership of Intellectual Property (IP)**

- a. The plans, specifications, models, programs, reports, and other products prepared by the Consultant in performing the Services are Instruments of Service for purposes of the copyright laws of the United States. The NWSA has ownership rights to the Instruments of Service. Consultant shall not be liable for changes made in the Instruments of Service by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the NWSA for public use, unless the NWSA

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

determines it is not in the public interest that it be owned or available.

- b. The Instruments of Service shall include all calculations, notes, draft documents, reports, drawings, specifications, electronic files, including e-mails, and any other materials, information or documentation developed or prepared in the performance of the Services and shall be owned by and treated as NWSA property. The Consultant shall obtain no proprietary rights or interest the Instruments of Service.
- c. Any items incorporated into the Instruments of Service that were developed by the Consultant prior to the execution of this Agreement, and not paid for by the NWSA, is not covered by this provision "Consultant Data."
- d. All information, materials, data and documentation furnished or made available to the Consultant by the NWSA for purposes of performing services pursuant to this Agreement on this project shall remain the property of the NWSA "NWSA Data." The Consultant shall obtain no proprietary rights or ownership interests to such NWSA Data. At the NWSA's written request, the Consultant shall return all such NWSA Data remaining in the Consultant's possession at the termination or expiration of this Agreement.

### **7. Disclosure**

All information developed by the Consultant, all analyses or opinions reached by the Consultant (Instruments of Service) and all information made available to the Consultant by the NWSA (NWSA Data), shall not be disclosed by the Consultant without the written consent of the NWSA.

### **8. Compensation**

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the NWSA shall pay Consultant as specified in the Agreement.
- b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

### **9. Invoices**

- a. Consultant shall submit detailed **numbered invoices showing** descriptions of the Services being invoiced, work order number, title of the Project, total authorized, total current invoice, balance of authorization,

individual's names and titles, hours, hourly rate, and all authorized expenses, if allowed, for the month, itemized, with backup, in accordance with the NWSA's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the following month to be paid by the end of the 30<sup>th</sup>, unless other terms are agreed to by the parties.

- b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7<sup>th</sup> day of January. If the Consultant is unable to provide an invoice, they shall advise the NWSA in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

### **10. Costs and Disbursements**

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

### **11. Standard of Care**

- a. Consultant shall perform the Services to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such Services.
- b. The NWSA's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs incurred by the NWSA arising from the Consultant's errors, omissions, or negligent performance of the Services.

### **12. Time**

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule, including any established milestones and task completion dates, and the overall period of performance. The completion dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the NWSA which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

### **13. Assignability**

The Consultant may not assign, transfer, or novate all or any portion of the Agreement, including but not limited to any claim or right to the Contract Sum, without the NWSA's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the NWSA's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the NWSA arising under the Agreement or otherwise related to the Project.

### **14. Termination of Agreement**

#### **a. Termination for Default:**

- i. The NWSA may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the NWSA; provided that the Consultant has been given an opportunity to cure.
  1. Cure Notice: If the NWSA determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the NWSA deems said breach to warrant corrective action, the following

sequential procedure will apply:

- ii. The NWSA will provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.
  - iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the NWSA;
- b. Show Cause Notice:
- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the NWSA will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the NWSA in writing within seven (7) calendar days of any reason the NWSA should not terminate this Agreement. At the expiration of the seven (7) calendar day period the NWSA may commence termination of this Agreement in whole or in part.
  - ii. The NWSA may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the NWSA is satisfied that the breach has been corrected.
  - iii. No increase in total price or period of performance shall result from breach of this Agreement; and
  - iv. Nothing herein shall be deemed to affect or waive any other rights of the NWSA.
- c. Notice of Termination:
- i. If the NWSA terminates this Agreement for default, the NWSA shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount



## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the NWSA incurs because of the Consultant's default. In such event, the NWSA shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the NWSA at the date of termination, the cost to the NWSA of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the NWSA of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the NWSA from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the NWSA:
  1. Promptly discontinue all Services (unless the notice directs otherwise);
  2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the NWSA all Instruments of Service and NWSA Data including data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries,

official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the NWSA has paid the Consultant for such items.

3. Upon termination, the NWSA may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

### d. Termination for Convenience:

- i. The NWSA may terminate this Agreement, for the convenience of the NWSA. The NWSA shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.
- ii. If the NWSA terminates this Agreement for convenience, the NWSA shall pay the Consultant for the following items:
  1. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination.
  2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
  3. Reasonable termination settlement costs the Consultant actually incurred unless the NWSA determines to assume said commitments. Reasonable termination settlement costs include

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

- settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.
- iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the NWSA:
1. Promptly discontinue all Services (unless the notice directs otherwise);
  2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the NWSA all Instruments of Services and NWSA Data including drawings, specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the NWSA has reimbursed the Consultant for such costs;
  3. Take any action necessary, or that the NWSA may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the NWSA has or may acquire an interest.
- iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the NWSA a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
  2. As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
  3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
  4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the NWSA is responsible.
- v. Termination settlement costs and proposals are subject to audit verification by the NWSA.
- vi. Upon termination, the NWSA may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- 15. Disputes**
- If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The NWSA reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to this Agreement may be consolidated and resolved in one forum.
- 16. Venue & Governing Law**

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.

### **17. Integration and Merger/ Extent of Agreement**

- a. This Agreement represents the entire and integrated understanding between the NWSA and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the NWSA and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of NWSA and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

### **18. Non-Discrimination**

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- c. The Consultant and all parties subcontracting under the authority of

this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

### **19. Indemnity / Hold Harmless Clause**

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, arising out of the negligence, recklessness, or intentional wrongdoing of Consultant or its officers, employees, subcontractors, or agents; or arising out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, subcontractors, or agent's provided, however, that for any defense obligation related to a claim for which Contractor has insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.
- b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise solely out of negligence on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.
- c. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.
- d. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data,

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.

- e. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

### **20. General Insurance Requirements**

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them, and shall comply with any such Project specific insurance requirements as determined by the NWSA.

### **21. Miscellaneous Provisions**

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by NWSA of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by NWSA of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by NWSA, in writing. NWSA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or NWSA's waiver of any breach hereunder shall not thereafter waive any other term,

condition, or privilege, whether of the same or similar type.

- e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. No Personal Liability: No officer, agent or authorized employee of either NWSA or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

### **22. Key Personnel**

The Consultant's key personnel, as described in the Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the NWSA.

### **23. Insurance - Assumption of Risk**

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and environmental liability insurance including asbestos abatement liability and other insurance as required by contract for this project that shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage, economic damage or cleanup costs, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the NWSA will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

- b. Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:
- Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and
  - Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
  - Professional Liability including environmental consulting services of not less than \$2,000,000 per claim and in the aggregate. If the scope of Professional Services includes environmental testing, consulting or other such professional services, the Consultant's Professional Liability policy shall include coverage for these services. If such coverage is written on a claims-made basis, any retroactive date on the policy shall be prior to the start of this contract. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.
  - Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.
  - Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
  - Protection and Indemnity Insurance/Jones Act: \$1,000,000 limits shall be provided covering all vessels and crew.
  - Maritime Employers Liability: \$1,000,000 limits shall be provided covering all divers.
- c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the NWSA in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port of Tacoma and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.
- d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the NWSA in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.
- e. Certain Services under this Agreement may require United States Longshoremen's and Harbor Worker's Act (USL&H) and Jones Act. The Consultant shall be solely responsible for determining the applicability of USL&H and Jones Act coverage. The failure of the Consultant to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the NWSA. The Consultant shall bear all responsibility and shall indemnify and hold harmless the NWSA for any and all liability, cost and/or damages.
- 24. Payment Schedule**
- Consultant shall submit detailed numbered invoices in accordance with the Agreement by the 10th of the month. After a complete and correct invoice has been received by the NWSA, payment will be made within thirty (30) days.
  - Consultant shall submit detailed invoices showing the following:

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

- i. Invoice Number, Contract number, Title, Invoice Period.
- ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
- iii. Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.
- iv. Current Amount Due, with a Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the Contract.
- v. Total amount of the Contract, and balance of Contract amount.  
Indicate "Final Invoice" when invoice is the final billing.

### 25. Compensation

- a. Consultant expenses will be reimbursed at cost with the exception of:
  - i. Subconsultant services will be reimbursed at cost plus negotiated markup.
  - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. Rates: Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.
  - i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.
- e. Rates and Markup: are defined in the attached Rate Sheet and made a part of this contract.

### 26. Deliverables

All tangible materials produced as a result of this Agreement shall be prepared as specified by the NWSA's Project Manager. Delivery of materials produced shall consist both of the tangible materials and one copy of any computer files used in the creation of

the tangible product in a PDF format or other format specified by the NWSA.

### 27. Drawing, Specification and GIS

- a. Consultant shall prepare specifications using BSD SpecLink-E, Masterformat specification organization, latest edition.
- b. Consultant shall prepare specifications in accordance the NWSA's Specification Standards available at <https://www.portoftacoma.com/business/contracting/forms> and from the NWSA Project Manager. The NWSA's Master format specifications are available at <https://www.portoftacoma.com/business/contracting/forms>.
- c. All site plans, derivative drawings, record drawings, and bid plans shall be completed using NWSA GIS and CADD standards and layer/block protocols available at <https://www.portoftacoma.com/business/contracting/forms> and from the NWSA Project Manager.

### 28. Security – Transportation Worker Identification Credential (TWIC)

- a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.
- b. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit <https://www.tsa.gov/for-industry/twic>.
- c. The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

### 29. Existing Hazardous Material Information

The NWSA shall furnish the Consultant with the information as required by the Hazard Communication standard for materials pre-existing on the Project. The Consultant is solely responsible for ensuring that this information is made available to the Consultant's personnel, subconsultants, and that relevant information is incorporated into work products including, but not limited to, reports, specifications, and contract documents.

### 30. Extent of Agreement

## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.
- c. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

### 31. Prevailing Wages

- a. The Consultant shall ensure that all Subcontractors of any tier pay all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Project.
- b. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" in effect as of the date that bids are due.
- c. The applicable effective date for prevailing wages for this project is the execution date of this Amendment.
- d. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries:  
<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>
- e. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the Port of Tacoma Administration Building, located at One Sitcum Plaza, Tacoma, WA 98421 (253-383-5841). Upon request to the Procurement Department at [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com), the NWSA will email or mail a hard copy of the applicable Journey Level prevailing wages for this project.
- f. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.

### Mailing Address:

Department of Labor and Industries  
Prevailing Wage Office  
PO Box 44540, Olympia, WA 98504  
Telephone: (360) 902-5335  
Facsimile: (360) 902-5300

- g. If there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid.
- h. Prior to any payment being made by the NWSA under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of Intent to Pay Prevailing Wages under oath with the NWSA and certified by the Director of Labor and Industries. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the Contractor or a Subcontractor of any tier, as well as the Contractor's contractor registration number and other information required by the Director of Labor and Industries. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the NWSA receives such certified statement.
- i. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.
- j. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern.
- k. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute



## ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute.

- I. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by NWSA), indemnify and hold the NWSA harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.

### 32. On-Call Definitions Supplementary Conditions (As Applicable)

- a. Task Order: The document that memorializes agreement between the Consultant and the NWSA, in accordance with the terms of the On-Call Contract. Task Orders are executed for defined Services under the On-Call Contract.
- b. Contract Owner: NWSA staff member responsible for managing the On-Call Contract and executing all Task Orders.
- c. Project Manager: NWSA staff member responsible for managing a specific Task Order.
- d. Consultant Representative: The Consultant staff member(s) delegated the authority to provide signature approval for Task Orders under the On-Call Contract.
- e. Task Order Proposals:
  - i. The Project Manager will request consultant to provide a fee proposal for the Services requested by the NWSA.
  - ii. The NWSA will not pay for time or materials associated with development of fee proposals, unless such costs are approved by the Project Manager and Contract Owner in advance.
  - iii. Task Order proposals shall be signed and submitted by the Consultant Representative to the NWSA's Project Manager in

writing. Proposals shall include one of the following:

### 1. Time and Materials

#### Proposal

- a. Description of Task Order scope and deliverables.
  - b. Consultant's Personnel Titles and Rates as negotiated.
  - c. Hours per person per task.
  - d. Sub-tier consultant scope and deliverables (when applicable).
  - e. Anticipated reimbursable costs.
  - f. Total proposal with Not to Exceed dollar amount.
- f. Task Order Execution: Executed Task Orders will be issued by the Contract Owner to the Consultant.
  - g. Task Order Revision:
    - i. Revisions include when the Consultant becomes aware of the potential to exceed the executed amount or when changes are requested by the Project Manager.
    - ii. Consultant shall provide a revised proposal detailing all revisions per 2A and B above. Consultant shall not proceed with changed work until a revised Task Order is executed by the Contract Owner.
  - h. Payment Schedule:
    - i. Each Task Order shall be invoiced separately. Consultant shall submit detailed invoices showing the following:
    - ii. Invoice Number, Contract number, Title, Task Order Number and Title.
    - iii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
    - iv. Current Amount Due:



ATTACHMENT B – NWSA'S STANDARD TERMS AND CONDITIONS

- v. For Lump Sum Task Orders:  
Percentage of Services  
complete, percentage of  
completed Services billed.
  - 1. For Time and Materials  
Task Orders: titles,  
hours, hourly rates, and  
all expenses itemized,  
with backup, in  
accordance with the  
contract.
- vi. Total amount of the Task Order,  
and balance of Task Order  
amount.
- vii. Indicate “**Final Invoice**” when  
invoice is the final billing for that  
Task Order.
- i. Task Order Closure:  
When the Services have been  
completed and final invoice processed  
by the NWSA, the Contract Owner will  
issue a Task Order Completion  
Notification to the Consultant  
Representative.
- j. Task Order Termination:  
The NWSA may terminate the Task  
Order at its convenience with or without  
cause. In such case, the Consultant  
shall be paid for all Services performed  
and reasonable expenses properly  
incurred in connection with the  
termination.

**Attachment C**

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

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

**January 29, 2024**

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## GENERAL TERMS AND CONDITIONS

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

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

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

### ARTICLE 1 PURPOSE

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

### ARTICLE 2 MARAD ROLE

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

David Bohnet  
Supervisory Grant Management Specialist

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

### **ARTICLE 3 RECIPIENT ROLE**

#### **3.1 Statements on the Project.** The Recipient states that:

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

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

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

#### **3.3 MARAD Reliance.** The Recipient acknowledges that:



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

### **3.4 Project Delivery.**

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

### **3.5 Rights and Powers Affecting the Project.**

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

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

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

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

### **4.2 Federal Funding Source.**

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

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

### **4.3 Federal Obligations.**

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

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

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

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

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

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

**5.4 Budget Changes.**

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

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

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

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

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

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

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

## **ARTICLE 6 GENERAL REPORTING TERMS**

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

**6.2 Alternative Reporting Methods.** MARAD may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by MARAD.

**6.3 Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control

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

## **ARTICLE 7 PROGRESS AND FINANCIAL REPORTING**

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

## **ARTICLE 8 PERFORMANCE REPORTING**

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

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

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

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

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

## **ARTICLE 9 CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE**

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

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

## **ARTICLE 10 RACIAL EQUITY AND BARRIERS TO OPPORTUNITY**

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

## **ARTICLE 11 LABOR AND WORK**

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

## **ARTICLE 12 CIVIL RIGHTS AND TITLE VI**

**12.1 Civil Rights and Title VI.**

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

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

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

## **ARTICLE 13**

### **CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE**

#### **13.1 Critical Infrastructure Security and Resilience.**

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



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

## **ARTICLE 14**

### **PIDP DESIGNATIONS**

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

## **ARTICLE 15**

### **CONTRACTING AND SUBAWARDS**

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

## **15.2 Buy America.**

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

## **15.3 Small and Disadvantaged Business Requirements.**

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

## **15.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

## **15.5 Pass-through Entity Responsibilities.**

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

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

## **ARTICLE 16**

### **NONCOMPLIANCE AND REMEDIES**

#### **16.1 Noncompliance Determinations.**

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

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

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

#### **16.2 Remedies.**

- (a) If MARAD makes a final determination of noncompliance under section 16.1, MARAD may impose a remedy, including:
- (1) additional conditions on the award;

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

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

## **ARTICLE 17**

### **AGREEMENT TERMINATION**

#### **17.1 MARAD Termination.**

- (a) MARAD may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
  - (1) the Recipient fails to obtain or provide any non-PIDP Grant contribution or alternatives approved by MARAD as provided in this agreement and consistent with schedule D;
  - (2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient fails to meet that milestone by six months after the date listed in section 2 of schedule C;

- (3) the Recipient fails to meet a milestone listed in section 3 of schedule C by the deadline date listed in that section for that milestone;
  - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the project schedule in schedule C even if it is beyond the reasonable control of the Recipient;
  - (5) circumstances cause changes to the Project that MARAD determines are inconsistent with MARAD's basis for selecting the Project to receive a PIDP Grant; or
  - (6) MARAD determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, MARAD may elect to consider only the interests of MARAD.
  - (c) This section 17.1 does not limit MARAD's ability to terminate this agreement as a remedy under section 16.2.
  - (d) The Recipient may request that MARAD terminate the agreement under this section 17.1.

#### **17.2 Closeout Termination.**

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

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

#### **17.4 Non-Terminating Events.**

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

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

## **ARTICLE 18**

### **COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

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

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

**18.3 Timing of Project Costs.**

- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
- (b) Except as permitted under section 18.3(d)–(e), the Recipient shall not charge to this award costs that were incurred before the date of this agreement.
- (c) This agreement hereby terminates and supersedes any previous MARAD approval for the Recipient to incur costs under this award for the Project. Section 5 of schedule D is the exclusive MARAD approval of costs incurred before the date of this agreement.
- (d) If section 5 of schedule D identifies a pre-award approval under 2 C.F.R. 200.458 that will be reimbursed with Federal funds, then the Recipient may charge to this award, for payment from the PIDP Grant or other Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the budget period.
- (e) If MARAD approves a request from the Recipient under 46 U.S.C. 54301(a)(10)(B) and section 5 of schedule D describes that approval, then the Recipient may charge to this award, for payment from non-Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the budget period.

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

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

**18.6 Timing of Payments to the Recipient.**

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

#### **18.7 Payment Method.**

- (a) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” then the Recipient shall complete all applicable forms and attach supporting documents, including the SF 270, in Delphi eInvoicing System, which is on-line and paperless, to request reimbursement. To obtain the latest version of these standard forms, visit <https://www.grants.gov/forms/>. The Recipient shall review the training on using Delphi eInvoicing System before submitting a request for reimbursement. To guide the Recipient when reviewing this training, MARAD provides the following additional information, which may change after execution of this agreement:
  - (1) The Recipient may access the training from the MARAD “Delphi eInvoicing System” webpage at <https://einvoice.esc.gov>. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training.
  - (2) A username and password are not required to access the on-line training. It is currently available, will be accessible 24/7, and will take approximately 10 minutes to review.
  - (3) Once the above referenced training has been reviewed, Recipients must request and complete the External User Access Request form. Recipients can request the External User Access Request form by sending an email to a Grants/Contracting Officer who is identified in in section 5 of schedule A or section 2.2. A request to establish access will be sent once the External User Access Request form is received.
- (b) MARAD may deny a payment request that is not submitted using the method identified in this section 18.7.

#### **18.8 Information Supporting Expenditures.**

- (a) If the MARAD Payment System identified in section 6 of schedule A is “Delphi eInvoicing System,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit and attach the SF 270 (Request for Advance or Reimbursement), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.



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

#### **18.9 Reimbursement Request Timing Frequency.**

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

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

#### **19.1 Liquidation of Recipient Obligations.**

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

#### **19.2 Funds Cancellation.**

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

## **ARTICLE 20**

### **AGREEMENT MODIFICATIONS**

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

**20.2 Unilateral Contact Modifications.**

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

**20.3 MARAD Unilateral Modifications.**

- (a) MARAD may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
- (b) To unilaterally modify this agreement under this section 20.3, MARAD must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

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

## **ARTICLE 21**

### **FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS**

**21.1 Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.

**21.2 Federal Law and Public Policy Requirements.**

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements:

including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

- (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

### **21.3 Federal Freedom of Information Act.**

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

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

### **21.5 Whistleblower Protection.**

- (a) The Recipient acknowledges that it is a "grantee" within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related this this award.
- (b) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

### **21.6 External Award Terms and Obligations.**

- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:
  - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
  - (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
  - (3) 2 C.F.R. 175.15(b): Trafficking in Persons; and
  - (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.
- (b) The Recipient shall comply with:
  - (1) 49 C.F.R. part 20: New Restrictions on Lobbying;

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

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

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

## **ARTICLE 22**

### **MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS**

#### **22.1 Recipient Monitoring and Record Retention.**

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

#### **22.2 Financial Records and Audits.**

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the Project.
- (b) The Recipient shall keep accounts and records described under section 22.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303 and 2 C.F.R. 200 subpart F and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.

(c) The Recipient shall separately identify expenditures under the FY 2023 PIDP Grants in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:

- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including “FY 2023” in the program name; and
- (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2023” in column c (“Additional Award Identification”).

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

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

## **ARTICLE 23 NOTICES**

### **23.1 Form of Notice.**

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

### **23.2 Method of Notice to MARAD.**

- (a) For a notice to MARAD under this agreement to be valid, it must be sent by one or more of the following: (1) email; (2) a national transportation company with all fees prepaid and receipt of delivery; or (3) by registered or certified mail with return receipt requested and postage prepaid.
- (b) For a notice to MARAD under this agreement to be valid, it must be addressed to all of the MARAD contacts who are listed in section 5 of schedule A and section 2.2.
- (c) Except as specified in section 23.2(d), a valid notice to MARAD under this agreement will be deemed to have been received on the earliest of (1) when the email is received by MARAD, as recorded by MARAD’s email systems, and (2) when indicated on the receipt of delivery by national transportation company or mail.

- (d) If a valid notice or other communication to MARAD under this agreement is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

### **23.3 Method of Notice to Recipient.**

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

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

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

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

**23.6 Scope of Notice Requirements.** The form and method requirements of this article 23, including sections 23.1, 23.2, and 23.3, apply only to communications for which this agreement expressly uses one or more of the following words: “notice”; “notification”;

“notify”; or “notifying.” This article 23 does not control or limit other communication between the parties about the Project or this agreement.

## **ARTICLE 24 INFORMATION REQUESTS**

### **24.1 MARAD Information Requests.**

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

## **ARTICLE 25 ASSIGNMENT**

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

## **ARTICLE 26 WAIVER**

### **26.1 Waivers.**

- (a) A waiver of a term of this agreement granted by MARAD will not be effective unless it is in writing and signed by an authorized representative of MARAD.
- (b) A waiver of a term of this agreement granted by MARAD on one occasion will not operate as a waiver on other occasions.
- (c) If MARAD fails to require strict performance of a term of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that term or breach.

**ARTICLE 27**  
**ADDITIONAL TERMS AND CONDITIONS**

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

**27.2 Relocation and Real Property Acquisition.**

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

**27.3 Real Property and Equipment Disposition.**

- (a) In accordance with 2 C.F.R. 200.311, when real property is no longer needed for the originally authorized purpose, the Recipient or subrecipient must obtain disposition instructions from the Federal awarding agency or pass-through entity.
- (b) In accordance with 2 C.F.R. 200.313 and 1201.313, equipment acquired under this award must be used by the Recipient or subrecipient in the Project as long as needed, whether or not the Project continues to be supported by the Federal award. When no longer needed for the originally awarded Project or another Federal award:
  - (1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and
  - (2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from MARAD within 120 days after that entity determines that the equipment is no longer needed.
- (c) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (d) The Recipient shall ensure compliance with this section 27.3 for all tiers of subawards under this award.



## **27.4 Environmental Review.**

- (a) The Recipient shall not begin final design, begin construction, or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
  - (1) MARAD complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, Section 7 of the Endangered Species Act, 16 U.S.C. 1531, and any other applicable environmental laws and regulations; and
  - (2) MARAD provides the Recipient with written communication stating that the environmental review process is complete.
- (b) The Recipient acknowledges that:
  - (1) MARAD's actions under section 27.4(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary environmental documents to MARAD; and
  - (2) applicable environmental statutes and regulations may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (c) To the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (d) The activities described in schedule B and other information described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with schedule B or other information in this agreement, then:
  - (1) the parties may amend this agreement under section 20.1 for consistency with the selected build alternative; or
  - (2) if MARAD determines that the condition at section 17.1(a)(5) is satisfied, MARAD may terminate this agreement under section 17.1(a)(5).
- (e) The Recipient shall complete any mitigation activities described in the environmental documents and correspondence for the Project, including the terms and conditions contained in the required permits and authorizations for the Project. Section 3 of schedule B identifies environmental documents and correspondence describing mitigation activities, but the absence of a document or correspondence from that section does not relieve the Recipient of any compliance obligations. MARAD may determine that any failure to complete the mitigation activities within the Project environmental documents is non-compliance of the grant agreement subject to the remedies identified in article 16.
- (f) The Recipient acknowledges that, unless MARAD indicates otherwise in writing, upon termination of an agreement for the Project entered into under 36 C.F.R. 800.6(c) or 36

C.F.R. 800.14(b), the Recipient shall immediately cease all Project activities related to the “undertaking” as defined in that agreement, pending MARAD’s determinations under 36 C.F.R. 800 and applicable law.

## **ARTICLE 28 MANDATORY AWARD INFORMATION**

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

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

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

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

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

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

## **ARTICLE 29 CONSTRUCTION AND DEFINITIONS**

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

Schedule A	Administrative Information
Schedule B	Project Activities
Schedule C	Award Dates and Project Schedule
Schedule D	Award and Project Financial Information
Schedule E	Changes from Application
Schedule F	PIDP Designations
Schedule G	PIDP Performance Measurement Information

Schedule H	Climate Change and Environmental Justice Impacts
Schedule I	Racial Equity and Barriers to Opportunity
Schedule J	Labor and Work
Schedule K	Civil Rights and Title VI

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

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

### **29.3 Construction.**

(a) In these General Terms and Conditions:

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

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

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

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

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

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

- (1) at 46 U.S.C. 54301;

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

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

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

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

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

## **ARTICLE 30**

### **AGREEMENT EXECUTION AND EFFECTIVE DATE**

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