



WASHINGTON'S WORKING PORT

PORT OF LONGVIEW
Procurement Division
10 International Way
Longview, WA 98632
(360) 425-3305

REQUEST FOR QUALIFICATIONS

Project No.: 26-023-AE

INTERNATIONAL WAY GRADE SEPARATION DESIGN, ENGINEERING AND
CONSTRUCTION MANAGEMENT PROJECT

REQUEST FOR QUALIFICATIONS (RFQ) RELEASE DATE

February 25, 2026

VIRTUAL PRE-PROPOSAL MEETING

March 5, 2026, at 1:00 p.m. PT (via Zoom)

QUESTIONS/CLARIFICATIONS DEADLINE

Date: March 12, 2026

Time: no later than 5:00 p.m. PT

PROPOSAL DUE DATE AND TIME

Date: March 20, 2026

Time: no later than 5:00 p.m. PT

RFQ COORDINATOR & CONTACT PERSON

Kara Metzger

Contracts and Grants Administrator

kmetzger@portoflongview.com

(360) 425-3305 ext. 254

LEGAL ADVERTISEMENT

PORT OF LONGVIEW REQUEST FOR QUALIFICATIONS #26-023-AE INTERNATIONAL WAY GRADE SEPARATION DESIGN, ENGINEERING, AND CONSTRUCTION MANAGEMENT PROJECT

Notice is hereby given that the Port of Longview is soliciting qualifications from consultants for design, engineering, and construction management of the International Way Grade Separation project until 5:00 p.m. PT, March 20, 2026. To access the solicitation documents, please visit the Port's website at <http://www.portoflongview.com/Bids.aspx>.

The agreement, subject to funding availability and Board of Commission approval, will be from approximately April 2026 through December 31, 2032, with the option for the Port of Longview to extend it for additional time and money if necessary. Consultants will be considered for the following project:

Project Description

This project will remove the International Way at-grade rail crossings by elevating the roadway over the IRC allowing both modes of transportation open access. The project includes alteration to driveways and accesses to properties directly adjacent to the project site, but does not displace any of the tenants or neighbors directly adjacent to the project site. Stormwater facilities will also be constructed to meet current state and local stormwater regulations and standards.

- Construction includes a mix of local, state, and federal funding.
- The major tasks required under the Scope of Work include the following:
 - Design and Engineering
 - Permit Coordination with Permitting Firm
 - Construction Management Services
 - Construction Inspection Services
 - Project Administration Services
 - Scheduling Services
 - Cost Estimating Services

Evaluation Criteria

Submittals will be evaluated and ranked based on the following criteria:

1. Project Team Experience & Qualifications
2. Project Understanding and Approach
3. Project Management & Availability
4. Familiarity with Federally Funded Transportation Projects

Submittal

Submit your Statement of Qualifications to: kmetzger@portoflongview.com no later than 5:00 p.m. PT on March 20, 2026.

Americans with Disabilities Act (ADA) Information

The Port of Longview in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing Melissa McCabe at mmccabe@portoflongview.com or by calling collect (360) 703-0203.

Title VI Statement

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

LEGAL ADVERTISEMENT

PUBLISHED: February 25, 2026

Daily Journal of Commerce
Port of Longview Website
Office of Minority and Women's Business Enterprises (OMWBE)

PUBLISHED: February 26, 2026

The Daily News

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SECTION 1 - INTRODUCTION

1.1 PORT OF LONGVIEW DESCRIPTION

The Port of Longview, a special purpose district established in the 1920's, is the first full-service operating port with strategic transportation connections on the deep-draft Columbia River Federal navigation channel in southwest Washington State. The Port is a multi-cargo deep draft facility that includes eight marine terminals and waterfront industrial property with direct connections to main-line rail and interstate highway. Cargo handling specialties include all types of dry bulk cargos and breakbulk commodities such as steel, lumber, logs, project and heavy-lift cargo, providing cargos to and from domestic barge and international ocean vessels. For general information about the Port of Longview, please visit the Port's website at: <https://www.portoflongview.com/>

1.2 STATEMENT OF WORK

The anticipated scope of work is attached as Appendix A.

1.3 DIVERSITY PARTICIPATION

The Port strongly encourages the participation of minority, women-owned, veteran-owned, and small businesses, and Washington small businesses as prime Consultants or Subconsultants. No preference will be included in the evaluation of proposals, no minimum level of participation by these businesses shall be required as a condition of receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

1.4 TITLE VI STATEMENT

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

1.5 DEBARMENT AND SUSPENSION

By submitting a response to this solicitation, Consultant certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting a response to this solicitation that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to its response to this solicitation. The Port reserves the right to require Consultant to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirements.

SECTION 2 – GENERAL INFORMATION

2.1 RFQ COORDINATOR

All questions and communication concerning this Solicitation must be directed to the RFQ Coordinator listed below. All oral communication will be considered unofficial and non-binding. Consultants are to rely only on written statements issued by the Port. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the Consultant.

RFQ Coordinator: Kara Metzger
Email Address: kmetzger@portoflongview.com
Phone Number: (360) 425-3305, ext. 254

2.2 ANTICIPATED PROCUREMENT SCHEDULE

The activities and dates listed below represent the anticipated procurement schedule. The Port reserves the right to change the schedule.

Procurement Activity	Date and Time (Pacific Time)
RFQ Release	February 25, 2026
Pre-Proposal Meeting	March 5, 2026, at 1:00 p.m. PT via zoom (link to be provided upon request to the RFQ Coordinator at: kmetzger@portoflongview.com)
Questions and Requests for Clarifications	Due March 12, 2026, by 5:00 p.m.
Proposal Due Date and Time	March 20, 2026, no later than 5:00 p.m. PT

Contract Award Date (Board Action)	April 2026
Contract Start Date	April 2026

2.3 PRE-PROPOSAL MEETING

- A. The Port will host an optional Pre-Proposal Virtual Meeting which will begin at the time and date identified in the Procurement Schedule above. While virtual attendance is not mandatory, consultants are encouraged to virtually attend this meeting. This meeting will provide prospective respondents an opportunity to seek clarification and raise concerns related to the Solicitation.
- B. **Consultants that wish to be provided with the link and call-in phone number for the Zoom meeting should contact Kara Metzger at kmetzger@portoflongview.com. The link and phone number will be emailed.**
- C. Questions will be taken through the on-line chat feature.
- D. Prospective respondents will have the opportunity to raise pertinent issues during this meeting or by the due date and time for questions. If interpretations, specifications, or other Solicitation concerns warrant a change or clarification as a result of the meeting, the RFQ Coordinator will do so by issuing an Addendum.

2.4 SOLICITATION DOCUMENTS AND ADDENDA

- A. Solicitation documents may be accessed from the Port's website at: <https://www.portoflongview.com/Bids.aspx>
- B. The Port may make changes to this RFQ and/or provide clarification to information stated within the document and questions asked by way of issuance of written addenda; all addenda issued may be accessed from the Port's website at the same location as the original solicitation documents.
- C. All addenda issued prior to the Proposal Due Date will become part of this RFQ and will be deemed to have been considered by the Consultant in its proposal.
- D. Some third-party services independently post Port of Longview solicitations on their websites. The Port does not guarantee that such services have accurately provided Consultants with all information, particularly Addenda or changes to proposal due date and time. It is the sole responsibility of the Consultant to ensure all addenda are received.

2.5 COST OF PROPOSAL

All costs incurred before the Contract is fully executed in the preparation and presentation of the Consultant's proposal and the contract negotiation process shall be borne by the Consultant.

2.6 INSURANCE

The successful Consultant will be required to obtain insurance to protect the Port in the event of any claims, suits, actions, costs, or damages or expenses arising from any negligent or intentional act or omission of the Consultant or its Subconsultants, or their agents, while performing work under the terms of any Contract resulting from this solicitation. Consultants will find a complete description of the specific insurance requirements in the Contract document located in Appendix B.

2.7 CONTRACT DOCUMENTS

- A. A Proposal submitted in response to this Solicitation is an offer to contract with the Port. This Request for Qualifications, Addenda, and the successful Consultant's proposal and scope of work will be incorporated by reference into the resulting Contract, hereinafter referred to as the Contract Documents.
- B. The successful Consultant will be required to sign the Port's Contract and a copy is provided in Appendix B for review. By offering a proposal to provide the services described herein, the firm represents that it has carefully read the terms and conditions of the Contract and agrees to be bound by them.

2.8 FEDERAL GRANT REQUIREMENTS

- A. The Port is applying for several federal grants through the U.S. Department of Transportation. If any of these grants are awarded, the resulting contract of this RFQ will be amended to incorporate the applicable federal terms and conditions. For reference, the *Fiscal Year 2025–2026 Infrastructure for Rebuilding America (INFRA) Program: MARAD Project Revision dated April 23, 2025* general terms and conditions are included as **Appendix D** to this RFQ as an example. The specific federal terms and conditions required will be incorporated into the contract by amendment based on the grant(s) awarded to the Port.

2.9 PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. The Consultant's proposal is subject to the Washington State Public Records Act, RCW Chapter 42.56, and may be subject to public inspection. The Port will not disclose any information contained in competing Proposals or the number of Proposals received until after the Contract is awarded. The Port will keep information submitted through this process confidential to the extent allowed by state or federal law.
- B. Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which

the exemption from disclosure upon which the Consultant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Making the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

- C. If a public records request is made for the information that the Consultant has marked as "Proprietary Information," the Port will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order enjoining that disclosure. If the Consultant fails to obtain the court order enjoining disclosure, the Port will release the requested information on the date specified. If a Consultant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 45.56 RCW, or other state or federal law that provides for nondisclosure, the Port shall maintain the confidentiality of the Consultant's information per the court order.

SECTION 3 – PROPOSAL SUBMITTALS

Respond to the following requirements in this section.

3.1 PROPOSAL SUBMITTAL REQUIREMENTS

Responses to the **Non-Cost Proposal** must address every item listed and should be submitted in PDF format, not to exceed 20 single sided pages including cover letter and attachments. Resumes included as an appendix are not included in the 20-page limit. Resumes are limited to one single sided page per individual. Consultants must also complete and provide the information identified in **Supplemental Submittal Document** in Appendix C, including the **Acknowledgements** page signed by an authorized representative. Appendix C, including the Acknowledgements page do not count towards the 15-page limit.

A. Non-Cost Proposal

Consultants must fully address the following criteria in accordance with the Submittal Instructions.

i. Project Team Experience & Qualifications.

- a. Summarize the qualifications of the firm. Include number of years in business and relevant experience with emphasis on similar projects as described in the Statement of Work.
- b. Provide comprehensive information regarding the track record of the firm in providing relevant services. Provide detailed descriptions and discuss the size and complexity of the projects, any special issues, and the technical challenges that were addressed. Include client name, comparison of project budget and final cost to client, comparison of original and actual project schedule, client contact information and telephone number.
- c. Summarize your Project Manager, and other key personnel regarding relevant experience and qualifications that are required to be performed. Include specialized experience and technical competence of the individuals assigned to provide the required services and how the assigned key personnel would benefit the Port in providing the required services.
- d. Describe why the Sub-Contractors were selected for this project and how your firm has worked together on previous projects.
- e. Submit an Organizational Chart

ii. Project Understanding And Approach

- a. Describe the firm's method demonstrating the firm's understanding of the project risks, challenges and strategy that will be employed to complete the project. Include your firm's capacity to recognize "project specific" issues and develop creative solutions to address them. Provide examples of challenges and resulting solutions from previous projects.
- b. Describe the firm's approach to the services required under this solicitation.
- c. Describe the processes that are used to complete the various scope elements.

iii. Project Management & Availability

- a. Present the project management procedures that will be used in the execution of work. Describe the involvement and the duties of the project manager, with a clear description of the ways in which projects will be kept on budget and on schedule.
- b. Discuss quality control measures that will be put in place and describe the stages of document review and the team members that will be involved and their responsibilities. Include your plan to ensure the Port has access to timely and effective communication with key personnel.
- c. Describe the availability of team members to complete projects. Indicate current and upcoming project commitments for the foreseeable future.

iv. Familiarity with Federally Funded Transportation Projects

- a. Demonstrate the firm's ability to successfully manage projects that include federal and state funding.

NOTE: A cost proposal SHOULD NOT be included in your submittal.

B. Supplemental Submittal Document

- i. Consulting Firm Information
 - a. Consultants must complete the Consulting Firm Profile, Authorized Representative, Proprietary or Confidential Information and Statement of Prior Contract Termination sections; additional sheets may be attached if necessary.
- ii. Subconsultant Information
 - a. Consultants are instructed to complete the Subconsultants Information section if they intend to utilize Subconsultants. If no information is entered, the Port will assume that Subconsultants will not be used.
- iii. References
 - a. Consultants must submit a minimum of three (3) references for which they have provided services similar to those described herein with the understanding that the Port may contact these references independently. The Port reserves the right to obtain and consider information from other sources, such as a Consultant's capability and performance under other contracts, financial stability, past or pending litigation, prior performance on Port of Longview projects/contracts and other publicly available information.

3.2 SUBMITTAL INSTRUCTIONS

Consultants must submit their complete Proposal in the following manner:

- 1. **Proposal:** Proposals must be submitted electronically as described below. The electronic submission must be received by the Port on or before the Proposal Due Date and Time set forth in the Anticipated Procurement Schedule.
 - i. **Hard Copies:** No hard copies of Consultant's submittal are required; any hard copies received will go unevaluated.
 - ii. **Electronic Submittal:** The electronic Proposal is to be submitted via email to kmetzger@portoflongview.com, with the subject title stating the RFQ number and Consultant's business name. **The file size can be no larger than 20 megabytes to be received by email. It is the responsibility of the respondent to ensure the electronic Proposal was received by the Port.**
- 2. **Time of Receipt:**
 - i. Ensure delivery to the Port at the email address provided in item A (ii) above on or before the Proposal due date and time. Time of receipt will be determined by the date and time the response is stamped by the email sent by the respondent. **Late submittals will not be accepted or considered.** Respondents accept all risks of late delivery regardless of fault or chosen delivery method. Contact the RFQ Coordinator PRIOR TO THE DUE DATE AND TIME OF THE PROPOSAL to verify receipt of proposal by due date and time.
 - ii. Proposals are to be submitted in the format described in this Solicitation. No oral, faxed or telephone Proposals or modifications will be accepted or considered. All Proposals and any accompanying documentation become the property of the Port and will not be returned.

SECTION 4 – EVALUATION

4.1 EVALUATION PROCESS

- A. Qualifications will be scored by the Port's evaluation team based upon the Evaluation Criteria identified below. Although some of the criteria may be given more weight than others, each Consultant is expected to provide the Port with a comprehensive submittal which allows the Port to do a complete evaluation against the criteria.

EVALUATION CRITERIA AND WEIGHTS		
Criteria	Description	Weight (pts)
1	PROJECT TEAM EXPERIENCE & QUALIFICATIONS	30
2	PROJECT UNDERSTANDING & APPROACH	30
3	PROJECT MANAGEMENT & AVAILABILITY	30
4	FAMILIARITY WITH FEDERALLY FUNDED TRANSPORTATION PROJECTS	10
Total:		100

- B. **Interview (if conducted) (not scored)**
 - i. Consultants who submit a Proposal in response to this RFQ may be required to attend an interview or give an oral presentation of their Proposal to the Port. This provides an opportunity for the consultant to clarify or elaborate on their Proposal and should be considered a fact finding and explanation session only and does not include negotiation.
 - ii. The Port RFQ Coordinator will schedule the time and location of the interview or presentation. All interviews or

presentations shall be held on site at the Port or virtually at the Port's sole discretion. Failure of the respondent to participate in interview(s) as requested by the Port may disqualify their Proposal from receiving further consideration.

- iii. If the Port conducts interviews of key personnel, the Project Manager shall be required to participate. Other individuals to participate in the interview(s) shall be limited to key personnel and shall not include marketing personnel from the firm.
- iv. The Evaluation Committee members may elect to change their original scoring or ranking based on interview(s).

4.2 AWARD AND CONTRACTING PROCESS

- i. This project is subject to grant funding. The contract may initially be funded in part with Port funds while the Port seeks grant funding to continue the project. It is anticipated that federal funds will partially fund this award. Because the specific grant source is not yet known, sample federal terms and conditions are included in this RFQ. The Professional Services Contract will be amended to incorporate the applicable terms and conditions required by the awarded grant.
- ii. The contract award, if any, will be in accordance with RCW 39.80 to the firm deemed most qualified to provide the services required for the proposed project.
- iii. All other responding firms will be notified when the Port has determined the successful Consultant.
- iv. The Port will negotiate a scope and fee with the apparent successful Contractor. If the Port and the successful Consultant are unable to negotiate an acceptable scope and fee, the Port will terminate negotiations and may proceed to negotiations with the next highest ranked Consultant.
- v. Following a successful negotiated scope and fee, the successful Consultant will execute the final Contract and provide proof of insurance in accordance with the Contract documents.
- vi. The Port reserves the right to waive any technicalities, irregularities or award in part or in whole or to not award at all, reject any and all proposals, and may order a re-advertisement for new proposals or whatever is in the best interest of the Port.
- vii. Award, if any, is subject to availability of funding, acceptance of terms and conditions by awarded firm, and approval by the Board of Commissions.

APPENDIX A – STATEMENT OF WORK

As part of the Port of Longview's (Port) Master Plan, the Port is constructing the Industrial Rail Corridor Expansion project which will facilitate unit trains between 8,500' and 10,500' in length entering into the Port. A traffic study conducted in 2020 to better understand the interaction between roads and rail transportation at the Port indicated that at grade crossings would be blocked for extended periods of time. The impact is intensified by unit train length and frequency, both inbound and outbound. Based on the informed impacts of the traffic study, the Port has included the construction of a grade separation structure in the Master Plan to help mitigate the effects of the anticipated traffic blockages.

To this end, the Port is seeking a qualified consultant to assist with design, engineering, permitting and construction management for a grade separation structure over the rail crossing on International Way. The selected consultant will take a conceptual design and location and develop it to a 30% design with engineering, estimate and construction schedule. Upon receiving a grant(s), the selected consultant will advance the design to 60%, 90% and final designs with specifications, estimates, schedule and other documents needed to bid the work. The selected consultant will also assist the Port in permit and right-of-way acquisition, bid submittal review, construction engineering and construction management including construction inspection.

APPENDIX B – CONTRACT

**PORT OF LONGVIEW CONTRACT NO. _____
FOR
_____**

THIS CONTRACT is made and entered into upon date of final execution by and between the **Port of Longview**, a Washington municipal corporation, organized under the laws of the State of Washington (hereinafter referred to as "Port"), and the below named company (hereinafter referred to as "Consultant").

Consultant: Firm Name
Address: Street Address, City, State Zip Code

1. SCOPE OF WORK

A. The Consultant’s Scope of Work is incorporated herein and attached as Exhibit “A”. In the event of a conflict between any provision of this Contract and the attached Exhibit “A”, the provisions of this Contract shall prevail.

2. DURATION OF CONTRACT

A. The term of this Contract shall commence with the execution of this document and will terminate when all tasks associated with the Scope of Work herein and as modified by written Amendment have been completed by the Consultant on or before _____. This Contract may be extended for multiple terms or reinstated at the sole discretion of the Port; if so extended, all of the provisions contained herein shall apply through such extension.

3. COMPENSATION AND METHOD OF PAYMENT

A. The Consultant shall be paid by the Port for completed work under this Contract as provided for in Exhibit B - Payment Terms and Negotiated Hourly Rates.
B. The Maximum Total Amount Payable under this Contract shall not exceed **\$xxx**, except by specific written amendment to this Contract. The Maximum Total Amount Payable includes all expenses and Washington State Sales Tax, if applicable, and is not to be construed as a guarantee payable amount.

4. PROJECT MANAGEMENT

A. The individuals listed below, or their successors, will be the main points of contact for services provided under this Contract. The Port’s Project Manager or his/her successor is responsible for monitoring Consultant’s performance and will be the contact person for all communications regarding Contract performance and deliverables. The Port’s Project Manager has the authority to accept or reject the services provided and if satisfactory, certify acceptance of each invoice submitted for payment.

Consultant’s Project Manager	Port’s Project Manager
First Last	xxx
Office Phone: (###) ###-####	Office Phone: (360) 425-3305, ext. xxx
Mobile Phone: (###) ###-####	Mobile Phone: xxx
Email address: [Enter email address]	Email address: xxx

B. Notifications regarding changes to this section must be in writing and maintained in the project file but will not require a formal Contract amendment.

5. CONTRACT ADMINISTRATION

A. The individual listed below, or his/her successor, will be Contract Administrator for this Contract. The Contract Administrator is designated to receive legal notices, and to administer, amend, or terminate this Contract. All Contract documents under this Contract will be processed by the Contract Administrator and submitted to Consultant for acceptance. Contact information for the Contract Administrator is:

Kara Metzger
Contracts/Grants Administrator
Port of Longview
10 International Way
Longview, WA 98632
Phone: (360) 425-3305, ext. 254

Email address: kmetzger@portoflongview.com

- B. Notifications regarding changes to this section must be in writing and maintained in the project file but will not require a formal Contract amendment. Notification by email is sufficient for notification.

6. CHANGES

- A. The Port reserves the right to add, remove, or otherwise modify any requirements, and/or services to meet the operational and strategic objectives of the Port.
- B. Any changes to the work requiring an adjustment to the cost, task items, workmanship, specified materials, completion date or as otherwise set forth herein or in the work, must be requested in writing to the Project Manager and Contracts Administrator and must be approved in writing by each party's execution of an amendment prior to implementation to the adjustment. The Port may request changes to the work by negotiating and executing an amendment with the Consultant.
- C. Any changes the Port requires which are attributable to the Consultant's error or failure to meet the standards set forth in the Contract shall be corrected by the Consultant at no additional cost to the Port.
- D. Failure to agree to any adjustment shall be a dispute under **Section 32** of this Contract. However, nothing in this clause shall excuse the Consultant from performance under this Contract as if unchanged, unless such performance falls under **Section 7 (B)** of this Contract.
- E. Notwithstanding the terms and conditions of this section of this Contract, the Maximum Total Amount Payable under this Contract shall not be increased or exceeded except by specific written amendment to this Contract. Any work done in violation of this section shall be at the sole expense of the Consultant.

7. DELAY IN COMPLETION

- A. Time is of the essence in the performance of the work required under this Contract. Consultant shall ensure that the work is commenced within the timeframe set forth in this Contract and that tasks and services are completed within the milestones set forth herein. In agreeing to the time for completion of the work set forth in this Contract, Consultant has taken into consideration and made allowance for ordinary delays and hindrances incident to or which otherwise may be reasonably anticipated to affect completion of the work. Any issues which may affect Consultant's ability to comply with the requirements set forth in this section shall immediately be brought to the Port's Project Manager's and Contracts Administrator's attention.
- B. Consultant shall not be excused from any delay in performance of this Contract, unless (i) approved by the Port in accordance with **Section 6** above, (ii) attributable to any damage caused by fire or other casualty through no fault, neglect, act or omission on the Consultant's part, (iii) attributable to extraordinary and unanticipated conditions arising out of war, national emergency or governmental regulations, or (iv) any other cause beyond the Consultant's control and which Consultant could not reasonably anticipate, and not due to any fault, neglect, act or omission on Consultant's part, including any delay attributable to the Port. In the event of any delay excused under items (i) through (iv) above, the time for performance may be extended by such reasonable time as shall be mutually agreed upon by the Consultant and the Port and shall be incorporated in a written amendment.

8. STANDARD OF CARE

- A. Consultant shall perform the work in conformance with generally acceptable standards of an industry professional of similar education, experience and skill. Consultant shall be responsible for the quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications if applicable, prepared under this Contract. Any action necessary to correct or revise any errors or omissions in the work due to the Consultant's failure to meet this standard of care shall be completed by the Consultant in accordance with **Section 6 (C)**.

9. PROJECT PERSONNEL

- A. The project personnel specified in the Consultant's proposal are considered to be essential to the performance of the work and completion of the work. At least thirty (30) days prior to diverting from any of the specified individuals to other programs (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Consultant), the Consultant shall notify the Port Project Manager and Contracts Administrator and shall submit comprehensive justification for the diversion or replacement, including proposed substitution for key personnel, to permit evaluation by the Port of the impact on performance of this Contract. Consultant shall not divert or otherwise replace any key personnel without the consent of the Port.
- B. Notifications regarding changes to this section must be in writing and maintained in the project file but will not require a formal Contract amendment.

10. SUBCONSULTANTS

- A. The Consultant shall not sub-contract for the performance of any work under this Contract without prior written permission of the Port. No permission for sub-contracting shall create, between the Port and Subconsultants, any contract, employment, agency, joint venture or other relationship.

- B. Consultant has the sole responsibility for hiring, compensating and overseeing the work of any approved Subconsultants and shall ensure such Subconsultant's compliance with this Contract, including all licensing and insurance requirements. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the Port, its agents, and their respective employees for, from, and against claims, damages, losses and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the work by any Subconsultant, or anyone for whose acts they may be liable.

11. INDEPENDENT RELATIONSHIP

- A. The parties intend that an independent Contractor relationship between Consultant and the Port will be created by this Contract. The Port is interested primarily in the results to be achieved; subject to the provisions herein, the implementation of services will lie solely with the discretion of Consultant. No agent, employee, servant or representative of Consultant shall be deemed to be an employee, agent, servant or representative of the Port for any purpose, and the employees of Consultant are not entitled to any of the benefits the Port provides to its employees. Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, Subconsultants or representatives during the performance of this Contract.
- B. In the performance of the services required by this Contract, Consultant is an independent Contractor with the authority to control and direct the performance of the details of the work, however, the results of the required work must meet the approval of the Port and shall be subject to the Port's general rights of inspection and review to secure the satisfactory completion thereof in accordance with applicable agreed upon testing procedures between the Port and Consultant.

12. NON-EXCLUSIVE PROVIDER

The Port reserves the right to obtain services or supplies not specifically covered by this Contract from other providers as deemed in the best interest of the Port.

13. ASSIGNMENT

Consultant will not assign its performance under this Contract, or any portion of this Contract, without the written consent of the Port. Consultant must seek consent from the Port, in writing, not less than thirty (30) days prior to the date of any proposed assignment. The Port reserves the right to reject any assignment without cause.

14. HOLD HARMLESS AND INDEMNIFICATION

- A. The Consultant shall indemnify and hold the Port, its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the Consultant's negligence or breach of any of its obligations under this Contract; provided that nothing herein shall require a Consultant to indemnify the Port against and hold harmless the Port from claims, demands or suits based solely upon the conduct of the Port, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (1) the Consultant's agents or employees, and (2) the Port, their agents, officers and employees, this indemnity provision with respect to (i) claims or suits based upon such negligence (ii) the costs to the Port of defending such claims and suits shall be valid and enforceable only to the extent of the Consultant's negligence or the negligence of the Consultant's agents or employees.
- B. The Consultant specifically assumes potential liability for actions brought by the Consultant's own employees against the Port and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the state industrial insurance law in accordance with Title 51 of the Revised Code of Washington.
- C. Consultant specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the Parties that Consultant provide the broadest scope of indemnity permitted by RCW 4.24.115. Consultant is an independent Consultant and responsible for the safety of its employees.

15. PLANS, ETC. PROPERTY OF PORT

- A. All original plans, drawings and specifications prepared by the Consultant and any and all Subconsultants for the Port and funded by the Port are and shall remain the property of the Port whether or not the Project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the Port and that was developed independent of funding by the Port. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the Consultant and funded by the Port shall become the property of the Port. No reports, records, questionnaires, software programs provided by Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.
- B. If included in the Scope of Work: As part of the project close-out, the Consultant is responsible for providing the Port with a FINAL RECORD drawing set that incorporates all of the Contractor's as-built redlines into the CAD file. Consultant shall deliver the following as part of the close-out to Port Engineering:
 - i. CAD files (all)
 - ii. PDF (1 file of all pages combined)

- iii. Bound hard copy 11x17 (1)
- iv. Contractors original paper redline

16. INSURANCE

- A. Insurance Requirements – Consultant shall obtain and keep in force during the entire term of this Contract, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Consultant, Subconsultants, and/or their agents and/or employees. The Consultant agrees to the following requirements relating to insurance coverage and shall provide evidence of all insurance required by submitting an insurance certificate to the Port on a standard "ACORD" or comparable form:
- i. Commercial General Liability – coverage as broad as Insurance Services form number CG 00 01 with minimum limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate limit.
 - ii. Automobile Liability – a minimum of \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto", or the combination of symbols 2, 8 and 9. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent), MCS 90, or auto pollution coverage, and
 - iii. ____ [Initial if applicable]: Consultant represents that Consultant will not perform any driving as part of this Contract. Based on this representation, Consultant shall maintain automobile liability insurance but shall be permitted to maintain lower limits provided that such limits meet the State of Washington minimum insurance coverage. All other terms of this Contract relating to insurance shall apply to this insurance.
 - iv. Professional Liability – a minimum of \$2,000,000 in the aggregate and \$1,000,000 per claim in professional liability insurance. Insurance coverage shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the entire term of this Contract.
- B. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than three (3) years from the date of the completion of the work which is the subject of this Contract or (2) the purchase of an extended discovery period not less than three years (3) years from the date of completion of the work which is the subject of this Contract, if such extended coverage is available.
- C. The insurance required by this Contract shall be issued by an insurance company authorized to do business within the State of Washington, and the policies shall name the Port, its agents and employees as additional insured's. Except, however, that Consultant is not required to add the Port or its agents and employees as an additional insured on its professional liability policy or workers compensation policy. All policies shall be primary to any other valid and collectable insurance and not contributory to any similar insurance carried by the Port and shall contain severability of interest or cross liability clause. Such insurance shall not be canceled or materially altered without first giving thirty (30) days' written notice thereof to the Port. The Consultant shall submit renewal certificates as appropriate during the term of this Contract (plus three years).
- D. By requiring insurance herein, the Port does not represent that coverage and limits will be adequate to protect Consultant and such coverage limits shall not limit Consultant's liability under the indemnities and reimbursements granted to the Port in this Contract.
- E. Additional Requirements:
- i. Worker's Compensation The Consultant shall comply with the Washington State Department of Labor & Industries Industrial Insurance program or applicable statutory requirements of the State of residency, for all of its employees who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Consultant shall require the Subconsultant to provide worker's compensation insurance for all of its employees as required by law.
 - ii. Employer's Liability or "Stop Gap" Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsements to the general Liability policy.
 - iii. Employment Security The Consultant shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith.
- F. The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

- i. The Port, its officers, officials, employees and agents are to be covered as additional insured as respects to liability arising out of activities performed by or on behalf of the Consultant in connection with this Contract. Such additional insured status shall include Products-Completed Operations.
 - ii. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respect the Port, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the Port, its officers, officials, employees and agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.
 - iii. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- G. The Consultant's General Liability, Automobile, and Protection and Indemnity, if applicable, policies shall waive rights of subrogation against the Port.
- H. Receipt by the PORT of any certificate of insurance or endorsements that do not meet the requirements of this section does not a waive the Consultant's obligations to independently procure and meet the coverage requirements in accordance with this Contract.

17. ACCESS TO DATA

Consultant shall provide access to data generated under this Contract to Port and its duly authorized agents at no additional cost to the Port. This includes access to all information that supports the findings, conclusions, and recommendations of the Consultant's reports, including computer models and methodology for those models.

18. TREATMENT OF ASSETS

- A. Title to all property furnished by the Port shall remain in the name of the Port and shall remain on the Port's premises. The Port shall become the owner of the work product and other documents, if any, prepared or developed specifically by Consultant for the Port pursuant to this Contract, unless otherwise expressly provided herein.
- B. Title to all property furnished by the Consultant, for the cost of which the Consultant is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Port upon delivery of such property by the Consultant. Title to other property, the cost of which is reimbursable to the Consultant under this Contract, shall pass to and vest in the Port upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Port in whole or in part, whichever comes first.
- C. Consultant shall be responsible for any loss or damage to property of the Port which results from the negligence of the Consultant or which results from the failure on the part of the Consultant to maintain and administer that property in accordance with sound management practices.
- D. If any Port property is lost, destroyed, or damaged, the Consultant shall immediately notify the Port and shall take all reasonable steps to protect the property from further damage.
- E. The Consultant shall surrender to the Port all property of the Port prior to settlement upon completion, termination, or cancellation of this Contract.
- F. All references to the Consultant under this clause shall also include Consultant's employees or agents.

19. COMPLIANCE WITH LAWS

- A. In the performance of this Contract, Consultant shall be knowledgeable and comply with all applicable federal, state or local laws and ordinances, including, but not limited to regulations for licensing, permits, accreditation, certification and operation of equipment, and licensing of individuals, and any other standards or criteria described in this Contract to assure quality of services; no claims for additional compensation will be allowed based on a lack of knowledge or misunderstanding by the Consultant.
- B. Consultant agrees to pay any applicable business and occupation (B&O) taxes which may be due on account of this Contract.
- C. If sales tax becomes applicable to the services covered by this Contract, the Port shall pay such tax to Consultant, and Consultant shall pay the tax as required by law.

20. ENVIRONMENTAL PROTECTION

Wherever applicable, Consultant will comply with applicable portions of the following statutes, ordinances and regulations and such other regulatory measures dealing with the prevention of environmental pollution and the preservation of public natural resources as may be subsequently identified by the Port or other public agencies as applicable to the work.

- A. Federal. Natural Environmental Policy Act of 1969, 42 USC 4321 et Seq.; Executive Order 11514; Clean Water Act, 33 USC 1251 et seq.;

- B. State. Water Pollution Control Act, Chapter 90.48 RCW; State Environmental Policy Act of 1971, Chapter 43.21C RCW and WAC Chapter 197-10; Noise Control Act of 1974, Chapter 70.107 RCW; Washington Clean Air Act, Chapter 70.94 RCW and WAC Chapter 1; Shoreline Management Act of 1971, Chapter 90.58 RCW.
- C. Regional. Any applicable Air Pollution Control District regulations.
- D. Cowlitz County. Any applicable County ordinances and regulations.
- E. Local. Any applicable City of Longview ordinances and regulations.

21. SAFETY AND HEALTH STANDARDS

It will be a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that Consultant and any Subconsultant will not require any employees contributing to the performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

22. SITE SECURITY

While in the secured area of Port premises, Consultant, its agents, employees, or Subconsultants shall conform in all respects with physical, fire, or other security regulations. All Consultant agents, employees and Subconsultants who perform work within the secured area of the Port will be required to have a Transportation Worker Identification Credential (TWIC) in order to perform their duties unescorted. This program was established by Congress and is administered by the Transportation Security Agency and the United States Coast Guard. More information and guidance can be found at www.tsa.gov/twic.

23. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

24. CONFLICT OF INTEREST

Consultant represents that it has not direct or indirect or indirect economic interest which conflicts in any manner with its performance of the services required under this Contract. Consultant represents that it has not retained any person to solicit this Contract and has not agreed to pay such person any compensation or other compensation contingent upon execution of this Contract.

25. NONDISCRIMINATION

- A. Equal Opportunity. The Port is an equal opportunity employer.
- B. Nondiscrimination in Employment. In the performance of this Contract, Consultant will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved. Consultant shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and programs for training including apprenticeships. Consultant shall take such action with respect to this Contract as may be required to ensure full compliance with Chapter 49.60 Revised Code of Washington, Law against Discrimination.
- C. Nondiscrimination in Services. Consultant will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.
- D. Nondiscrimination in Sub-Contracting. If any assignment and/or subcontracting have been authorized by the Port, said assignment or subcontract shall include appropriate safeguards against discrimination. Consultant shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein and further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

26. DEBARMENT AND SUSPENSION

By executing this Contract, Consultant certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by acceptance of this Contract that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to

this statement it shall attach an explanation to this Contract. The Port reserves the right to require Consultant to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirements.

27. GRATUITIES AND KICKBACKS

- A. Gratuities – It shall be a breach of ethical standards for any person to offer, give or agree to give any Port of Longview member, officer, employee, agent or former Port member, officer, employee, or agent or for any Port member, officer, employee, agent or former Port member, officer, employee or agent to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation therefore.
- B. Kickbacks – It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a Subconsultant under a contract to the prime Consultant or higher tier Subconsultant or any person associated therewith, as an inducement for the award of a subcontract or order.

28. LIENS, CLAIMS AND ENCUMBRANCES

Consultant certifies that all materials, equipment or services shall be free of all liens, claims, or encumbrances of any kind, and if the Port requests, a formal release of same shall be provided.

29. CONFIDENTIALITY

- A. In connection with the performance of this Contract, the Consultant may be provided with certain information concerning the Port which is confidential, proprietary or otherwise not generally available to the public and all portions of analyses, data, compilations, notes, forecasts, summaries, studies and other materials prepared by Consultant or Consultant's representatives, or otherwise on Consultant's behalf, that contain, reflect or are based in whole or in part, on such information (the "Confidential Information"). The Consultant agrees that such Confidential Information shall be used solely for the purposes of performing Consultant's obligations under this Contract, shall be kept strictly confidential and shall not be disclosed to any person for any reason, except to the Consultant's representatives who need to know such Confidential Information for the purpose of performing this Contract. The Consultant agrees to undertake reasonable precautions to safeguard and protect the confidentiality of the Confidential Information and to prevent its representatives from prohibited or unauthorized disclosure or uses of the Confidential Information, and Consultant will be responsible for any breach or threatened breach of this section by any of its representatives.
- B. In the event that Consultant is required by law, or any governmental, judiciary or regulatory authority or securities exchange to disclose any Confidential Information, Consultant will provide the Port with prompt written notice of such requirement, and in no case later than forty-eight (48) hours after becoming aware of such requirement, but in all events in sufficient time to enable the Port to object to disclosure and/or to seek an appropriate protective order or other remedy or, in the Port's sole discretion, waive compliance with the provisions of this section, and Consultant will consult and cooperate with the Port to the extent permitted by law, regulation and the requesting authority with respect to taking steps to resist or narrow the scope of such requirement or legal process. If a protective order or other remedy is not obtained and the terms of this section are not waived, and disclosure of Confidential Information is legally required, Consultant will disclose such information only to the extent legally required, in the opinion of Consultant's counsel.
- C. The Consultant acknowledges that the Port is required by statute (RCW 42.56) to make certain of its records available for public inspection, which may include submission of materials related to Consultant. Consultant acknowledges and agrees that the Port will have no obligation or any liability to the Consultant in the event that the Port must disclose any such materials, including those marked proprietary, confidential or otherwise.

30. PUBLICITY

The Consultant agrees not to publish or use the Port's name, or any description which in the Port's sole judgement can reasonably be implied to refer to the Port, in any advertising, marketing or publicity materials without the prior written consent of the Port.

31. MAINTENANCE AND INSPECTION OF RECORDS

- A. Consultant shall maintain books, records, documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and shall undertake such accounting procedures and practices as may be deemed necessary to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times to inspection, review or audit, by the Port, its authorized representative, the State Auditor or any of their authorized representatives or other governmental officials authorized by law to monitor this Contract.

- B. Consultant shall retain all books, records, documents and other material relevant to this Contract for six (6) years after the Port's final payment and all other pending matters are closed. Consultant agrees that the Port, or its designee, shall have full access and right to examine any of said materials at all reasonable times during said period.
- C. Consultant's fiscal management system shall include the capability to provide accurate, current and complete disclosure of the financial status of this Contract upon request.

32. DISPUTE RESOLUTION

- A. Prior to the initiation of any action or proceeding to resolve disputes between the parties, both shall make good faith efforts to resolve any such disputes by negotiation first between representatives of each party with the authority to make such negotiations.
- B. If the dispute cannot be settled through direct discussions after thirty (30) days, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties with the cost divided equally, however, all other costs associated with the mediation shall be borne by each Party. The Port reserves the right to join any dispute under this Contract with any other claim in litigation or other dispute resolution forum and the Consultant agrees to such joinder, so that all disputes related to the Project may be consolidated and resolved in one forum.
- C. Port and Consultant agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

33. TERMINATION

A. Termination for Cause.

- i. The Port may terminate this Contract for cause if the Consultant is in material breach under any provision of this Contract and such breach is not cured within thirty (30) days after Consultant is made aware of the action giving rise to such breach;
- ii. Prior to termination under this section, and upon notice to Consultant, the Port has the right to suspend all or part of this Contract, withhold further payments, or prohibit the Consultant from incurring additional obligations to investigate the alleged breach and determine whether corrective action or termination will be required.
- iii. In the event of termination under this section, the Consultant shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover costs and all administrative costs directly related to the replacement costs, e.g. cost of the competitive bidding, mailing, advertising, and staff time.
- iv. Consultant shall be entitled to terminate this Contract for cause if the Port is in material breach under any provision of this Contract and such breach is not cured within thirty (30) days after Port is made aware of the action giving rise to such breach.
- v. The rights and remedies of the Port provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- vi. If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

B. Termination for Convenience.

- i. The Port may terminate this Contract for convenience for any reason in its sole discretion upon the Port providing Consultant ten (10) days written notice of such intent to terminate this Contract in whole or in part.
- ii. If the Port terminates this Contract for convenience, the Port shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination and for costs incurred by reason of such termination. Consultant hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits.

C. Termination Procedures. Upon notice of termination of this Contract:

- i. The Port shall pay to the Consultant the agreed upon price, if separately stated, for completed work accepted by the Port, and the amount agreed upon by the Consultant and the Port for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property or services which are accepted by the Port, and (iv) the protection and preservation of property, unless the termination is for breach, in which case the Port shall determine the extent of the liability of the Port. Failure to agree with such determination shall be a dispute within the meaning of **Section 32** of this Contract.

- ii. Except as otherwise directed by the Port Project Manager or Contract Administrator, the Consultant shall:
 - a. Stop work under this Contract on the date, and to the extent specified, in the notice;
 - b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
 - c. Assign to the Port, in the manner, at the times, and to the extent directed by the Port Project Manager, all of the rights, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the Port has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Port to the extent Port may require, which approval or ratification shall be final for all the purposes of this clause;
 - e. Transfer title to the Port and deliver in the manner, at the times, and to the extent directed by the Port any property which, if the Project had been completed, would have been required to be furnished to the Port;
 - f. Complete performance of such part of the work as shall not have been terminated by the Port; and
 - g. Take such action as may be necessary, or as the Port may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Consultant and in which the Port has or may acquire an interest.

34. WAIVER

Waiver of any default or breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by an instrument in writing signed by the parties hereto.

35. NOTICE

Notice provided for in this Contract shall be sent by certified mail to the addresses designated for the parties on the last page of this Contract.

36. ATTORNEYS FEES AND COSTS

If any legal proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and costs incurred in such action or proceeding.

37. JURISDICTION

- A. This Contract has been and shall be construed as having been made and delivered within the state of Washington and it is agreed by each party hereto that this Contract shall be governed by laws of the state of Washington, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Contract or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Cowlitz County, Washington.

38. SEVERABILITY

- A. It is understood and agreed by the parties that if any part, term or provision of this Contract is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.
- B. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

39. MARAD TERMS AND CONDITIONS

The U.S. Department of Transportation General Terms and Conditions under the Fiscal Year 2021 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant program: Marad project revision dated July 18, 2022, provided for as Exhibit C are hereby incorporated and will be a part of this Agreement.

40. ENTIRE CONTRACT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Failure to comply with any of the provisions stated herein shall constitute material breach of Contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Contract. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Contract does not constitute a waiver of the provisions of this Contract. This Contract may be executed in counterparts, which may be transmitted via email or other electronic transmittal, each of which shall constitute an original, and all of which will be deemed a single document. Signature of an email or other electronic transmittal copy of this Contract, and transmission of a signature page by email or other electronic transmittal, shall bind the signing party to the same degree as delivery of a signed original.

41. APPROVAL

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year last hereinbelow written.

PORT OF LONGVIEW

CONSULTANT

Name:

Name:

Title:

Title:

Date

Date

**EXHIBIT A
CONSULTANT SCOPE OF WORK
<PROJECT NAME>**

EXHIBIT B
PAYMENT TERMS AND NEGOTIATED HOURLY RATES
<PROJECT NAME>

The Port shall pay the Consultant at the rates indicated for the Scope of Work performed under the terms of this Contract. The Maximum Total Amount Payable under this Contract cannot not be exceeded without Port's prior written authorization in the form of a negotiated and executed amendment. Such payment shall be full compensation for work performed necessary to complete the project as set forth herein.

The Consultant shall submit invoices to Port covering both professional fees and project expenses, if allowable. Unless otherwise stated, invoices will be paid Net 30 upon receipt of an invoice that, in the sole discretion of the Port, is acceptable to the Port. The Port reserves the right to correct any invoices submitted in error and adjust according to the rates and allowable costs set forth in this Contract. Port and Consultant agree that any amount paid in error by Port does not constitute a rate change in the amount of this Contract.

No payments in advance or in anticipation of services or supplies shall be paid by the Port under this Contract.

1. Hourly Rates: The Consultant shall be paid by the Port for work done, based upon the negotiated hourly rates shown in Schedule 1 attached hereto. The rates listed shall remain firm through completion of the negotiated Scope of Work. Rates are inclusive of direct salaries, payroll additives, overhead, and fees. The Consultant shall maintain support data to verify the hours billed on this Contract.
2. Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the Consultant. These charges may include, but are not limited to the following items: travel meals, vehicles, lodging, printing (if requested), and Subconsultant costs. All travel must be pre-approved by the Port. All non-salary costs shall comply with the following provisions:
 - A. All charges must be necessary for the work provided under this Contract.
 - B. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the Project.
 - C. Receipts for all costs shall be detailed and itemized.
 - D. Reimbursement for travel meals, vehicles, and lodging cannot exceed the most recently published per diem rates by the Washington State Office of Financial Management.
3. Subconsultants: Sections 1 and 2 shall apply to Subconsultants as they do the Consultant. Schedule 1 shall be required for approved Subconsultants prior to the Subconsultant beginning work.
4. Monthly Progress Payments: Progress payments may be claimed on a monthly basis. Monthly invoices must reflect the task schedule(s) attached to this Contract and shall be supported, to the satisfaction of the Port, with detailed statements for hours expended at the rates established in Schedule 1, including names and classifications of all employees, and billing/receipts for all other direct non-salary expenses. To provide a means of verifying the billed salary costs for the Consultant's employees, the Port may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing the work on the Project at the time of the interview. The Consultant shall direct its employees to cooperate and provide this information when requested by the Port.
 - A. Invoices should be submitted electronically to dmartin@portoflongview.com and kmetzger@portoflongview.com with **the contract name and number assigned to this Contract (captured 1st herein) referenced on all invoices**. If Consultant is unable to submit invoices electronically, invoices may be submitted by mail to:

Port of Longview
Attn: Accounts Payable
10 International Way
Longview, WA 98632
5. Total amounts billed per task as listed in the task schedule(s) to this Contract shall not exceed the amounts per task without prior approval in writing by a contract amendment executed by both parties. A variance between per task totals is allowable up to 20% when approved in writing by the Project Manager or Contracts Administrator. Approval from the Project Manager or Contracts Administrator by email is an acceptable form of written approval.
6. Final Payment: Final payment of any balance due the Consultant of the gross amount earned will be made promptly upon its verification by the Port after the completion of the Project under this Contract, contingent upon receipt of all PS&E, maps, notes, reports, electronic data and other related documents which are required to be furnished under this Contract. Acceptance of such final payment by the Consultant shall constitute a release of all claims for payment, which the Consultant may have against the Port unless such claims are specifically reserved in writing and transmitted to the Port by the Consultant prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the Port may have against the Consultant or to any remedies the Port may pursue with respect to such claims.
7. The payment of any billing will not constitute agreement as to the appropriateness of any item. All required adjustments will be made and reflected in a final payment. In the event that an audit reveals an overpayment to the Consultant, the Consultant will refund such overpayment to the Port within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the Consultant for any claims relating to the validity of a finding by the Port of overpayment. The Consultant has twenty (20) days after receipt of the notice to repay the Port to appeal the finding.
8. Inspection of Cost Records: The Consultant and their Subconsultants shall keep available for inspection by representatives of the Port, State and Federal government, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining

to this Contract and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this Contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

EXHIBIT B
PAYMENT TERMS AND NEGOTIATED HOURLY RATES
<PROJECT NAME>

EXHIBIT B
PAYMENT TERMS AND NEGOTIATED HOURLY RATES
<PROJECT NUMBER>
SCHEDULE 1

WAGE CLASSIFICATION	MAXIMUM HOUR RATE
	\$
	\$
	\$

APPENDIX C – SUPPLEMENTAL SUBMITTAL DOCUMENT

SUBMITTAL INSTRUCTIONS

Consultants must properly complete and submit all sections of this document as part of their Proposal by the Proposal Due Date and Time.

- A. Consulting Firm Information
- B. Subconsultant Information
- C. References

Consultants will submit their complete Proposal in accordance with **Section 3, Proposal Submittals**, of the RFQ document.

A. CONSULTING FIRM INFORMATION

1. Consultant Profile:

Firm Name _____

Street Address _____

City, State, Zip Code _____

Federal Tax ID Number _____

WA State UBI Number _____

DUNS # (if applicable) _____

2. Consultant's Authorized Representative:

Consultant must designate an Authorized Representative who will be the principal point of contact for the Procurement Coordinator for the duration of this RFQ process. The Consultant's Authorized Representative will serve as the focal point for business matters and administrative activities.

Representative Name: _____

Street Address _____

City, State, Zip Code _____

Telephone Number _____

Email Address _____

3. Proprietary or Confidential Information:

Consultant must indicate any pages and/or sections of their Response that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW below. Indicate the pages of Consultant's Response that have been marked "Confidential" and the particular exception from disclosure upon which the Consultant is making the claim below. Please see **Section 2.9** of the **Request For Qualifications** document for more detail on Proprietary or Confidential Information as it relates to this Solicitation. *If not applicable, Consultant is instructed to enter "NA" in the box below. If left blank, the Port will consider the Consultant's response to be N/A. Attach additional sheets if necessary.*

4. Statement of Prior Contract Termination:

Consultant must disclose below if the Consultant's firm and/or any proposed Subconsultants have had a contract terminated for either cause or convenience in the last five (5) years. If a contract was terminated for cause or convenience during this timeframe, submit full details of the termination including but not limited to, the reason for termination, the other party's contact information (name, address, email address, and telephone number), and the Consultant's position on the matter. The Port will evaluate the information and may, at its sole discretion, reject the Response based on the risk to the Port. *If not applicable, Consultant is instructed to enter "NA" in the box below. If left blank, the Port will consider the Contractor's response to be N/A. Attach additional sheets if necessary.*

B. SUBCONSULTANT INFORMATION

Check the applicable box:

Yes No *Proposing firm intends on utilizing Subconsultants to fulfill the service requirements.*

Contractor will be required to perform all work under this Contract using his/her own employees carried on payroll or by using Subconsultants. Where Subconsultants are used in the performance of the Contract, Consultant will indicate as required with the Response. Contractor will be held responsible for all work performed or not performed by the Subconsultant(s). Subconsultant(s) will be required to bill through the Contractor.

If revisions are required in the subcontract assignment, new parties are to be proposed in advance of assignment, in writing to the Port Procurement Coordinator and Contracts and Purchasing Manager.

If applicable, Consultant will identify below all Subconsultants who will perform services in fulfillment of Contract requirements, including their name, the nature of services to be performed, address, telephone number, email address, federal tax identification number (TIN), and Washington State Unified Business Identifier (UBI). The Port reserves the right to approve or reject any and all Subconsultants that Consultant proposes. Any Subconsultants not listed in the Consultant's Response, who are engaged after award of the Contract, must be pre-approved, in writing, by the Port before providing services under the Contract.

Subconsultant 1

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____

Subconsultant 2

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____

Subconsultant 3

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____

Subconsultant 4

Name: _____
Services: _____
Address: _____
Telephone: _____
Email: _____
Fed ID: _____
UBI: _____

C. REFERENCES

Consultant must provide a minimum of three (3) references for which the Consultant has provided goods and/or services similar to those described in this Solicitation. **The Port of Longview cannot be one of these references.** References must not be from an individual, company or organization with any special interest, financial or otherwise, to the Consultant. If in question, please contact the RFQ Coordinator.

REFERENCE 1:	
Name of Company:	
Type of Organization:	
Address:	
Phone:	
Project Manager/Contact:	
Email:	
Dates of Services:	
Summary of Services Provided:	

REFERENCE 2:	
Name of Company:	
Type of Organization:	
Address:	
Phone:	
Project Manager/Contact:	
Email:	
Dates of Services:	
Summary of Services Provided:	

REFERENCE 3:	
Name of Company:	
Type of Organization:	
Address:	
Phone:	
Project Manager/Contact:	
Email:	
Dates of Services:	
Summary of Services Provided:	

CERTIFICATION REGARDING LOBBYING

International Way Grade Separation Design, Engineering, and Construction Management Project
26-023-AE

Issued by Port of Longview

PART A. PREAMBLE Federal legislation, Section 319 of Public Law 101-121 generally prohibits entities from using federally appropriated funds to lobby the executive or legislative branches of the federal government. Section 319 specifically requires disclosure of certain lobbying activities. A federal government-wide rule, "New Restrictions on Lobbying", published in the Federal Register, February 26, 1990, requires certification and disclosure in specific instances.

PART B. CERTIFICATION This certification applies only to the instant federal action for which the certification is being obtained and is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$100,000 for each such failure. The undersigned certifies, to the best of his or her knowledge and belief, that: 1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. 2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with these federally funded contract, subcontract, subgrant, or cooperative agreement, the undersigned shall complete and submit "Disclosure Form to Report Lobbying", in accordance with its instructions. 3. The undersigned shall require that the language of this certification be included in the award documents for all covered subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all covered subrecipients will certify and disclose accordingly.

Do you have, or do you anticipate having covered sub-awards under this transaction? Yes No

Name of Provider	Vendor ID No. or Social Security No.	Program No.
Name of Authorized Representative		Title

Signature – Authorized Representative

Date

ACKNOWLEDGEMENTS

International Way Grade Separation Design, Engineering, and Construction Management Project

26-023-AE

Issued by Port of Longview

Having carefully examined all requirements and terms and conditions identified in this Request for Qualifications (RFQ), the undersigned agrees to the following:

I/We certify, under penalty of perjury, that this is not a sham or collusive Proposal, nor made in the interest or on behalf of any person not herein named. I/We have not directly or indirectly induced or solicited any Consultant on the above work to put in a sham Proposal, nor any other person or corporation to refrain from responding. I/We have not in any manner sought by collusion to secure advantage over any other Consultants.

In preparing this proposal, I/we have not been assisted by any current or former employee of the Port of Longview whose duties relate (or did relate) to this proposal or prospective Contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.

I/We certify that we are, at the time of submitting this Proposal and shall remain throughout the period of the Contract, registered and licensed by the state of Washington to perform the type of work required under the Solicitation Documents. I/We further certify that we are skilled and regularly engaged in the professional class and type of work called for in the Solicitation Documents.

I/We understand that the Port will not reimburse me/us for any costs incurred in the preparation of this proposal or the Contract negotiation process.

I/We grant the Port the right to contact references and others who may have pertinent information regarding the ability of the Contractor and the lead staff person to perform the services contemplated by this RFQ.

I/We further agree, if our Proposal is accepted and a contract is awarded by the Port, to plan and prosecute the work with such diligence that the work and portions thereof shall be completed and ready for use within the period set forth.

I/We certify that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or in receipt of a notice or proposed debarment from any Agency. I/We agree to provide immediate notice to the Port in the event of being suspended, debarred or declared ineligible by any department or federal agency, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or Contract.

I/We certify that all of the information provided to the Port in response to this solicitation is true and correct. I/We understand that failure to complete this form in its entirety may deem our Proposal "Non-Responsive". If our business is not required to have one of the following items, we have attached a letter explaining why.

The signatory below represents that they have the authority to bind the company named below to the Proposal submitted and to any contract awarded as a result of this Solicitation. The authorized signatory acknowledges and agrees, having read and understood the entire Solicitation and the Contract, to be bound by all terms and conditions and to fulfilling the offer made in its Proposal.

Consultant Signature

Company Name

Print Name and Title

Date

U.S. DEPARTMENT OF TRANSPORTATION
GENERAL TERMS AND CONDITIONS UNDER FISCAL YEARS 2025 AND 2026
INFRASTRUCTURE FOR REBUILDING AMERICA (INFRA) PROGRAM:
MARAD PROJECTS

Revision date: April 23, 2025

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GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) (the “**IJA**”) made funds available to the United States Department of Transportation (the “**USDOT**”) for fiscal years 2025 and 2026 to carry out 23 U.S.C. 117 by providing Federal financial assistance for projects of national or regional significance. The USDOT program administering those funds is the INFRA program.

On March 25, 2024, the USDOT posted a funding opportunity at Grants.gov with funding opportunity title “INFRA Grants” and funding opportunity number NSMFHP-25-26-INFRA. The notice of funding opportunity posted at Grants.gov (the “**NOFO**”) solicited applications for Federal financial assistance under the fiscal years 2025 and 2026 INFRA program. Because the NOFO also made funding available for two other programs, DOT also collected INFRA applications under funding opportunity numbers NIPA-25-26-MEGA and RSTGP-25-26-RURAL. On October 21, 2024, the USDOT announced application selections under the NOFO for the INFRA program.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal years 2025 and 2026 INFRA program. The term “Recipient” is defined in the project-specific portion of the agreement. The project-specific portion of the agreement includes schedules A through I. The project-specific portion of the agreement may include special terms and conditions in project-specific articles.

ARTICLE 1 PURPOSE

1.1 Purpose. The purpose of this award is to fund an eligible project of national or regional significance to help achieve the goals identified at 23 U.S.C. 117(a)(2). The parties will accomplish that purpose by achieving the following objectives:

- (a) timely completion of the Project; and
- (b) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by Schedule D.

ARTICLE 2 USDOT ROLE

2.1 Division of USDOT Responsibilities.

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

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

2.2 USDOT Program Contacts.

OST INFRA Program Manager
United States Department of Transportation
Office of the Secretary
1200 New Jersey Avenue SE
Washington, DC 20590
MPDGrants@dot.gov

and

United States Department of Transportation
Maritime Administration
1200 New Jersey Ave, SE
Washington, DC 20590

**ARTICLE 3
RECIPIENT ROLE**

3.1 Statements on the Project. The Recipient states that:

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

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

- (a) it has the authority to receive Federal financial assistance under this agreement;
- (b) it has the legal authority to complete the Project;
- (c) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
- (d) not less than the difference between the total eligible project costs listed in section 3 of Schedule D and the INFRA Grant Amount listed in section 1 of Schedule D is committed to fund the Project;

- (e) 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
- (f) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 3 and in section 21.7 on behalf of the Recipient.

3.3 USDOT Reliance. The Recipient acknowledges that:

- (a) the USDOT relied on statements of fact in the Technical Application to select the Project to receive this award;
- (b) the USDOT relied on statements of fact in both the Technical Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;
- (c) the USDOT relied on statements of fact in both the Technical Application and this agreement to establish the terms of this agreement; and
- (d) the USDOT's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

3.4 Project Delivery.

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

3.5 Rights and Powers Affecting the Project.

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

3.6 Notification of Changes to Key Personnel. The Recipient shall notify all USDOT representatives who are identified in section 5 of Schedule A in writing within 30 calendar days of any change in key personnel who are identified in section 4 of Schedule A.

ARTICLE 4
AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

- 4.1 Federal Award Amount.** The USDOT hereby awards an INFRA Grant to the Recipient in the amount listed in section 1 of Schedule D as the INFRA Grant Amount.
- 4.2 Federal Funding Source and Year.**
- (a) If section 3 of Schedule F identifies the Funding Source as “Trust Fund,” then the INFRA Grant is from INFRA program funding that was made available at IIJA div. A §§ 11101(a)(5)(B) and (C).
 - (b) If section 3 of Schedule F identifies the Funding Source as “General Fund,” then the INFRA Grant is from INFRA program funding that was appropriated in IIJA div. J for fiscal years 2025 and 2026.
 - (c) If section 3 of Schedule F contains a table that lists separate amounts for “Trust Fund” and “General Fund,” then the amount listed for “Trust Fund” is from INFRA program funding that was made available at IIJA div. A § 11101(a)(5)(B) and the amount listed for “General Fund” is from INFRA program funding that was appropriated in IIJA div. J for fiscal years 2025 and 2026.
 - (d) If section 3 of Schedule F selects FY 25, FY 26, or both for funding year, this designates which year(s) of funding were awarded.
- 4.3 Federal Obligations.**
- (a) If the Federal Obligation Type identified in section 2 of schedule D is “Single,” then this agreement obligates for the budget period the amount listed in section 1 of schedule D as the INFRA Grant Amount and sections 4.3(c)–4.3(h) do not apply to this agreement.
 - (b) If the Federal Obligation Type identified in section 2 of schedule D is “Multiple,” then an amount up to the INFRA Grant Amount listed in section 1 of schedule D will be obligated with one initial obligation and one or more subsequent, optional obligations, as described in sections 4.3(c)–4.3(h).
 - (c) The Obligation Condition Table in section 2 of schedule D allocates the INFRA Grant among separate portions of the Project for the purpose of the Federal obligation of funds. The scope of each portion of the Project that is identified in that table is described in section 2 of schedule B.
 - (d) This agreement obligates for the budget period only the amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table does not list an obligation condition.
 - (e) This agreement does not obligate amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table lists an obligation

condition. The parties may obligate the amounts allocated to those portions of the Project only as described in section 4.3(f) or by modifying this agreement under article 15.

- (f) For each portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, the amount allocated in that table to that portion of the Project is obligated if the parties execute an instrument, in the form provided in Exhibit D, documenting that:
 - (1) the USDOT determines that the obligation condition listed in that table for that portion of the Project is satisfied;
 - (2) the USDOT determines that all applicable Federal requirements for obligating the amount are satisfied; and
 - (3) the Recipient states that it is not required to request a modification of this agreement under article 5.
- (g) The Recipient shall not request reimbursement of costs for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f).
- (h) INFRA program funding for this award lapses and is unavailable for obligation, by statute, after September 30, 2028 and September 30, 2029, for FY 25 and FY 26 funds, respectively.
- (i) The Recipient acknowledges that:
 - (1) the USDOT is not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f);
 - (2) any portion of the INFRA Grant that is not obligated under this section 4.3 by the statutory lapse date identified in section 4.3(h) for those funds lapse on the day after that date and becomes unavailable for the Project; and
 - (3) the USDOT may consider the failure to obligate funds by the statutory lapse date identified in section 4.3(h) for those funds to be a basis for terminating this agreement under section 10.1.

4.4 Budget Period. The Budget Period for this award begins on the date of this agreement and ends on the Budget Period end date that is listed in section 1 of Schedule C. In this agreement, “Budget Period” is used as defined at 2 CFR 200.1.

4.5 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 CFR 200.1.

ARTICLE 5 STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 5.1 Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 5 of Schedule A in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 5.1 is separate from any requirements under this article 5 that the Recipient request modification of this agreement.
- 5.2 Scope and Statement of Work Changes.** If the Project’s activities differ from the activities described in Schedule B, then the Recipient shall request a modification of this agreement to update Schedule B.
- 5.3 Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request a modification of this agreement to update Schedule C:
- (a) 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;
 - (b) a Schedule change would require the Final Budget Period of the project to continue after the Final Budget Period end date listed in section 1 of Schedule C (i.e., for projects with multiple phases, changes to the base phase budget period end date for projects with two phases, or changes to base or secondary phase budget period end dates for projects with three phases, etc. will not trigger notification/modification requirements); or
 - (c) 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 the Administering Operating Administration and document the changes in writing.

5.4 Budget Changes.

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient’s obligation under this agreement to complete the Project; and
 - (2) the USDOT will not increase the amount of this award to address any funding shortfall.

- (b) The Recipient shall request a modification of this agreement to update Schedule D if, in comparing the Project's budget to the amounts listed in section 3 of Schedule D:
 - (1) the total "Non-Federal Funds" amount decreases; or
 - (2) the total eligible project costs amount decreases.
- (c) For budget changes that are not identified in section 5.4(b), the Recipient shall follow the applicable procedures of the Administering Operating Administration and document the changes in writing.
- (d) If there are Project Cost Savings, then the Recipient may propose to the USDOT, in writing consistent with the Administering Operating Administration's requirements, to include in the Project specific additional activities that are within the scope of this award, as defined in section 1.1 and Schedule B, and that the Recipient could complete with the Project Cost Savings.

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

- (e) If there are Project Cost Savings and either the Recipient does not make a proposal under section 5.4(d) or the USDOT does not accept the Recipient's proposal under section 5.4(d), then:
 - (1) in a request under section 5.4(b), the Recipient shall reduce the Federal Share by the Project Cost Savings; and
 - (2) if that modification reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall refund to the USDOT the difference between the reimbursed costs and the revised award.

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

- (f) The Recipient acknowledges that amounts that are required to be refunded under section 5.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 CFR 200.346 and the Standards for Administrative Collection of Claims (31 CFR part 901).

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

unless the USDOT accepts that modification request and the parties modify this agreement under section 15.1.

ARTICLE 6 GENERAL REPORTING TERMS

- 6.1 Report Submission.** The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 5 of Schedule A and all USDOT contacts who are listed in section 2.2.
- 6.2 Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 6.3 Paperwork Reduction Act Notice.** Under 5 CFR 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Notwithstanding any other term of this agreement, the due date for any information collections required under this agreement, including the reporting requirements in article 7, is the later of (1) the due date stated with the requirement and (2) the 30th day after OMB approves an information collection titled “Discretionary Grants for Nationally Significant Freight and Highway Projects (FASTLANE/INFRA) Program.”

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 the USDOT a Quarterly Project Progress Report and Recertification in the format and with the content described in exhibit C. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.
- 7.2 Final Progress Reports and Financial Information.** No later than 120 days after the end of the 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 the Administering Operating Administration's award closeout procedures.

ARTICLE 8 PERFORMANCE MEASUREMENT AND REPORTING

8.1 Baseline Performance Measurement.

- (a) Before the start of construction on the Project but not earlier than one year before the start of construction on the Project, the Recipient shall collect baseline data for each performance measure that is enumerated in Schedule G.
- (b) Not later than January 31 of the calendar year that begins after the Recipient collects baseline data under section 8.1(a), the Recipient shall submit a Baseline Performance Measurement Report containing the data collected under section 8.1(a), stating the dates when the data was collected, and describing, in detail, the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is enumerated in Schedule G.

8.2 Post-construction Performance Measurement.

- (a) For each performance measure that is enumerated in Schedule G and has a quarterly measurement frequency, for each of 19 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.
- (b) For each performance measure that is that is enumerated in Schedule G and has an annual measurement frequency, the Recipient shall collect data for that performance measure on at least five separate occasions: (i) once during the three consecutive calendar quarters that begin after the Project substantial completion date; (ii) once during the fourth calendar quarter after the first collection; (iii) once during the eighth calendar quarter after the first collection; (iv) once during the twelfth calendar quarter after the first collection; and (v) once during the sixteenth calendar quarter after the first collection.
- (c) Not later than January 31 of each year that follows a calendar year during which data was collected under this section 8.2, the Recipient shall submit to the USDOT a Post-construction Performance Measurement Report containing the data collected under this section 8.2 in the previous calendar year and stating the dates when the data was collected.
- (d) 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 described in section 8.2(c) and discuss the external factor's influence on the performance measure.

8.3 Project Outcomes Report.

The Recipient shall submit to the USDOT, not later than January 31 of the year that follows the final calendar year during which data was collected under section 8.2, a Project Outcomes Report that contains:

- (1) an analysis of the impacts of the project, including a comparison of the baseline performance measurement data collected under section 8.1 with the post-construction performance measurement data that the Recipient reported in the final Post-construction Performance Measurement Report required under section 8.2(c);
- (2) for each performance measure that is enumerated in Schedule G, an analysis of the accuracy of the projected outcome listed in Schedule G; and
- (3) all data collected under sections 8.1 and 8.2.

8.4 General Performance Measurements.

For each performance measure that is enumerated in Schedule G, the Recipient shall ensure that all data collections under this article 8 are completed in a manner consistent with the description, location, and other attributes associated with that performance measure in Schedule G.

ARTICLE 9 NONCOMPLIANCE AND REMEDIES

9.1 Noncompliance Determinations.

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

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

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

9.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 9.1, the USDOT may impose a remedy, including:
 - (1) additional conditions on the award;
 - (2) any remedy permitted under 2 CFR 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to the USDOT; suspension or termination of the award; or suspension and disbarment under 2 CFR part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
- (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 9.2(a), before making a final determination of noncompliance under section 9.1. If it does so, then the notice provided under section 9.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (d) In imposing a remedy under this section 9.2 or making a public interest determination under section 9.2(c), the USDOT may elect to consider the interests of only the USDOT.
- (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 9.2 constitute a debt to the Federal Government that the USDOT may collect under 2 CFR 200.346 and the Standards for Administrative Collection of Claims (31 CFR part 901).

- ## **9.3 Other Oversight Entities.**
- Nothing in this article 9 limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 10 AGREEMENT TERMINATION

10.1 USDOT Termination.

- (a) The USDOT may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
 - (1) the Recipient fails to obtain or provide any non-INFRA Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with Schedule D;
 - (2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient fails to meet that milestone by six months after the date listed in section 2 of Schedule C;
 - (3) the Recipient fails to meet a milestone listed in section 3 of Schedule C by the deadline date listed in that section for that milestone;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the project schedule in Schedule C even if it is beyond the reasonable control of the Recipient;
 - (5) circumstances cause changes to the Project that the USDOT determines are inconsistent with the USDOT's basis for selecting the Project to receive an INFRA Grant; or
 - (6) the USDOT determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
- (c) This section 10.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 9.2.
- (d) The Recipient may request that the USDOT terminate the agreement under this section 10.1.

10.2 Closeout Termination.

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

10.3 Post-Termination Adjustments. The Recipient acknowledges that under 2 CFR 200.345–200.346, termination of the agreement does not extinguish the USDOT's

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

10.4 Non-Terminating Events.

- (a) The end of the Budget Period described under section 4.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (b) The end of the Period of Performance described under section 4.5 does not terminate this agreement or the Recipient's obligations under this agreement.
- (c) The cancellation of funds under section 14.2 does not terminate this agreement or the Recipient's obligations under this agreement.

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

ARTICLE 11 MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

11.1 Recipient Monitoring and Record Retention.

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

11.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 11.2(a) in accordance with a financial management system that meets the requirements of 2 CFR 200.302–200.307, 2 CFR 200 subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.

(c) The Recipient shall separately identify expenditures under the fiscal years 2023 and 2024 INFRA program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:

- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 CFR 200 subpart F, including “FY 2023-24” 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 2023-24” in column c (“Additional Award Identification”).

11.3 Internal Controls. The Recipient shall establish and maintain internal controls as required under 2 CFR 200.303.

11.4 USDOT Record Access. The USDOT may access Recipient records related to this award under 2 CFR 200.337.

11.5 Oversight Responsibilities. This award is subject to the oversight requirements of title 23, United States Code.

ARTICLE 12 CONTRACTING AND SUBAWARDS

12.1 Minimum Wage Rates. The Recipient shall include, in all contracts in excess of \$2,000 for work on the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with 23 U.S.C. 113, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

12.2 Buy America.

- (a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
- (b) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (c) Under 2 CFR 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 CFR 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

- 12.3 Small and Disadvantaged Business Requirements.** The Recipient shall comply with 49 CFR part 26, including any amendments thereto. For the purpose of 49 CFR 26.3, that part applies to the Recipient.
- 12.4 Engineering and Design Services.** As applicable, the Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. 1101-1104 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT.
- 12.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 CFR 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 12.6 Pass-through Entity Responsibilities.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 CFR parts 200 and 1201, including 2 CFR 200.331–200.333.
- 12.7 Subaward and Contract Authorization.** [Reserved]

ARTICLE 13 COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 13.1 Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated under section 4.3. The Recipient acknowledges that the USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 13.2 Projects Costs.** This award is subject to the cost principles at 2 CFR 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- 13.3 Timing of Project Costs.**
- (a) The Recipient shall not charge to this award costs that are incurred after the Budget Period.

- (b) Except as permitted under section 13.3(d)–(e), the Recipient shall not charge to this award costs that were incurred before the date of this agreement.
- (c) This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this award for the Project. Section 5 of Schedule D is the exclusive USDOT approval of costs incurred before the date of this agreement.
- (d) If section 5 of Schedule D identifies a pre-award approval under 2 CFR 200.458, then the Recipient may charge to this award, for payment from the INFRA Grant or other Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the Budget Period.
- (e) If the USDOT approves a request from the Recipient under 2 CFR 200.458 and section 5 of Schedule D describes that approval, then the Recipient may charge to this award, for payment from non-Federal amounts, costs that were incurred before the date of this agreement, were consistent with that approval, and would have been allowable if incurred during the Budget Period.

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

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

13.6 Timing of Payments to the Recipient.

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

13.7 Payment Method.

- (a) If the USDOT Payment System identified in section 6 of Schedule A is “Delphi eInvoicing 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/post-award-reporting-forms.html/>. 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, the USDOT provides the following additional information, which may change after execution of this agreement:

- (1) The Recipient may access the training from the USDOT “Delphi eInvoicing System” webpage at <https://einvoice.esc.gov>. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training.
 - (2) 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 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) The USDOT may deny a payment request that is not submitted using the method identified in this section 13.7.

13.8 Information Supporting Expenditures.

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

13.9 Reimbursement Request Timing Frequency.

- (a) If the USDOT 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, the USDOT may deny the request for being untimely.
- (b) If the USDOT Payment System identified in section 6 of Schedule A is “Delphi eInvoicing System,” then the Recipient shall not request reimbursement more frequently than monthly.

ARTICLE 14 LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

14.1 Liquidation of Recipient Obligations.

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the Period of Performance or (2) the statutory funds cancellation date identified in section 14.2.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 CFR 200.344–200.346.

14.2 Funds Cancellation.

- (a) INFRA program funding that was made available at IJJA div. A §§ 11101(a)(5)(B) and (C) remains available until expended.
- (b) INFRA program funding that was appropriated in IJJA div. J for fiscal years 2025-26, is canceled by statute after September 30, 2033 and September 30, 2034, respectively, and then unavailable for any purpose, including adjustments.
- (c) Section 4.2 identifies the specific source or sources of funding for this award.

ARTICLE 15 AGREEMENT MODIFICATIONS

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

15.2 Unilateral Contact Modifications.

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

15.3 USDOT Unilateral Modifications.

- (a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.

- (b) To unilaterally modify this agreement under this section 15.3, the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

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

ARTICLE 16 RESERVED

ARTICLE 17 CIVIL RIGHTS AND TITLE VI

17.1 Civil Rights and Title VI.

- (a) The purpose of sections 17.1(b)–17.1(c) is to ensure that the Recipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 CFR part 21, including any amendments thereto.
- (b) If the Recipient is an Existing Recipient, the Recipient shall submit to the USDOT either:
 - (1) not later than one month after the date of this agreement, documentation showing that the Recipient has complied with all reporting requirements under the Administering Operating Administration’s implementation of Title VI; or
 - (2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.
- (c) If the Recipient is “New,” then the Administering Operating Administration completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C., including any amendments or updates thereto, before entering this agreement.
- (d) In this section 17.1:
 - (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).
 - (2) “Existing” means a prior recipient of DOT federal financial assistance since the publication of DOT Order 1000.12C on June 11, 2021.

(3) “New” means a recipient who has not received DOT federal financial assistance since the publication of DOT Order 1000.12C on June 11, 2021.

ARTICLE 18 LABOR AND WORK

18.1 Labor and Work. Consistent with Executive Order 14025, “Worker Organizing and Empowerment” (Apr. 26, 2021), Schedule H documents the consideration of job quality and labor rights, standards, and protections related to the Project.

ARTICLE 19 RESERVED

ARTICLE 20 CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

20.1 Critical Infrastructure Security and Resilience.

- (a) Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient shall consider physical and cyber security and resilience in planning, design, and oversight of the Project.
- (b) If the Security Risk Designation in section 6 of Schedule F is “Elevated,” then, not later than two years after the date of this agreement, the Recipient shall submit to the USDOT a report that:
 - (1) identifies a cybersecurity Point of Contact for the transportation infrastructure being improved in the Project;
 - (2) summarizes or contains a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project;
 - (3) summarizes or contains a cybersecurity incident response plan for the transportation infrastructure being improved in the Project;
 - (4) documents the results of a self-assessment of the Recipient’s cybersecurity posture and capabilities; and

- (5) describes any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 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 CFR 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; and Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.
- (b) Pursuant to Section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination And Restoring Merit-Based Opportunity*, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
- (c) Pursuant to Section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination And Restoring Merit-Based Opportunity*, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.
- (d) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

21.3 Federal Freedom of Information Act.

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

21.4 History of Performance. Under 2 C.F.R 200.206, any Federal 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 26, this agreement includes the following additional terms as integral parts:
 - (1) Appendix A to 2 CFR part 25: System for Award Management and Universal Identifier Requirements;
 - (2) Appendix A to 2 CFR part 170: Reporting Subawards and Executive Compensation;
 - (3) 2 CFR part 175: Award Term for Trafficking in Persons; and
 - (4) Appendix XII to 2 CFR part 200: Award Term and Condition for Recipient Integrity and Performance Matters.
- (b) The Recipient shall comply with:
 - (1) 49 CFR part 20: New Restrictions on Lobbying;
 - (2) 49 CFR part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, including any amendments thereto;
 - (3) 49 CFR part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
 - (4) Subpart B of 49 CFR part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

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

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

ARTICLE 22 ASSIGNMENT

22.1 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 23 WAIVER

23.1 Waivers.

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

ARTICLE 24 ADDITIONAL TERMS AND CONDITIONS

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

24.2 Effect of Large or Small Designation.

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

- (c) The Recipient states that the reasonably anticipated eligible costs of the Project on the date of this agreement, including costs incurred before that date, are consistent with the USDOT determination described in section 24.3(a)–(b).

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

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

24.4 Use of Limited Non-Highway Funds.

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

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

24.6 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 CFR 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 CFR 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 CFR 24 subparts D–E.
- (c) The Recipient shall make available to displaced persons, comparable replacement dwellings in accordance with 49 CFR 24.

24.7 Equipment Disposition.

- (a) In accordance with 2 CFR 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project:
 - (1) if the entity that acquired the equipment is a State, the State shall dispose of that equipment in accordance with State laws and procedures;
 - (2) if the entity that acquired the equipment is an Indian Tribe, the Indian Tribe shall dispose of that equipment in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in 2 CFR 200.313; and
 - (3) if the entity that acquired the equipment is neither a State nor an Indian Tribe, that entity shall request disposition instructions from the Administering Operating Administration.
- (b) In accordance with 2 CFR 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 CFR 200.310–200.316 and 2 CFR 1201.313.
- (c) The Recipient shall ensure compliance with this section 24.8 for all tiers of subawards under this award.

24.8 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) the Administering Operating Administration 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) the Administering Operating Administration provides the Recipient with written notice that the environmental review process is complete.
- (b) The Recipient acknowledges that:
 - (1) the Administering Operating Administration's actions under section 24.9(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Administering Operating Administration; and
 - (2) applicable environmental statutes and regulation 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 15.1 for consistency with the selected build alternative; or
 - (2) if the USDOT determines that the condition at section 10.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 10.1(a)(5).
- (e) The Recipient shall complete any mitigation activities described in the environmental document or 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 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.

ARTICLE 25 MANDATORY AWARD INFORMATION

25.1 Information Contained in a Federal Award. For 2 CFR 200.211:

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 27.2;
- (2) the “Assistance Listings Number” is 20.934 and the “Assistance Listings Title” is “Nationally Significant Freight and Highway Projects”; and
- (3) this award is not for research and development.

25.2 Federal Award Identification Number. The Federal Award Identification Number is listed in section 8 of Schedule A.

25.3 Recipient’s Unique Entity Identifier. The Recipient’s Unique Entity Identifier, as defined at 2 CFR 25.400, is listed in section 2 of Schedule A.

ARTICLE 26 CONSTRUCTION AND DEFINITIONS

26.1 Schedules. This agreement includes the following Schedules as integral parts:

Schedule A	Administrative Information
Schedule B	Project Activities
Schedule C	Award Dates and Project Schedule
Schedule D	Award and Project Financial Information
Schedule E	Changes from Application
Schedule F	INFRA Program Designations
Schedule G	Performance Measures
Schedule H	Labor and Work
Schedule I	Safety

26.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to MARAD Grant Agreements Under Fiscal Years 2025 and 2026 INFRA Grant Program,” dated April 23, 2025, and available at <https://www.transportation.gov/grants/infra-grant-implementation>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Additional Standard Terms
Exhibit C	Quarterly Project Progress Reports and Recertifications: Format and Content
Exhibit D	Form for Subsequent Obligation of Funds

26.3 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 26.1 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 26.1.

(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.

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

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

“**General Terms and Conditions**” means this document, including articles 1–7.

“Program Statute” means the collective statutory text:

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

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

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

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

ARTICLE 27 AGREEMENT EXECUTION AND EFFECTIVE DATE

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