

# Dane County Contract Cover Sheet

Revised 01/2025

Res 376  
significant

Dept./Division	Dane County Department of Administration- Public Works Engineering		
Vendor Name	KL Engineering, Inc.	MUNIS #	4223
Brief Contract Title/Description	AWARD OF AGREEMENT FOR THE PUBLIC ELECTRIC VEHICLE (EV) CHARGING INFRASTRUCTURE AT MULTIPLE SITES WITHIN DANE COUNTY, WI		
Contract Term	04/01/25 - 12/31/25		
Contract Amount	\$898,000.00		

Contract # Admin will assign	15782
Type of Contract	
<input checked="" type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Grant
<input type="checkbox"/>	Other

Department Contact Information		Vendor Contact Information	
Name	Brandon Braithwaite	Name	Mike Scarmon
Phone #	608.279.8934	Phone #	608.310.3813
Email	Braithwaite.Brandon@danecounty.gov	Email	Mike.Scarmon@klengineering.com
Purchasing Officer	Pete Patten		

Purchasing Authority	<input type="checkbox"/> \$13,000 or under – Best Judgment (1 quote required)		
	<input type="checkbox"/> Between \$13,000 – \$45,000 (\$0 – \$25,000 Public Works) (3 quotes required)		
	<input checked="" type="checkbox"/> Over \$45,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP #	325001
	<input type="checkbox"/> Bid Waiver – \$45,000 or under (\$25,000 or under Public Works)		
	<input type="checkbox"/> Bid Waiver – Over \$45,000 (N/A to Public Works)		
	<input type="checkbox"/> Cooperative Contract	Contract Name & #	
<input type="checkbox"/> N/A - Grants, Leases, Intergovernmental, Property Purchase/Sale, Other			



MUNIS Req.	Req #	1442	Org: OECC	Obj: 30541	Proj:	\$ 898,000.00
			Org:	Obj:	Proj:	\$
	Year	2025	Org:	Obj:	Proj:	\$

Budget Amendment	
<input type="checkbox"/>	A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

Resolution Required if contract exceeds \$100,000	<input type="checkbox"/> Contract does not exceed \$100,000		
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 – resolution required.	Res #	376
	<input type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	Year	2024

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input type="checkbox"/> No modifications.	<input type="checkbox"/> Modifications and reviewed by:	<input type="checkbox"/> Non-standard Contract

APPROVAL	
Dept. Head / Authorized Designee	
Draper, Todd	Digitally signed by Draper, Todd Date: 2025.03.21 10:27:47 -05'00'

APPROVAL – Contracts Exceeding \$100,000	
Director of Administration	Corporation Counsel
	

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
DOA:	Date In: 3/21/25	Date Out: _____	<input checked="" type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

## Goldade, Michelle

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**From:** Goldade, Michelle  
**Sent:** Tuesday, March 25, 2025 11:59 AM  
**To:** Hicklin, Charles; Patten (Purchasing), Peter; Gault, David; Cotillier, Joshua  
**Cc:** Stavn, Stephanie; Oby, Joe  
**Subject:** Contract #15782  
**Attachments:** 15782.pdf

Tracking:	Recipient	Read	Response
	Hicklin, Charles	Read: 3/25/2025 12:21 PM	Approve: 3/25/2025 4:52 PM
	Patten (Purchasing), Peter		Approve: 3/25/2025 12:32 PM
	Gault, David	Read: 3/25/2025 1:08 PM	Approve: 3/25/2025 1:09 PM
	Cotillier, Joshua		Approve: 3/25/2025 1:17 PM
	Stavn, Stephanie	Read: 3/25/2025 3:33 PM	
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #15782  
Department: Public Works  
Vendor: KL Engineering  
Contract Description: Public Electric Vehicle Charging Infrastructure at multiple sites (Res 376)  
Contract Term: 4/1/25 – 12/31/25  
Contract Amount: \$898,000.00

Thanks much,  
Michelle

*Michelle Goldade*

Administrative Manager  
Dane County Department of Administration  
Room 425, City-County Building  
210 Martin Luther King, Jr. Boulevard  
Madison, WI 53703  
PH: 608/266-4941  
Fax: 608/266-4425  
TDD: Call WI Relay 711

Please note: I am currently working a modified schedule. I work in office Mondays and Wednesdays and work remotely Tuesday, Thursdays and Fridays.

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# AWARD OF AGREEMENT FOR THE PUBLIC ELECTRIC VEHICLE (EV) CHARGING INFRASTRUCTURE AT MULTIPLE SITES WITHIN DANE COUNTY, WI

The Department of Administration-Public Works Engineering Division reports the receipt of Proposals for Public Electric Vehicle (EV) Charging Infrastructure, Multiple Sites within Dane County, WI; Project# 325001.

A complete tabulation is on file at the Department of Administration-Public Works Engineering Division.  
An Agreement has been negotiated with:

KL Engineering, Inc.  
5400 King James Way, Suite 200  
Madison, WI 53719

Total: \$898,000.00

The Public Works staff finds the amount to be reasonable and recommends the Agreement be awarded to KL Engineering, Inc.

There are sufficient funds available for this project. This project is part of the Office of Energy & Climate Change's Charge Up Dane County program, funded by the Federal Highway Administration (FHWA) of the US Department of Transportation grant; no County capital funds are being used for this project.

**NOW, THEREFORE, BE IT RESOLVED** that the Agreement be awarded to KL Engineering, Inc. in the amount of \$898,000.00;

**BE IT FURTHER RESOLVED** that the County Executive and the County Clerk be authorized and directed to sign the Agreement; and

**BE IT FINALLY RESOLVED** that both the Office of Energy & Climate Change and Department of Administration-Public Works Engineering Division be directed to ensure complete performance of the Agreement.

**COUNTY OF DANE  
PROFESSIONAL SERVICES AGREEMENT  
SIGNATURE PAGE**

Date: 3/20/25

Project No.: 325001

Agreement No.: 15782

**THIS AGREEMENT** is between the **COUNTY** of Dane, by its Department of Administration- Public Works Engineering Division, hereinafter referred to as “**COUNTY**”, and KL Engineering, Inc., 5400 King James Way, Suite 200, Madison, WI 53719, hereinafter called the “**CONSULTANT**”.

**WITNESSETH**

**WHEREAS, COUNTY** proposes securing consulting services for a Project described as follows:

Public EV Charging Infrastructure

**WHEREAS, COUNTY** deems it advisable to engage the services of the **CONSULTANT** to furnish professional services in connection with this Project, and

**WHEREAS, COUNTY** has authority to engage such services, and

**WHEREAS, the CONSULTANT** represents that it is in compliance with the applicable Wisconsin Statutes relating to the registration of architects and professional engineers and designers, and has agreed to furnish professional services for **COUNTY**,

**NOW, THEREFORE**, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the following pages, which are annexed hereto and made a part hereof.

**IN WITNESS WHEREOF, COUNTY** and the **CONSULTANT** have executed this Agreement as of the above date.

**KL Engineering, Inc.**

 03/20/25  
Signature Date

**Michael D. Scarmon**

Printed Name

**Director**

Title

**39-1708153**

Federal Employer Identification Number (FEIN)

**COUNTY OF DANE**

Melissa Agard, County Executive Date

Scott McDonell, County Clerk Date

**COUNTY OF DANE  
PROFESSIONAL SERVICES AGREEMENT  
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# PROFESSIONAL SERVICES AGREEMENT- STANDARD TERMS & CONDITIONS

## ARTICLE 1: SCOPE OF AGREEMENT

- A. This Agreement between **COUNTY** and the person or firm, duly licensed under the laws and in accordance with the regulations of the State of Wisconsin, hereinafter referred to as the “**CONSULTANT**” shall be governed by the following Terms and Conditions.
- B. The **CONSULTANT** shall provide technical and professional services under this Agreement. The Terms and Conditions of this Agreement shall apply to modifications made to this Agreement and shall apply to both the services rendered in the creation of the design and to the additional services called for in carrying out the design.
- C. The **CONSULTANT** shall serve as the professional technical advisor and **CONSULTANT** to **COUNTY** in matters arising out of or incidental to the performance of this Agreement and in that capacity, the **CONSULTANT** shall not have a contractual duty or responsibility to any other person or party or individual regarding the services under this Agreement, except as that duty may arise under the laws of the State of Wisconsin. The **CONSULTANT** is not an agent of the **COUNTY** within the meaning of s. 893.80 or 895.46, Wis. Stats.
- D. Professional services performed or furnished under this Agreement shall be based on the care and skill ordinarily used by members of the profession involved, who practice under the authority of and who are governed by the license issued under the Wisconsin Statutes and the Wisconsin Administrative Code. The standard of care for architectural and engineering services under this Agreement shall include designing buildings, structures and / or related infrastructural systems that comply with all applicable building and safety codes.
- E. By accepting this Agreement, the **CONSULTANT** represents possession of the necessary skill and other qualifications to perform work under this Agreement and is familiar with the practices in the locality where such services and work shall be performed.
- F. The **CONSULTANT** shall review and become familiar with the current Division 00 & 01 requirements utilized by **COUNTY** in construction contracts and shall provide services and work, consistent with such requirements, so that the Contractor’s schedule is not negatively impacted.
- G. The **CONSULTANT** shall be professionally responsible for work performed under this Agreement. Upon written approval of **COUNTY**, the **CONSULTANT** may subcontract work to an approved **CONSULTANT** under this Agreement, to the specific extent authorized by **COUNTY**. The authorization to subcontract shall not relieve the **CONSULTANT** of professional or contractual responsibility for any work performed or delivered under this Agreement. The authorization to subcontract shall not be construed to create any contractual relationship between **COUNTY** and such **CONSULTANT**.
- H. Subcontracts for services under this Agreement shall provide that work performed under such subcontract, shall be subject to provisions of this Agreement and shall also provide that any professional duty or responsibility pertaining thereto shall be accomplished to the benefit of **COUNTY**. Upon request, an electronic copy of each such subcontract for which **COUNTY** approval is granted shall be furnished to **COUNTY**.
- I. The **CONSULTANT** may substitute **CONSULTANT**s or professional staff under this Agreement only to the specific extent authorized by **COUNTY** in writing.
- J. In the performance of this Agreement, the **CONSULTANT** shall become familiar with and perform such services in accordance with the specifications set forth in the Request for Proposals document. The **COUNTY** reserves the right to update **COUNTY** Master Specifications Division 00 and Division 01 at any time, including after the signing date of this Agreement. The **CONSULTANT** shall use and conform to the most current **COUNTY** Master Specifications Division 00 and Division 01 available at the time of Final

Review Documents and the **CONSULTANT** shall not be eligible for a change order based upon alterations to said **COUNTY** Master Specifications Division 00 and Division 01 occurring after the date of Agreement signing.

K. For this project the following terms will be in use:

1. The Project: The entirety of what is required to conceive, design, build, commission, start-up & troubleshoot the work for which this RFP and any subsequent RFB(s) are published.
2. Project Budget: The total amount of funds the **COUNTY** has allocated for the Project. This includes contingencies, fees, costs for design services, commissioning services, furniture, fixtures and equipment (FF&E) expenditures and the Construction Budget.
3. Construction Budget: The portion of the Project Budget specifically allocated for construction services, or the accepted bid amount including any alternate bids.
4. Construction Opinion of Probable Cost: The **CONSULTANT**'s cost estimate for the Construction Budget before any bids are received.
5. Project Planning Team: Dane **COUNTY** staff from respective department (OECC department) and Department of Administration- Public Works Engineering Division, the architect / engineering design team (A/E) & the commissioning provider (CxP) if applicable. Occasionally, others may join or provide input to this team.
6. Project Committee (if applicable) : A group of individuals selected by the Chair of the respective Committee. The **CONSULTANT** shall be present & provide input for the meetings of this group.

## ARTICLE 2: COUNTY'S RESPONSIBILITIES

- A. **COUNTY** will determine the Project scope for which the professional design services are required and will fully cooperate in achieving completion of that work.
- B. **COUNTY** will establish an internal operating procedure for timely and proper performance of any **COUNTY** duty required to fulfill the needs of the Project.
- C. **COUNTY** will provide available information regarding the requirements for the Project, which set forth **COUNTY**'s objectives for program, schedule and overall Project Budget. **COUNTY** will make available to the **CONSULTANT** data or documents known to **COUNTY** or requested by the **CONSULTANT**, which may be needed for the fulfillment of the professional responsibility of the **CONSULTANT**. Documents provided by **COUNTY** shall not relieve the **CONSULTANT** from the responsibility for conducting a field survey to verify existing conditions as specified herein.
- D. **COUNTY** will communicate to the **CONSULTANT** the format of the documents required to be submitted.
- E. **COUNTY** will examine documents submitted by the **CONSULTANT** and will render decisions regarding them promptly, to avoid unreasonable delay in the progress and sequence of the **CONSULTANT**'s work. **COUNTY** will coordinate review comments from the Department of Administration- Public Works Engineering Division and **COUNTY** staff prior to issuance to the **CONSULTANT**.
- F. **COUNTY** will distribute Construction Documents and any necessary addenda to prospective bidders and conduct the bid opening for the Project.
- G. **COUNTY** will prepare and process the Agreements between **COUNTY** and **CONSULTANT**, and between **COUNTY** and construction contractor(s).
- H. Unless otherwise specified in this Agreement, **COUNTY** will arrange for services of a testing laboratory to furnish structural, chemical, mechanical and other laboratory tests, inspections and reports as required by law or deemed necessary by **COUNTY**.



## ARTICLE 3: ACCOUNTING RECORDS

- A. Records of the **CONSULTANT's** direct personnel, **CONSULTANTs**, and reimbursable expenses pertaining to the Project shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and shall be available to **COUNTY** or an authorized representative throughout the term of this Agreement and for at least three (3) years after final payment to the **CONSULTANT**.

## ARTICLE 4: TERMINATION OF AGREEMENT

- A. This Agreement may be terminated by **COUNTY** without cause upon ten (10) calendar days written notice to the **CONSULTANT**. In the event of termination, the **CONSULTANT** will be paid fees for services performed to termination date, reimbursable expenses then due, and termination expenses as approved by **COUNTY**. Work performed prior to the date of termination shall be in accordance with the terms and conditions of this Agreement. Upon termination, the results of such work shall immediately be turned over to the **COUNTY** Project Manager prior to further payment by **COUNTY**.
- B. In the event the Agreement between the **CONSULTANT** and any **CONSULTANT** on this Project is terminated, the results of work by that **CONSULTANT** shall immediately be turned over to the **CONSULTANT**.

## ARTICLE 5: OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

- A. All reports, drawings, specifications, renderings, models, details, and other such documents prepared by the **CONSULTANT** or any **CONSULTANT** pursuant to this Agreement shall become the property of **COUNTY** on completion and acceptance of any of the **CONSULTANT's** work, or upon termination of the Agreement, and shall be delivered to **COUNTY** upon request.
- B. **COUNTY** may use documents prepared under this Agreement for informational purposes without additional compensation to the **CONSULTANT**. If **COUNTY** uses or modifies documents without involvement or written consent of the **CONSULTANT** or its SUBCONSULTANT(s), **COUNTY** shall remove name and signatures of the **CONSULTANT** or its SUBCONSULTANT(s) from documents prior to such use or modification. Any such use or modification shall be at sole risk of **COUNTY** and without liability for the **CONSULTANT** or its SUBCONSULTANT(s).
- C. Specifications and isolated, detail drawings inherent to the architectural/engineering design of the Project, whether provided by the **COUNTY** or generated by the **CONSULTANT**, shall be available for future use by the parties to this Agreement and other parties, each at their own risk.
- D. Confidential Information. "Confidential Information" shall mean any and all information, technical data and related material disclosed or made available by the **COUNTY** to the **CONSULTANT** or their officers, directors, employees, SUBCONSULTANTs, subcontractors, contractors, representatives, or agents that is (a) not generally known to the public, and (b) identified as confidential, or, to a reasonable person, would be expected to be confidential due to its character and nature, including, but not limited to: financial information or projections; contract details; costs; pricing; designs, specifications and uses of products and services; product research; trade secrets; developments; inventions; processes; equipment settings; operational parameters; facilities; engineering techniques; data, know-how, or formats; software; business and strategic plans; business opportunities; employees; and other significant and valuable business information.
  - 1. Disclosure to Subcontractors. **CONSULTANT** shall maintain Confidential Information in the strictest confidence and shall only disclose information to the extent necessary. Prior to the limited disclosure of confidential information to SUBCONSULTANTs or agents, the **CONSULTANT** shall obtain the written agreement of such SUBCONSULTANTs to be bound by confidentiality.



2. Ownership of Information. All right, title and interest in and to the Confidential Information shall be and remain vested in the **COUNTY**. **CONSULTANT** shall not be granted any license or right of any kind with respect to the Confidential Information, other than to use the Confidential Information for the limited purposes of the Project.
3. Disclosure Required by Law. If the **CONSULTANT** is requested or required by law (by deposition, interrogatories, subpoenas, civil investigative demand or similar process) to disclose any Confidential Information or the existence of negotiations between the parties, the **CONSULTANT** shall, unless prohibited by law, promptly notify the **COUNTY** of such request.

## ARTICLE 6: LIABILITY- HOLD HARMLESS AND INDEMNIFICATION

- A. **CONSULTANT** shall indemnify and hold harmless **COUNTY**, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which **COUNTY**, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of the **CONSULTANT** furnishing the services required to be provided under this Agreement, but only to extent caused or resulting from intentional or negligent acts of the **CONSULTANT** or its SUBCONSULTANT(s) and provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused or resulting from the acts or omissions of **COUNTY**, its agencies, boards, commissions, officers, employees or representatives. The obligations of the **CONSULTANT** under this paragraph shall survive the expiration or termination of this Agreement.

## ARTICLE 7: PROFESSIONAL LIABILITY INSURANCE

- A. The **CONSULTANT** and its **CONSULTANT**s retained under the terms of this Agreement shall procure and maintain a professional liability insurance policy with at least \$1,000,000 in coverage that provides for payment of the insured's liability for errors, omissions or negligent acts arising out of the performance of the professional services required under this Agreement. The **CONSULTANT** shall provide up-to-date, accurate professional liability information on the **CONSULTANT**'s Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Upon request by **COUNTY**, the **CONSULTANT** shall furnish **COUNTY** with a Certificate of Insurance showing the type, amount, deductible, effective date and date of expiration of such policy. Such certificate shall also contain substantially the following statement: "The insurance covered by this certificate shall not be canceled, the coverage changed or reduced by endorsement, by the insurance company, except after thirty (30) calendar days written notice has been received by **COUNTY**." The **CONSULTANT** shall not cancel or materially alter this coverage without prior written approval by **COUNTY**. The **CONSULTANT** shall be responsible for **CONSULTANT**s maintaining professional liability insurance during the life of their Agreement.

## ARTICLE 8: OTHER INSURANCE

- A. The **CONSULTANT** and its **CONSULTANT**s retained under terms of this Agreement shall:
  1. Maintain Worker's Compensation Insurance:
    - a. Procure and maintain Worker's Compensation Insurance as required by State of Wisconsin Statutes for all of the **CONSULTANT**'s and **CONSULTANT**'s employees engaged in work associated with the Project under this Agreement.
    - b. Maintain Employer's Liability Insurance with a policy limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Insurance may be met by a combination of primary and excess coverage.

2. Procure and maintain during the life of this Agreement, and until one year after the completion of this Agreement, Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence, \$1,000,000 general aggregate, combined single limit for bodily injury, personal injury, and property damage. Such coverage shall be of the “occurrence” type form and shall include the employees of the **CONSULTANT** as insureds.
3. Procure and maintain Commercial Automobile Liability Insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Insurance may be met by a combination of primary and excess coverage.
4. Provide an insurance certificate indicating the above Commercial Liability Insurance and property damage coverage, countersigned by an insurer licensed to do business in Wisconsin, covering and maintained for the period of the Agreement. Upon request by **COUNTY**, the insurance certificate is to be presented on or before execution of the Agreement.

## ARTICLE 9: MISCELLANEOUS PROVISIONS

- A. **CONSULTANT** warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so.
- B. Legal Relations: The **CONSULTANT** shall comply with and observe federal and state laws and regulations and local zoning ordinances applicable to this Project and in effect on the date of this Agreement.
- C. Approvals or Inspections: None of the approvals or inspections performed by **COUNTY** shall be construed or implied to relieve the **CONSULTANT** from any duty or responsibility it has for its professional performance, unless **COUNTY** formally assumes such responsibility in writing from **COUNTY** so stating that the responsibility has been assumed.
- D. Successors, Subrogees and Assigns: **COUNTY** and **CONSULTANT** each bind themselves, their partners, successors, subrogees, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, subrogees, assigns and legal representatives of such other party with respect to covenants of this Agreement.
- E. Claims: The **CONSULTANT**'s project manager will meet with **COUNTY**'s Project Manager to attempt to resolve claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof. Issues not settled are to be presented in writing to the **COUNTY** Director of the Department of Administration- Public Works Engineering Division for review and resolution. The decision of the Director of the Department of Administration- Public Works Engineering Division shall be final. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane **COUNTY**, Wisconsin.
- F. Amendment of Agreement: This Agreement may be amended in writing by both **COUNTY** and **CONSULTANT**.
- G. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane **COUNTY** Circuit Court.
- H. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

- I. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.
- J. Execution: The parties agree that execution of this document may be made by electronic signatures. The parties may make electronic signatures by typing the name of the authorized signature followed by the words, “electronically signed” or by any other electronic means representing an authorized signature by **CONSULTANT**. **CONSULTANT** shall ensure that only authorized persons may affix electronic signatures to this Agreement and **COUNTY** may rely that the electronic signature provided by **CONSULTANT** is authentic.
  - 1. This Agreement has no effect until signed by both parties. The submission of this Agreement to **CONSULTANT** for examination does not constitute an offer. **CONSULTANT** warrants that the persons executing this Agreement on its behalf are authorized to do so.
  - 2. This Agreement, and any amendment or addendum relating to it, may be transmitted by legible facsimile reproduction or by scanned legible electronic PDF copy and utilized in all respects as an original, wet-inked manually executed document. Further, this Agreement and any amendment or addendum thereto, may be stored and reproduced by each party electronically, photographically, by photocopy or other similar process, and each party may at its option destroy any original document so reproduced. All parties hereby stipulate that any such legible reproduction shall be admissible in evidence as the original itself in any judicial, arbitration or administrative proceeding whether or not the original is in existence and whether or not each party made such reproduction in the regular course of business. This provision does not apply to the service of notices under this Agreement.

## ARTICLE 10: NONDISCRIMINATION IN EMPLOYMENT

- A. During the term of this Agreement, **CONSULTANT** agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). **CONSULTANT** agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases and exceptions shall be permitted only to the extent allowable in state or federal law.
- B. Civil Rights Compliance:
  - 1. If **CONSULTANT** has twenty (20) or more employees and receives \$20,000 in annual contracts with **COUNTY**, the **CONSULTANT** shall submit to **COUNTY** a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. **CONSULTANT** shall also file an Affirmative Action (AA) Plan with **COUNTY** in accordance with the requirements of Chapter 19 of the Dane **COUNTY** Code of Ordinances. **CONSULTANT** shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by **COUNTY**. If an approved plan has been received during the previous calendar year, a plan update is acceptable. The plan may cover a two-year period. If **CONSULTANT** has less than twenty (20)

employees, but receives more than \$20,000 from the **COUNTY** in annual contracts, it may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If **CONSULTANT** submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by **COUNTY**, a verification of acceptance by the State of **CONSULTANT**'s Plan is sufficient.

2. **CONSULTANT** agrees to comply with the **COUNTY**'s civil rights compliance policies and procedures. **CONSULTANT** agrees to comply with civil rights monitoring reviews performed by the **COUNTY**, including the examination of records and relevant files maintained by the **CONSULTANT**. **CONSULTANT** agrees to furnish all information and reports required by the **COUNTY** as they relate to affirmative action and non-discrimination. **CONSULTANT** further agrees to cooperate with **COUNTY** in developing, implementing, and monitoring corrective action plans that result from any reviews.
3. **CONSULTANT** shall post the Equal Opportunity Policy, the name of **CONSULTANT**'s designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to **COUNTY**'s policies and procedures and made available in languages and formats understandable to applicants, clients and employees. **CONSULTANT** shall supply to **COUNTY**'s Contract Compliance Specialist upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.
4. **CONSULTANT** shall provide copies of all announcements of new employment opportunities to **COUNTY**'s Contract Compliance Specialist when such announcements are issued.

## Contract Assumptions and Scope of Services

### General Overview

- A. The **CONSULTANT** shall provide services in each of the following phases:
- Activity 1: Setting Framework
  - Activity 2: Site Feasibility Phase
  - Activity 3: Concept Design & NEPA
- B. Refer to the appropriate Section for detailed information regarding communication protocols and meeting expectations for each Phase of this Project. Assume meetings are one (1) hour in length, unless otherwise noted.
- C. An assigned **COUNTY** Project Manager will be the **CONSULTANT**'s contact in securing **COUNTY** direction and for arranging the necessary meetings with **COUNTY** or other **COUNTY** Departments and obtaining the approvals required by **COUNTY**.
- D. The **CONSULTANT** shall create a log of all **COUNTY** and **CONSULTANT** generated design changes resulting from meetings and communications from **COUNTY**. Keep this log throughout the entire design process and submit it to **COUNTY** every two (2) months.
- E. The **CONSULTANT** shall facilitate a site investigation(s) for the purpose of identifying conditions at the site which might adversely affect the achievement of the proposed design.
- F. The term “written” or “in writing” may be either electronic or hard copy documentation, unless otherwise stated or directed by **COUNTY**.
- G. Document Review and Submittals (Drawings, Specifications, Project Manuals, Design Reports, etc.) must be in PDF file format (.pdf) using Adobe Acrobat 2020 or previous compatible version. It is recommended to minimize the pdf file size by converting files from AutoCAD or other programs rather than scanning. Microsoft Word files (.doc) should be generated in Word 2016 or previous compatible version Microsoft Excel files (.xls) should be generated in Excel 2016 or previous compatible version Drawing files (.dwg) should be generated in AutoCAD 2019 or previous compatible version, and must include x-refs or base plan sheets, the Plot Style Table (ctb file) used to print drawings, and any external data from non-AutoCAD programs (e.g., Excel or Word) Documents must be delivered to Dane **COUNTY** electronically via email or SharePoint, and unless noted otherwise, assume two (2) weeks for initial review and one (1) week for each review iteration
- H. Consistent with the federal grant requirements set forth in Grant Award 693JJ32540012 (“Award Agreement”), **CONSULTANT** agrees to comply with the following:
- FEDERAL HIGHWAY ADMINISTRATION, GENERAL TERMS AND CONDITIONS UNDER THE FISCAL YEAR 2022 and FISCAL YEAR 2023 CHARGING AND FUELING INFRASTRUCTURE (CFI) GRANT PROGRAM, Dated March 1, 2024 (“Federal Terms and Conditions”); and
  - FEDERAL HIGHWAY ADMINISTRATION, EXHIBITS TO PROJECT-SPECIFIC AGREEMENTS UNDER THE FISCAL YEAR 2022 and FISCAL YEAR 2023 CHARGING AND FUELING INFRASTRUCTURE (CFI) GRANT PROGRAM, Date March 1, 2024 (“Federal Exhibits”)
  - A copy of both the Federal Terms and Conditions and Federal Exhibits are attached hereto as regulatory compliance Exhibit D and incorporated herein and made part of this Agreement.



## Assumptions

- A. Minimum 240V electrical service is available within 300 feet of each site.
- B. Four (4) charging ports are in the same location on the site. Most sites will be Level 2. Less than five (5) will be 2.5 requiring a 480V service.
- C. Communication infrastructure is available (hardwire or Wi-Fi) or the site is covered by a cellular network.
- D. Soils at each site is conducive to boring or trenching
- E. The purpose and programmatic need verbiage for sections 1- 16 of the Categorical Exclusion (CE) and Environmental Assessment (EA) Templates for Direct Grant Recipients would be similar for each site (excluding site specific characteristics).
- F. Individual meetings are not required for NEPA compliance and FHWA compliance.
- G. FHWA review to require 20-hours by **CONSULTANT** per submission.
- H. Field work for site feasibility will be completed at a rate of four (4) sites per day.
- I. Site investigations will be scheduled to maintain a maximum 30-mile separation during Phase 1 (travel distance to be less than 30 miles on average).

## Scope of Work

### A. Activity 1- Setting the Framework:

#### 1. Program Development:

- a. The **CONSULTANT** shall obtain from **COUNTY** information and materials necessary to ascertain scope of the Project and shall verify with **COUNTY** program and functional requirements of the Project.
  - (1) The **CONSULTANT** will prepare a brief memorandum outlining key considerations and a framework for developing and administering the Charge Up Dane County Program. The memorandum will outline the necessary requirements to comply with the CFI program, as well as considerations for options in administering the program. The memorandum will capture options for future phase of the program to multiple vendors vs. a consolidated vendor approach, as well as business model considerations for the owner/operator structure. The **CONSULTANT** will present the framework memorandum to the **COUNTY** in a single meeting and feedback will be incorporated accordingly.
  - (2) The **COUNTY** will build upon the Charge Up Dane County program to issue a formal Site Host Request for Proposals (RFP) and distribute broadly. The Site Host RFP may include questions about the site's general characteristics such as the presence of lighting, the location, the type of development (commercial, multifamily, institutional, etc.), and the ability to provide publicly accessible, 24/7 charging.
  - (3) The **CONSULTANT** will map the sites and overlay them with the public interest map created by the **COUNTY** and screen sites for geographic representation. Based on the results, the **CONSULTANT** will work with the **COUNTY** to conduct strategic outreach and additional RFPs to fill any gaps identified.
  - (4) The **CONSULTANT** will create a standardized form to be used during Activity 2: Site Feasibility

- (5) The **CONSULTANT** will develop a Scoring Matrix to document site evaluations for alignment with the Charge Up Dane County goals and initiatives. Scoring Matrix will include criteria and ranking descriptions.
  - (a) The **CONSULTANT** will provide a draft Scoring Matrix to the **COUNTY** for review. The **COUNTY** will provide one (1) set of consolidated comments, and the **CONSULTANT** will incorporate the feedback.
  - (b) The **CONSULTANT** will create a dashboard to be used in tracking progress of individual sites. The dashboard will be shared with the **COUNTY**.
- (6) Public Involvement: **CONSULTANT** shall participate in public involvement activities. **COUNTY** to lead outreach. 40 hours of effort is included for **CONSULTANT**, no expenses are included.
- (7) **COUNTY** to provide memorandum to document public involvement process and summary of results. Identify specific site comments as necessary for NEPA compliance.
  1. This task includes a kickoff meeting and two progress meetings. The kickoff meeting will be in person, the progress meetings will be virtual.
- (8) **CONSULTANT** shall provide draft and final submission framework documentation updates for program development tasks as described above.

B. Activity 2- Site Feasibility:

1. Site Evaluation will be completed in groups of sites as provided by the **COUNTY**. Elements to be considered are as follows:
  - a. Facility Standards & Emergency Operations Procedures: Review existing facility standards and assess emergency operations protocols, ensuring they align with national and local requirements.
  - b. Public Access: Evaluate the current public access points and consider improvements to ensure safe and efficient entry and exit for all visitors.
  - c. ADA Considerations: Review site plans for ADA (Americans with Disabilities Act) compliance, including access to facilities, parking spaces, and pathways.
  - d. ADA Accessibility will be reviewed during on-site evaluation with the intent of identifying whether additional evaluation will be required following Concept Design.
  - e. Workflow for All Facility Functions: Analyze the internal workflows for the facility to identify operational efficiencies, space utilization, and any adjustments needed to enhance functionality. Property owner and **COUNTY** to notify **CONSULTANT** of potential future property changes as well as current.
  - f. Building & Site Security: Assess security needs for the site, including considerations for lighting, fencing (ensure charging facilities are available 24/7), and surveillance to ensure public and facility safety. Priority will be provided for proposed EV sites located in well lit, publicly viewed locations, to maximize safety and promote use by all population groups.
  - g. Power availability: **CONSULTANT** shall review on-site power within building or site to determine whether 240V and 320-amp capacity is available. Additional reconnaissance to be completed to review utility owned infrastructure.
  - h. Hazardous Materials: **CONSULTANT** shall perform desktop environmental review to assist in decision making: review the Wisconsin DNR Bureau for Remediation and Redevelopment



Tracking system (BRRTs) for previously reported Haz mat concerns (note: Phase 1 HMA is not included in **CONSULTANT**'s scope).

- i. Cultural Resources/Section 106: **CONSULTANT** shall complete a desktop-level cultural and heritage resources review of up to 100 potential EV charging station sites. The purpose of this review will be to identify any previously surveyed resources (buildings and structures), previously recorded archaeological sites, and cemetery/burial sites that could be affected in any way by the installation of an EV charger, be it during construction (physical impacts) or after construction (visual impacts).
  - (1) For each site, **CONSULTANT** shall review the Wisconsin Historic Preservation Database (WHPD) for the area, as well as maps, aerial photographs, and street view imagery, to determine if any known significant resources or sensitive sites are within the Area of Potential Effects (APE).
  - (2) Results will be provided in a letter report and include recommendations for next steps should additional archaeological or architectural history investigations be needed in accordance with Section 106 of the National Historic Preservation Act (36 CFR Part 800).
  - (3) No fieldwork or site visits are included as part of the desktop-level review.
- j. **CONSULTANT** shall present the findings of site visits and desktop evaluation to review sites with the most uncertainties (Priority 3), as well as sites with less risk (Priority 1). The most straight forward sites will initially be prioritized for the NEPA process and evaluation into three separate groups (those most favorable to move forward versus those which have more barriers to move forward). **CONSULTANT** shall provide an updated list based on **CONSULTANT**'s evaluations including high level findings and rankings within a month of receiving a group of sites from the **COUNTY**. The findings will be tabulated in a table to contain criteria and critical elements.
- k. The following submittals are included:
  - (1) Summary table shall be provided as sites are provided for evaluation by the **COUNTY**.
  - (2) At the completion of this phase, a memorandum shall be provided to document criteria evaluated and site rankings. Improvements shall be identified on plan-view drawing using PDF mark-up tools.
- l. Construction Opinion of Probable Cost based on information provided and gathered for Final version of Study. This Construction Opinion of Probable Cost will be itemized per proposed site and include allowances for charging equipment purchases and will include provisions to meet NEVI requirements. Operation and Maintenance costs (uptime) will be included in cost estimates.
- m. Summary and Study
  - (1) Draft and Final Study Phase deliverables will be submitted electronically, per the Document Review and Submittals guideline.
  - (2) Based on information, materials and requirements as verified by **COUNTY**, **CONSULTANT** shall prepare a Summary and Study consisting of text, drawings and other documents illustrating scale and relationship of the Project components. Draft version of Study shall be submitted to **COUNTY** for review, modifications and written approval before submitting Final version.
- n. The **CONSULTANT** shall document the results of all meetings.
- o. The **CONSULTANT** shall furnish a copy of the documentation produced under this Phase to each participant attending the meetings.

- p. At a minimum, this Activity will have an anticipated ten (10) meetings where the following & more shall be clarified:
- (1) Facility standard & emergency operations & procedures
  - (2) Public access
  - (3) ADA considerations
  - (4) Workflow for all facility functions
  - (5) Wayfinding
  - (6) Building & site security (lighting, fencing, etc)
  - (7) Various cost considerations
  - (8) Cost-value trade offs
  - (9) Proposed EV charging equipment and station requirements as outlined in 23 CFR 680 National Electric Vehicle Infrastructure Standards and Requirements, the original Infrastructure Investment and Jobs Act, and any updates to 23 CFR 680 NEVI Standards published by US DOT
  - (10) CFI specific Grant Requirements as outlined in Charging and Fueling Infrastructure (CFI) General Terms and Conditions and the CFI Exhibits
  - (11) Features of ideal station hosts
  - (12) EV charging station vendor considerations
- q. The anticipated ten meetings shall include, study progress meetings, and a 2 Hour virtual Study conclusion meeting to the EV Advisory Commission. Six (6) meetings are intended to be held in-person.

C. Activity 3- Concept Design and NEPA

1. Program Development and Meetings
  - a. Program development includes coordination with the **COUNTY** and agencies as needed based on programmatic requirements identified within the study. 180 Hours are provided for this task.
  - b. Six meetings shall include a phase kick-off, four study progress meetings, and a phase conclusion meeting.
  - c. Public Involvement: **CONSULTANT** shall participate in public involvement activities. **COUNTY** to lead outreach. 40 hours of effort is included for **CONSULTANT**.
2. Charging Equipment Hardware & Software Technical Specs: Based on the approach established in the Activity 1 Setting the Framework task, the **CONSULTANT** will provide technical specifications for integration and operation in alignment with the CFI program requirements. This will be provided as a single deliverable and is anticipated to be applicable for all sites. **CONSULTANT** shall provide advisory services to support EV program. 30 hours have been provided for this service.
3. Drawings: The following aspects shall be included in the evaluation of each site and included in the deliverables.
  - a. Aerial Photos: Use aerial photos of the project site(s), including the facility address, to form a baseline plan view for the design process. No field survey is required.

- b. Inventory of Existing Electrical Distribution System: Compile an inventory of existing electrical infrastructure (service, meter, panel, breakers, etc.) to assess the current capacity and identify necessary upgrades. Identify approximate location of system infrastructure on baseline plan view.
  - c. Proposed Electrical Improvements: Create a table listing proposed electrical upgrades, including estimates for the necessary capacity, equipment, and modifications.
  - d. Proposed Civil/Site Improvements: Overlay proposed civil and site improvements on the aerial photo of each facility, identifying locations for new infrastructure, access points, and facility expansions. Identify four parking spots with charging ports with one being accessible. Pull through spots, where feasible, will be identified for traffic flow and larger vehicles. It is understood that there is not a requirement for pull through charging sites.
  - e. Table of Civil/Site Improvements: Provide a comprehensive list of all proposed civil and site improvements, along with design specifications.
4. EV Charger Hardware & Software List: Provide an itemized list of proposed EV charger hardware and software specifications, along with the corresponding opinion of probable cost for each site. This list is intended to be generic and not specify providers; as such a low and high-end opinion of probable cost may be provided to account for variations in cost of electric vehicle supply equipment (EVSE) systems.
  5. Construction Opinion of Probable Cost: Provide an itemized construction opinion of probable cost for each proposed site, reflecting anticipated construction, materials, and labor costs.
  6. Environmental Documentation: Complete the Categorical Exclusion (CE) and Environmental Assessment (EA) templates for Direct Grant Recipients, including all associated documentation required for each of the 70 sites to meet NEPA compliance. Two submissions are anticipated for FHWA review and approval.
    - a. Direct Grant Categorical Exclusion form with appropriate attachments to be prepared for each site.
      - (1) Public Involvement/local officials' coordination: summarize coordination completed and any feedback received. PI/meeting time not included in the CE budget.
    - b. Agency Coordination:
      - (1) Bureau of Aeronautics for sites within runway zones identified on the BOA sites. Assume most sites will not require coordination with BOA.
      - (2) Railroads and Harbors Section: assume not required.
      - (3) Natural Resources (DNR): coordination required. The **CONSULTANT** recommends meeting with WDNR early on to establish efficient coordination methods.
      - (4) State Historic Preservation Office (SHPO): It is assumed that the literature review/letter report completed in Activity 1 will be sufficient to document whether there are cultural resources concerns. Assume that this letter report will be submitted to SHPO through FHWA utilizing a Section 106 Form for approval. This process to be verified during Program Development. The **CONSULTANT** shall prepare the Section 106 form and attachments and submit to FHWA, for FHWA submittal to SHPO.
      - (5) United States Army Corps of Engineers (USACE): Coordination is needed if there are any wetland impacts. A review of the WDNR Surface water data site will be completed for each site in Phase 1. It is assumed that sites with wetland impacts would be removed from consideration. If sites with wetland impacts are recommended for construction, preparation of a Section 404 permit would be Extra Work.

- (6) U.S. Fish and Wildlife Service (USFWS): Coordination via the USFWS IPAC website will be prepared for each location; this is needed for each location. A Threatened and Endangered Species Factor Sheet detailing any Threatened and Endangered Species impacts will be provided for each site. If any species impacts require consultation, this work would be considered Extra Work.
    - (7) American Indian Tribes: A separate notification will be sent to Tribes using the process outlined in the attachment for each location. Assume that FHWA program manager will review each email notification, and that the email will need to be sent by **COUNTY**.
  - c. Alternatives: Assume that a No Build and a Build alternative will be documented in each CE.
  - d. Historic Properties, Burial Sites, Tribal: Assume that the cultural resources background review will indicate no effects on any historic properties by the proposed work. Any additional work will be Extra Work.
  - e. Section 4(f)/ 6(f), park and recreation area impacts: Assume that there will be no impacts to these resources; if there are, this work will be completed as Extra Work. **COUNTY** to be responsible for identifying Section 4(f)/ 6(f) properties.
- 7. Presentation Materials: Create a comprehensive set of presentation materials (PDFs, slides, and other exhibits) for the final summary of findings presentation to the EV Advisory Committee. These materials will be used publicly by **COUNTY** to seek future funding and inform further design work.
  - a. Presentation to include:
    - (1) Site identification methods
    - (2) Evaluation criteria
    - (3) Sites evaluated
    - (4) Priority criteria
    - (5) Priority sites
    - (6) Typical site layout
    - (7) Next Steps
- 8. Deliverables for the Schematic Design Phase
  - a. Schematic Design Plans: Develop schematic design plans for proposed sites, ensuring compliance with NEPA and other regulatory requirements.
  - b. EV Charger Hardware & Software List: Provide an itemized list of proposed EV charger hardware and software specifications, along with the corresponding opinion of probable cost for each site.
- 9. FHWA Submission: Assemble and submit concept drawings and environmental documentation to the FHWA for review and approval.
- 10. The **CONSULTANT** shall submit to **COUNTY** in the Summary and Study, a Construction Opinion of Probable Cost based on information provided by **COUNTY** and gathered by **CONSULTANT** for Final version of Study. This Construction Opinion of Probable Cost should be itemized per proposed site and include allowances for charging equipment purchases.

## Consultant Compensation and Schedule

- CONSULTANT** fees for Basic Services will be compensated by **COUNTY** in accordance with the Terms and Conditions of this Agreement as follows:

A. **COUNTY** will pay the **CONSULTANT** the following fees:

- COUNTY** will pay the **CONSULTANT** a lump sum fee of \$898,000.
- The proposed lump sum fee above is reduced by the **CONSULTANT**'s 20% local grant match requirements. (**CONSULTANT**'s total fee, including match is \$1,122,500; their 20% match is \$224,500 and the fee due from **COUNTY** is \$898,000.)
- No change in fee shall result from change orders to design contracts unless such change is described as an Additional Service and approved by **COUNTY**.
- The cost for the services under this contract will be billed on a unit price and hourly basis with a total not to exceed fee of \$898,000. The **COUNTY** intends to authorize fees incrementally as the project progresses. The **COUNTY** shall authorize Activity 2 Services in increments of no less than 10 sites. Activity 3 tasks shall be authorized in groups of no less than 20 sites.
- CONSULTANT** assumes that 60% of the sites for Activity 1 and 2 will be completed prior to November 1, 2025. Additionally, 50% of the sites in Activity 3 are expected to be completed after November 1, 2025. **CONSULTANT** anticipates that all work will be finished by November 1, 2026.

In the table below, numbers in parenthesis (#) indicate the total number of units anticipated.

Estimated cost to be completed prior to November 1, 2025:

<b>Activity 1: Setting Framework</b>	Quantity	Unit Cost	Total Cost
Kick-off and Data Gathering	1	\$3,600	\$3,600
Program and Framework Memorandum	1	\$32,100	\$32,100
Mapping and Scoring Matrix Documents	1	\$24,900	\$24,900
Site Assessment Form and Dashboard	1	\$21,100	\$21,100
Framework and Program Meetings	1	\$11,800	\$11,800
Framework Documentation	2	\$8,300	\$16,600
Public Involvement	2	\$3,200	\$6,400
Meetings (2)	2	\$1,300	\$2,600
<b>Activity 2: Site Feasibility Phase</b>	Quantity	Unit Cost	Total Cost
Desktop Evaluation (140)	100	\$470	\$47,000
Site Evaluation (100)	60	\$3,000	\$180,000
Construction Cost Estimate (100)	60	\$500	\$30,000
Summary and Study Documentation (100)	60	\$220	\$13,200
<b>Activity 3: Concept Design and NEPA</b>	Quantity	Unit Cost	Total Cost
Program Development	1	\$39,700	\$39,700
Meetings (6)	4	\$1,100	\$4,400
Public Involvement	0	\$3,200	\$0
Drawings (65)	35	\$1,600	\$56,000
Charging Equipment Hardware and Software - Specification (1)	0	\$7,500	\$0
Construction Opinion of Probable Cost (65)	35	\$200	\$7,000
Environmental Documentation (65)	35	\$1,900	\$66,500
Presentation Materials	1	\$8,000	\$8,000
Schematic Design Deliverables (3)	2	\$2,700	\$5,400
Submission to FHWA (3)	2	\$4,100	\$8,200

Estimated cost to be completed after November 1, 2025, and before November 1, 2026.

<b>Activity 1: Setting Framework</b>	Quantity	Unit Cost	Total Cost
Kick-off and Data Gathering	0	\$3,800	\$0
Program and Framework Memorandum	0	\$33,400	\$0
Mapping and Scoring Matrix Documents	0	\$25,900	\$0
Site Assessment Form and Dashboard	0	\$21,900	\$0
Framework and Program Meetings	0	\$12,300	\$0
Framework Documentation	0	\$8,600	\$0
Public Involvement	0	\$3,300	\$0
Meetings (2)	0	\$1,400	\$0
<b>Activity 2: Site Feasibility Phase</b>	Quantity	Unit Cost	Total Cost
Desktop Evaluation (140)	40	\$500	\$20,000
Site Evaluation (100)	40	\$3,100	\$124,000
Construction Cost Estimate (100)	40	\$560	\$22,400
Summary and Study Documentation (100)	40	\$230	\$9,200
<b>Activity 3: Concept Design and NEPA</b>	Quantity	Unit Cost	Total Cost
Program Development	0	\$41,300	\$0
Meetings (6)	2	\$1,100	\$2,200
Public Involvement	2	\$3,300	\$6,600
Drawings (65)	30	\$1,700	\$51,000
Charging Equipment Hardware and Software - Specification (1)	1	\$7,800	\$7,800
Construction Opinion of Probable Cost (65)	30	\$210	\$6,300
Environmental Documentation (65)	30	\$1,900	\$57,000
Presentation Materials	0	\$8,400	\$0
Schematic Design Deliverables (3)	1	\$2,800	\$2,800
Submission to FHWA (3)	1	\$4,200	\$4,200

B. The **CONSULTANT's** Compensation for Additional Services beyond the scope of this contract can be completed under subsequent written authorization from the **COUNTY**, prior to starting work. Authorized additional services will be billed on an hourly basis according to **CONSULTANT's** billing schedule, included as financial Exhibit C.

1. Employee's time shall be computed using the employee's basic hourly salary and include overhead costs for clerical support and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits for persons in consultation, research and design in producing drawings, specifications and other documents pertaining to the Project and for services during construction at the site.

C. Reimbursable Expenses:

1. Reimbursable Expenses are actual, incidental expenses incurred by the **CONSULTANT**, its employees or **CONSULTANTS**, in the interest of the Project and are not included in overhead costs for the Fees for Basic Services and Additional Services. Reimbursable Expenses shall be incurred or contracted for only with PRIOR written approval from **COUNTY**. Such approval shall be based on a written proposal delineating the nature of the services, the time involved, the estimated cost thereof, and the individuals or firms involved. Payment Requests from **CONSULTANTS** and construction contractors providing these Reimbursable Expenses shall be reviewed by the **CONSULTANT** to check the accuracy of and entitlement to the sums requested. There are no markups allowed for Reimbursable Expenses. Reimbursable Expenses may include, but are not limited to, the following incidental expenses:
  - a. Expense of a site survey when needed.



- b. Expense of a geotechnical investigation and soils & material testing when required.
- c. Expense of State and / or City review fees when required.
- 2. Expenses not eligible for reimbursement shall include, but are not limited to, indirect project overhead costs associated with the Fees for Basic Services and Additional Services such as mileage, travel, lodging, replication of drawings for the design development meetings and subsequent design meetings, preliminary and final review document printing, handling and postage, cost of correspondence transmittals, telephone expenses, and CAD / electronic graphic services. Such expenses shall be included as part of the Lump Sum fee.

D. Additional Services:

- 1. The following services are in addition to but are not covered in Scopes of Services Compensation for these additional services or other services must be requested by the **CONSULTANT**, and subsequently approved by **COUNTY** prior to proceeding with the work. If the additional services are requested after the Agreement has been issued, such authorization shall be based on a written proposal delineating the nature of the services, the time involved, the estimated cost thereof, the effect on the Project schedule and the individuals or firms involved. When authorized, an Agreement Change Order will be used to modify the **CONSULTANT**'s Agreement.
  - a. Providing planning surveys, program revision, site feasibility, or comparative studies of prospective sites.
  - b. Revising previously approved drawings, specifications or other documents after written approval of Design Development Phase, to accomplish changes not initiated by the **CONSULTANT** other than record documents and revisions normally to be expected or required to correct deficiencies in the approved drawings and specifications.
  - c. Preparing detailed models, perspective or renderings.
  - d. Preparing documents for alternate bids or petitions for waiver when requested by **COUNTY** and, requiring significant additional time and expense on the part of the **CONSULTANT** or its **CONSULTANTS**.
  - e. Obtaining or participating in third party Value Engineering / Enhancement of the Project when directed by **COUNTY**.
  - f. Providing services other than corrective design work and record documents, after final payment to the construction contractor(s).
  - g. Providing services as expert witness in connection with any public hearings, arbitration proceeding, or the proceedings of a court of record except when the **CONSULTANT** is party thereto.
  - h. Providing specialized design services, including, but not limited to sustainability, vibration, wind or acoustical analysis, energy modeling.
  - i. Participation in post-project evaluations.
  - j. Preparing multiple bid packages.

E. Payments to the **CONSULTANT**:

- 1. Payments of the **CONSULTANT**'s unit price will be made monthly, in proportion to services performed as confirmed by **COUNTY** and per schedule identified above.
- 2. Items which are identified to be authorized and billed per site will be invoiced per site as completed.



3. Items with a quantity not identified per site will be invoiced as percent complete. **CONSULTANT** shall notify **COUNTY** of effort overage and will negotiate overages as **applicable**.
4. No more than ninety percent (90%) of the **CONSULTANT**'s lump sum fee shall be paid out prior to substantial completion of the Project. When **COUNTY** confirms that development of punch lists, review of Operating & Maintenance Manuals, submittal of record documents, has been satisfactorily completed by the **CONSULTANT**, **COUNTY** will determine how and when the remaining lump sum fee is disbursed.
5. Payments for **COUNTY**-approved Reimbursable Expenses and Additional Services of the **CONSULTANT**, will be made monthly upon request.
6. **CONSULTANT** whose work is found deficient or fails to conform to the requirements set forth in the Agreement, is not entitled to further payments, until corrected to the satisfaction of **COUNTY**.
  - a. Payments to the **CONSULTANT** may be withheld for damages sustained by **COUNTY** due to error, omission, unauthorized changes or negligence on the part of the **CONSULTANT**. **COUNTY** will notify the **CONSULTANT** in writing of the alleged, specific damages and amounts involved, on a timely basis.
7. Payments to the **CONSULTANT** will not be withheld due to disputes between construction contractor(s) and **COUNTY**.
8. If the Project is suspended for more than three (3) months in whole or in part, the **CONSULTANT** will be paid fees for services performed prior to receipt of written notice from **COUNTY** of the suspension, together with Reimbursable Expenses then due and reasonable expenses resulting from this suspension, as approved by **COUNTY**. If the Project is resumed after being suspended for more than three (3) months, the **CONSULTANT**'s compensation will be subject to renegotiation.
9. Federal Government's decision to terminate Award Agreement for any reason, its refusal to reimburse **COUNTY** under the Award Agreement or its decision to impose additional conditions on **COUNTY** not already set forth in the Award Agreement shall result in immediate termination of this Agreement without notice.

## Attached References:

Attachment A	Sub Consultant Agreement(s)	Supporting contractual documentation
Attachment C*	KL Billing Rates	Financial Exhibits
Attachment D	Federal Terms and Conditions and Federal Exhibits	Regulatory Compliance Exhibits

\*Attachment B Placeholder for future revisions

Placeholder

## ATTACHMENT A – SUBCONSULTANT AGREEMENT

*Note: If there are more than one subconsultant, replicate the page as many times as needed.*

Date: 2/6/2025

Project No.: 325001

Agreement No.: \_\_\_\_\_

**THIS AGREEMENT** is between  
KL Engineering, Inc. [CONSULTANT Name], hereinafter called  
"CONSULTANT", executing this Agreement, and  
Kimley-Horn and Associates, Inc. [SubConsultant Name] hereinafter called the  
"SUBCONSULTANT".

### WITNESSETH

**WHEREAS**, the CONSULTANT has entered into an Agreement with COUNTY to furnish professional services with a project, hereinafter named "Project", which is described as follows:

Public EV Charging Infrastructure

**WHEREAS**, the CONSULTANT deems it advisable to engage the services of a SUBCONSULTANT to furnish professional services in connection with this project, and

**WHEREAS**, the CONSULTANT and SUBCONSULTANT agree that the terms of the Agreement between COUNTY and the CONSULTANT also apply to this Agreement as though fully set forth and binding upon the SUBCONSULTANT, and

**WHEREAS**, the SUBCONSULTANT agrees that in the event of conflict between the CONSULTANT's Agreement with COUNTY and the CONSULTANT's Agreement with the SUBCONSULTANT, the CONSULTANT's Agreement with COUNTY shall take precedence, and

**WHEREAS**, the SUBCONSULTANT has signified willingness to furnish services for the CONSULTANT;

**NOW, THEREFORE**, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the Agreement between COUNTY and the CONSULTANT which are annexed hereto and made a part hereof.

**IN WITNESS WHEREOF**, the CONSULTANT and the SUBCONSULTANT have executed this Agreement.

Kimley-Horn and Associates, Inc.  
Name of the SUBCONSULTANT's Firm  
  
Signature Date 02/07/2025

Sarah L. Shearouse  
Printed Name  
Corporate Counsel  
Title

KL Engineering, Inc.  
Name of the CONSULTANT's Firm  
  
Signature Date \_\_\_\_\_

Mike Scarmon  
Printed Name  
Director Infrastructure Services  
Title

The SUBCONSULTANT will be providing the following services:

Program Planning and Advisory Services

## ATTACHMENT A – SUBCONSULTANT AGREEMENT

*Note: If there are more than one subconsultant, replicate the page as many times as needed.*

Date: 2/6/2025

Project No.: 325001

Agreement No.: \_\_\_\_\_

**THIS AGREEMENT** is between  
KL Engineering, Inc. [CONSULTANT Name], hereinafter called  
"CONSULTANT", executing this Agreement, and  
Pieper Electric, Inc. [SubConsultant Name] hereinafter called the  
"SUBCONSULTANT".

### WITNESSETH

**WHEREAS**, the CONSULTANT has entered into an Agreement with COUNTY to furnish professional services with a project, hereinafter named "Project", which is described as follows:

Public EV Charging Infrastructure

**WHEREAS**, the CONSULTANT deems it advisable to engage the services of a SUBCONSULTANT to furnish professional services in connection with this project, and

**WHEREAS**, the CONSULTANT and SUBCONSULTANT agree that the terms of the Agreement between COUNTY and the CONSULTANT also apply to this Agreement as though fully set forth and binding upon the SUBCONSULTANT, and

**WHEREAS**, the SUBCONSULTANT agrees that in the event of conflict between the CONSULTANT's Agreement with COUNTY and the CONSULTANT's Agreement with the SUBCONSULTANT, the CONSULTANT's Agreement with COUNTY shall take precedence, and

**WHEREAS**, the SUBCONSULTANT has signified willingness to furnish services for the CONSULTANT;

**NOW, THEREFORE**, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the Agreement between COUNTY and the CONSULTANT which are annexed hereto and made a part hereof.

**IN WITNESS WHEREOF**, the CONSULTANT and the SUBCONSULTANT have executed this Agreement.

Pieper Electric, Inc.

Name of the SUBCONSULTANT's Firm

Todd Cook

Digitally signed by Todd Cook  
DN: C=US, E=Todd.Cook@Pieperpower.com,  
O="Pieper Electric, Inc.", OU=Branch Manager,  
CN=Todd Cook  
Date: 2025.02.07 13:04:03-06'00'

Signature

Date

Printed Name

Branch Manager

Title

KL Engineering, Inc.

Name of the CONSULTANT's Firm



Signature

Date

Mike Scarmon

Printed Name

Director Infrastructure Services

Title

The SUBCONSULTANT will be providing the following services:

Site design and cost estimating.

Attachment C  
Billing Rates  
DANE COUNTY OFFICE OF ENERGY & CLIMATE CHANGE  
Project Number: 325001  
Public EV Charging Infrastructure

Kimley Horn Billing Rates

Subject Matter Expert	\$260.00
EV Strategist	\$250.00
EV Strategist II	\$260.00
EV Strategist I	\$235.00

Pieper Billing Rates

Project Manager	\$125.00
Cost Estimating	\$125.00



**STANDARD BILLING RATE SCHEDULE**  
EFFECTIVE NOVEMBER 1, 2024

Limited Term Employee	\$77.00
Administration	\$90.00
Senior Administration	\$110.00
Technician I	\$85.00
Technician II	\$90.00
Technician III	\$95.00
Technician IV	\$105.00
Technician V	\$110.00
Senior Technician I	\$120.00
Senior Technician II	\$130.00
Senior Technician III	\$140.00
Senior Technician IV	\$150.00
Senior Technician V	\$160.00
Surveyor I	\$90.00
Surveyor II	\$95.00
Surveyor III	\$100.00
Surveyor IV	\$110.00
Surveyor V	\$115.00
Senior Surveyor I	\$120.00
Senior Surveyor II	\$125.00
Senior Surveyor III	\$135.00
Senior Surveyor IV	\$140.00
Senior Surveyor V	\$145.00
Engineer I	\$113.00
Engineer II	\$117.00
Engineer III	\$124.00
Engineer IV	\$129.00
Engineer V	\$132.00
Senior Engineer I	\$135.00
Senior Engineer II	\$140.00
Senior Engineer III	\$150.00
Senior Engineer IV	\$160.00
Senior Engineer V	\$165.00
Senior Specialist I	\$125.00
Senior Specialist II	\$135.00
Senior Specialist III	\$145.00
Senior Specialist IV	\$155.00
Senior Specialist V	\$180.00
Technical Leader I	\$165.00
Technical Leader II	\$170.00
Technical Leader III	\$180.00
Project Leader I	\$165.00
Project Leader II	\$170.00
Project Leader III	\$180.00
Senior Technical Leader	\$185.00
Senior Project Leader	\$185.00
Discipline Leader	\$190.00
Director	\$205.00
Executive	\$220.00

**Expenses**

Out-of-pocket direct job expenses (reproductions, sub-consultants, equipment rental, etc.) at cost

**Travel Expenses**

Company or Personal Car Mileage IRS rate  
Lodging and Subsistence at cost

**Billing and Payment**

Travel time is charged for work required to be performed out-of-office.

Invoicing is on a monthly basis for work performed. Payment for services is due within 30 days from the date of the invoice.

An interest charge of 1.5% per month is made on the unpaid balance starting 30 days after the date of the invoice.

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This schedule of billing rates is effective November 1, 2024 and will remain in effect until October 31, 2025 unless unforeseen increases in operational costs are encountered. We reserve the right to change rates to reflect such increases.

**FEDERAL HIGHWAY ADMINISTRATION**

**GENERAL TERMS AND CONDITIONS**

**UNDER THE**

**FISCAL YEAR 2022 and FISCAL YEAR 2023 CHARGING AND FUELING**

**INFRASTRUCTURE (CFI) GRANT PROGRAM**

**March 1, 2024**



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## GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Section 11401 of Pub. L No. 117-58 (Nov. 15, 2021) (the “**IJA**”) made funds available to the United States Department of Transportation (“**USDOT**”) for fiscal year (FY) 2022 and FY 2023 for the Charging and Fueling Infrastructure (CFI) Discretionary Grant Program to strategically deploy publicly accessible electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, and natural gas fueling infrastructure along designated alternative fuel corridors or in certain other locations within communities that will be accessible to all drivers of electric vehicles, hydrogen vehicles, propane vehicles, and natural gas vehicles. The CFR is codified at 23 U.S.C. 151(f)(2).

On March 14, 2023, the USDOT posted a funding opportunity at Grants.gov for “Charging and Fueling Infrastructure” grant and funding opportunity number 693JJ323NF00004. The notice of funding opportunity (“**NOFO**”) solicited applications for Federal financial assistance under the FY 2022 and FY 2023 program. On January 11, 2024, the USDOT announced application selections under the NOFO for the FY 2022 and FY 2023 CFI grant program.

These General Terms and Conditions are incorporated by reference in the project-specific agreement under the FY 2022 and FY 2023 CFI discretionary grant program. The term “Recipient” is defined in the project-specific agreement. The project-specific agreement includes schedules A through K. The project-specific agreement may include special terms and conditions in project-specific articles or schedules.

### ARTICLE 1 PURPOSE

**1.1 Purpose.** The purpose of this award is to fund the eligible project defined in the project-specific agreement that has been selected to receive a FY 2022 or FY 2023 CFI Grant. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by schedule E.

### ARTICLE 2 FHWA ROLE

**2.1 Federal Highway Administration (FHWA) Responsibilities.**

- (a) The FHWA is the operating administration under the United State Department of Transportation (“USDOT”) responsible for the administration of the Grant Program, the approval and execution of the project-specific agreement, and any modifications to the project-specific under section 15.1.

## **ARTICLE 3 RECIPIENT ROLE**

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

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

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

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

### **3.3 USDOT FHWA Reliance.** The Recipient acknowledges that:

- (1) the USDOT FHWA relied on statements of fact in the Technical Application to select the Project to receive this award;
- (2) the USDOT FHWA relied on statements of fact in both the Technical Application and the project-specific agreement to determine that the Recipient and the Project are eligible under the terms of the CFI NOFO.
- (3) the USDOT FHWA relied on statements of fact in both the Technical Application and the project-specific agreement to establish the terms of the project-specific agreement; and
- (4) the USDOT FHWA'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 the project-specific 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 the Project.

### **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 the project-specific agreement without written approval of the FHWA.
- (b) The Recipient shall act promptly, in a manner acceptable to the FHWA, to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under the project-specific agreement.

### **3.6 Notification of Changes to Key Personnel.** The Recipient shall notify all FHWA 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.

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

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

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

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



## ARTICLE 4

### AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

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

**4.2 Federal Obligations.**

- (a) If the Federal Obligation Type identified in section 2 of schedule D is “Single,” then the project-specific agreement obligates for the budget period the amount listed in section 1 of schedule D as the Grant Amount and sections 4.2(c)–4.2(h) do not apply to the project-specific agreement.
- (b) If the Federal Obligation Type identified in section 2 of schedule D is “Multiple,” then an amount up to the 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 4.2(c)–4.2(h).
- (c) The Obligation Condition Table in section 2 of schedule D allocates the 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) The project-specific 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) The project-specific 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 4.2(f) or by modifying the project-specific agreement under article 15.
- (f) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then for each portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, the amount allocated in that table to that portion of the Project is obligated if, not later than the statutory lapse date identified in the project-specific agreement as applicable to the Grant Program, the parties execute an instrument, in the form provided in Exhibit D, documenting that:
  - (1) the FHWA determines that the obligation condition listed in that table for that portion of the Project is satisfied;
  - (2) the FHWA 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 the project-specific 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 4.2(f) or by modifying the project-specific agreement under Article 15.

(h) For information with respect to the Recipient's responsibility to contract with a Private Entity to pay the non-Federal cost share, see section 12.8 Requirement to Contract with a Private Entity under Article 12 titled Contracting and Subawards.

(i) The Recipient acknowledges that:

- (1) the FHWA 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 4.2(f) or by modifying the project-specific agreement under Article 15.;
- (2) any portion of the Grant that is not obligated under this section 4.2 by the statutory lapse date identified in the project-specific agreement for those funds lapses on the day after that date and becomes unavailable for the Project;
- (3) the FHWA may consider the failure to obligate funds by the statutory lapse date identified in the project-specific agreement as applicable to the Grant Program for those funds to be a basis for terminating the project-specific agreement under section 10.1; and
- (4) the payment of any non-Federal cost share by a Private Entity is solely a contractual matter between the Recipient and such Private Entity to which the FHWA is not a party.

**4.3 Budget Period.** The budget period for this award begins on the date of the project-specific agreement and ends on the budget period end date that is listed in section 1 of schedule C or as determined in the FHWA Fiscal Management Information System ("FMIS"). In the project-specific agreement, "budget period" is used as defined at 2 C.F.R. 200.1.

**4.4 Period of Performance.**

- (a) If the USDOT Payment System identified in section 6 of schedule A is "FMIS," then the period of performance for this award begins on the date of the project-specific agreement and ends on project end date in FMIS.
- (b) If the USDOT Payment System identified in section 6 of schedule A is "DELPHI eInvoicing," then the period of performance for this award is listed on page 1, line 6 of

the project-specific agreement.

- (c) In the project-specific agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

## **ARTICLE 5**

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

- 5.1 Notification Requirement.** The Recipient shall notify all FHWA 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 the project-specific agreement.
- 5.2 Scope and Statement of Work Changes.** If the Project’s activities differ from the activities described in the Technical Application, then the Recipient shall request a modification of the project-specific agreement in Schedule E.
- 5.3 Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request a modification of the project-specific agreement to update schedule C:
- (1) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 2 of schedule C;
  - (2) a schedule change would require the budget period to continue after the budget period end date listed in section 1 of schedule C; or
  - (3) the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing” and a schedule change would require the period of performance to continue after the period of performance listed on page 1, line 6 of the project-specific agreement.

For other schedule changes, the Recipient shall follow the applicable procedures of the FHWA 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 the project-specific agreement to complete the Project; and
  - (2) the FHWA will not increase the amount of this award to address any funding shortfall.

- (b) The Recipient shall request a modification of the project-specific 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 FHWA and document the changes in writing.
- (d) If there are Project Cost Savings, then the Recipient may propose to the FHWA, in writing consistent with the FHWA'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 FHWA 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 FHWA had reimbursed costs exceeding the revised award, the Recipient shall refund to the FHWA the difference between the reimbursed costs and the revised award.

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

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

## **ARTICLE 6 GENERAL REPORTING TERMS**

- 6.1 Report Submission.** The Recipient shall send all reports required by the project-specific agreement to all FHWA contacts who are listed in section 5 of schedule A.
- 6.2 Alternative Reporting Methods.** The FHWA may establish processes for the Recipient to submit reports required by the project-specific agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the FHWA.

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

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

## **ARTICLE 8 PERFORMANCE REPORTING**

- 8.1 Baseline Performance Measurement.**
- (1) The Recipient shall collect data for each performance measure that is identified in the Performance Measure Table in schedule G, accurate as of the Baseline Measurement Date that is identified in schedule G; and
  - (2) On or before the Baseline Report Date that is stated in schedule G, the Recipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 8.1 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table

in schedule G.

## **8.2 Post-construction Performance Measurement.**

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

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

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

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

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

## **ARTICLE 9 NONCOMPLIANCE AND REMEDIES**

### **9.1 Noncompliance Determinations.**

- (a) If the FHWA determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of the project-specific agreement, the FHWA may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the FHWA 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 FHWA 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 FHWA 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 FHWA must provide a notice to the Recipient that states the bases for that determination.

### **9.2 Remedies.**

- (a) If the FHWA makes a final determination of noncompliance under section 9.1, the FHWA may impose a remedy, including:
  - (1) additional conditions on the award;
  - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to the FHWA; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or



- (3) any other remedy legally available.
- (b) To impose a remedy, the FHWA must provide a written notice to the Recipient that describes the remedy, but the FHWA may make the remedy effective before the Recipient receives that notice.
- (c) If the FHWA determines that it is in the public interest, the FHWA 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 FHWA may elect to consider the interests of only the FHWA.
- (e) The Recipient acknowledges that amounts that the FHWA requires the Recipient to refund to the FHWA due to a remedy under this section 9.2 constitute a debt to the Federal Government that the FHWA may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

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

## **ARTICLE 10**

### **AGREEMENT TERMINATION**

#### **10.1 FHWA Termination.**

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

## **10.2 Closeout Termination.**

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

## **10.3 Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the project-specific agreement does not extinguish the FHWA's authority to disallow costs, including costs that the FHWA 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 the project-specific agreement or the Recipient's obligations under the project-specific agreement.
- (b) The end of the period of performance described under section 4.5 does not terminate the project-specific agreement or the Recipient's obligations under the project-specific agreement.
- (c) The cancellation of funds under section 6 of schedule D does not terminate the project-specific agreement or the Recipient's obligations under the project-specific agreement.

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

## **ARTICLE 11**

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

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

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

#### **11.2 Financial Records and Audits.**

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 11.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303, 2 C.F.R. 200 subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year of the Grant Program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
  - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including the Federal Fiscal Year (“FY”) 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 the Federal Fiscal Year (“FY”) in column c (“Additional Award Identification”).

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

**11.4 USDOT Record Access.** The FHWA may access Recipient records related to this award under 2 C.F.R. 200.337.

- 11.5 Title 23 Oversight Responsibilities.** This award is subject to the oversight program at 23 U.S.C. 106(g).

## **ARTICLE 12 CONTRACTING AND SUBAWARDS**

- 12.1 Minimum Wage Rates.** The Recipient shall include, in all contracts in excess of \$2,000 for construction work to be performed on a Federal-aid highway (or work that is treated as if performed on a Federal-aid highway) under 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 and 23 U.S.C. 109(s)(2), as applicable, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**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 FHWA. The Recipient acknowledges that the project-specific 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 Office of Management and Budget (OMB), USDOT, and FHWA. The Recipient acknowledges that the project-specific agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

- 12.3 Small and Disadvantaged Business Requirements.** The Recipient shall comply with 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”). For the purpose of 49 C.F.R. 26.3 that part applies to the Recipient.

- 12.4 Engineering and Design Services.** 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 is negotiated under the Brooks Act, 40 U.S.C. 1101-1104 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT.

- 12.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2

C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under the Grant award.

**12.6 Pass-through Entity Responsibilities.** If the Recipient makes a subaward under the Grant award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333 and 23 U.S.C. 106(g)(4) where applicable.

**12.7 Subaward and Contract Authorization.**

- (a) If the FHWA Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Division,” then the Recipient shall comply with subaward and contract authorization requirements under 23 C.F.R chapter I.
- (b) If the FHWA Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Office of Acquisition and Grants Management,” then the Recipient may be required to obtain prior written approval from the FHWA agreement officer pursuant to 2 C.F.R. 200.308 and 23 C.F.R. 172 as applicable for the subaward or contracting out of any CFI Planning Grant work under the project-specific agreement above the Simplified Acquisition Threshold. Approvals under 2 C.F.R. 200.308 will be contingent upon a fair and reasonable price determination on the part of the Recipient and the agreement officer’s concurrence on that determination. This provision does not apply to the acquisition of supplies, material, equipment, or general support services.

**12.8 Requirement to Contract with a Private Entity**

- (a) If the award is designated as “**Corridor**” in section 1 of schedule F, then the Recipient must enter into a contract with a Private Entity for the acquisition and installation of the charging and fueling infrastructure provided for under the Grant award as required by 23 U.S.C. 151(f)(6)(A). The Recipient may also enter into a contract with a Private Entity for the operations and maintenance of the charging and fueling infrastructure provided for under the Grant award as provided by 23 U.S.C. 151(f)(6)(C).
- (b) If the award is designated as “**Community**” in section 1 of schedule F, then the Recipient may enter into a contract with a Private Entity for the acquisition, construction, installation, operations or maintenance of the charging and fueling infrastructure provided for under the Grant award as provided by 23 U.S.C. 151(f)(8)(H).
- (c) For a contract awarded under a **Corridor** award, the Recipient must require the Private Entity to pay the non-Federal cost share for the portion of the contract value that includes acquisition, installation, operations, and maintenance of charging and fueling infrastructure as required by 23 U.S.C. 151(f)(6)(A), 23 U.S.C. 151(f)(6)(C), and 23 U.S.C. 151(f)(10)(B). If a recipient is unable to execute a contract with the Private Entity to pay the non-Federal cost share, FHWA will not consider the recipient to be in violation or noncompliance of the grant agreement pursuant to 23 CFR 1.36. As provided in section 4.2, the Recipient shall be ultimately responsible for meeting the

non-Federal share under the award.

- (d) For a contract awarded under a **Community** award, the Recipient must require the Private Entity to pay the non-Federal cost share for the portion of the contract value that includes acquisition, construction, installation, operations, and maintenance of charging and fueling infrastructure as required by 23 U.S.C. 151(f)(8)(H) and 23 U.S.C. 151(f)(10)(B). If a recipient is unable to execute a contract with the Private Entity to pay the non-Federal cost share, FHWA will not consider the recipient to be in violation or noncompliance of the grant agreement pursuant to 23 CFR 1.36. As provided in section 4.2, the Recipient shall be ultimately responsible for meeting the non-Federal share under the award.
- (e) As provided at 23 U.S.C. 151(f)(6)(E)(i), contracts awarded for the acquisition and installation of charging and fueling infrastructure under award may provide for revenue sharing between the Recipient and the Private Entity. Pursuant to 23 U.S.C. 151(f)(6)(E)(ii), any revenues received by the Recipient under such an arrangement must be used only for projects that are eligible under title 23, United States Code.

**12.9 Consultation with Indian Tribes.** As provided at 23 U.S.C. 151(f)(6)(B), any charging and fueling infrastructure acquired or installed with funds awarded under 23 U.S.C. 151(f) shall be located along alternate fuel corridors that have been designed under 23 U.S.C. 151 only if any affected Indian Tribes are consulted prior to the designation. Accordingly, prior to commencing any work for the acquisition or installation of charging and fueling infrastructure under the award, the Recipient must produce documentation demonstrating that any affected Tribes have been consulted concerning such acquisition and installation. Such consultation may be satisfied through other applicable required processes, such as the Section 106 (of the National Historic Preservation Act) process.

## **ARTICLE 13**

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

**13.1 Limitation of Federal Award Amount.** Under the Grant Program award, the FHWA shall not provide funding greater than the amount obligated under section 4.3, and FMIS as applicable. The Recipient acknowledges that the FHWA is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.

#### **13.2 Projects Costs.**

- (a) The Grant Program award is subject to the cost principles at 2 C.F.R. 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- (b) **Operating Assistance.** As provided at 23 U.S.C. 151(f)(6)(C), if included within the scope of the award, the Recipient may use grant funds for operating assistance (as defined at 23 U.S.C. 151(f)(6)(C)(ii)) for any charging and fueling infrastructure that has been acquired and installed with funds awarded under 23 U.S.C. 151(f). Eligibility for any such



operating assistance is limited to a period of 5 years after the date of installation, and the amounts allowed for such assistance may not exceed the amount of the contract for the acquisition and installation of the charging and fueling infrastructure.

- (c) **Traffic Control Devices.** As provided at 23 U.S.C. 151(f)(6)(D), if included within the scope of the award, the Recipient may use grant funds to acquire and install traffic control devices for charging and fueling infrastructure that has been acquired and installed with funds awarded under 23 U.S.C. 151(f). The amounts allowed for the acquisition and installation of such traffic control devices may not exceed the amount of the contract for the acquisition and installation of the charging and fueling infrastructure. Any such traffic control devices must comply with the Manual of Uniform Traffic Control Devices.
- (d) **Education and Community Engagement.** As provided at 23 U.S.C. 151(f)(8)(K), for any award designated as “**Community**” in section 1 of schedule F, and where included within the scope of such award, the Recipient may not use more than 5 percent of the grant award for the costs for educational and community engagement activities to develop and implement education programs through partnerships with schools, community organizations, and vehicle dealerships to support the use of zero-emission vehicles and associated infrastructure.

### 13.3 Timing of Project Costs.

- (a) The Recipient shall not charge to the Grant Program award costs that are incurred after the budget period.
- (b) Except as permitted under section 13.3(d)-(f), the Recipient shall not charge to the Grant award costs that were incurred before the date of the project-specific agreement.
- (c) The execution of the project-specific agreement will terminate and supersede any previous FHWA approval for the Recipient to incur costs under the Grant Program award for the Project. Section 5 of schedule D is the exclusive FHWA approval of costs incurred before the date of the project-specific agreement.
- (d) Reserved.
- (e) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing” and section 5 of schedule D identifies a pre-award approval under 2 C.F.R. 200.458, then the Recipient may charge to the Grant Program award, for payment from the Grant Program grant or other Federal amounts, costs that were incurred before the date of the project-specific 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 FHWA 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 Grant award unless approved in advance in writing by the FHWA.



**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 Grant 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 “FMIS,” then the Recipient shall follow FMIS procedures to request and receive reimbursement payments under this award.
- (b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System to request reimbursement under this award unless the FHWA agreement officer provides written approval for the Recipient to use a different request and payment method.
- (c) The FHWA 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,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF 271 (Outlay Report and Request for Reimbursement for Construction Programs) 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 FHWA determines does not include or is not supported by sufficient detail, the FHWA may deny the request or withhold processing the request until the Recipient provides sufficient detail.

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

## **ARTICLE 14**

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

**14.1 Liquidation of Recipient Obligations.**

- (a) The Recipient shall liquidate all obligations of award funds under the project-specific 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 6 of schedule F, if applicable.
- (b) Liquidation of obligations and adjustment of costs under the project-specific agreement follow the requirements of 2 C.F.R. 200.344–200.346.

## **ARTICLE 15**

### **AGREEMENT MODIFICATIONS**

**15.1 Bilateral Modifications.** The parties may amend, modify, or supplement the project-specific agreement by mutual agreement in writing signed by the FHWA and the Recipient. Either party may request to amend, modify, or supplement the project-specific 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 FHWA contacts who are listed in section 5 of schedule A and section 2.2.
- (b) The FHWA may update the contacts who are listed in section 5 of schedule by written notice to all of the Recipient contacts who are listed in section 3 of schedule A.

**15.3 FHWA Unilateral Modifications.**

- (a) The FHWA may unilaterally modify the project-specific agreement to comply with Federal law, including the Program Statute.
- (b) To unilaterally modify the project-specific agreement under this section 15.3, the FHWA 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 the project-specific agreement except as permitted under sections 15.1, 15.2, or 15.3. If an amendment, modification, or supplement is not permitted under section 15.1, not permitted under section 15.2, and not permitted under section 15.3, it is void.

## **ARTICLE 16**

### **CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE**

**16.1 Climate Change and Environmental Justice.** Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), schedule H documents the consideration of climate change and environmental justice impacts of the Project.

**ARTICLE 17**  
**EQUITY AND BARRIERS TO OPPORTUNITY**

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

**ARTICLE 18**  
**LABOR AND WORK**

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

**ARTICLE 19**  
**CIVIL RIGHTS AND TITLE VI**

**19.1 Civil Rights and Title VI.**

- (a) Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Feb. 16, 2023), and DOT Order 1000.12C, “The U.S. Department of Transportation Title VI Program” (June 11, 2021), the purpose of sections 19.1(b)-19.1(c) is to ensure that the Recipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 C.F.R. part 21.
- (b) If the Recipient Type Designation in section 1 of schedule K is “Existing,” then the Recipient shall submit to the FHWA 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 FHWA’s implementation of Title VI; or
  - (2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.
- (c) If the Recipient Type Designation in section 1 of schedule K is “New,” then the FHWA completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C, before entering this agreement, as documented in section 2 of schedule K.

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

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

## **ARTICLE 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 3 of schedule F is “Elevated,” then, not later than two years after the date of this agreement, the Recipient shall submit to the FHWA 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 C.F.R. parts 200 and 1201.

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

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- (b) The failure of the project-specific agreement to expressly identify Federal law applicable to the Recipient or activities under the project-specific agreement does not make that law inapplicable.

**21.3 Federal Freedom of Information Act.**

- (a) The FHWA 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 FHWA by the Recipient related to this agreement may become FHWA records subject to public release under 5 U.S.C. 552.

**21.4 History of Performance.** Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient's performance under the project-specific 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 the Grant Program 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 the project-specific agreement includes the following additional terms as integral parts:
  - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;

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

(b) The Recipient shall comply with:

- (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
- (2) 49 C.F.R. part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance;
- (4) 23 C.F.R. Chapter 1: Federal Highway Administration, Department of Transportation as, applicable to the Recipient.
- (5) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

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

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

## **ARTICLE 22 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 the project-specific agreement granted by the FHWA will not be effective unless it is in writing and signed by an authorized representative of the FHWA.

- (b) A waiver of a term of the project-specific agreement granted by the FHWA on one occasion will not operate as a waiver on other occasions.
- (c) If the FHWA fails to require strict performance of a term of the project-specific agreement, fails to exercise a remedy for a breach of the project-specific agreement, or fails to reject a payment during a breach of the project-specific 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.** As applicable to the Grant Program, based on information that the Recipient provided to the FHWA, including the Technical Application, if section 1 of schedule F designates the Grant award as an urban award or a rural award, as defined in the NOFO, then the Recipient shall comply with the requirements that accompany that designation on geographic location.

**24.2 Disclaimer of Federal Liability.** The FHWA 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 the project-specific agreement.

**24.3 Relocation and Real Property Acquisition.**

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

**24.4 Equipment Disposition.**

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under the Grant Program award, then when that equipment is no longer needed for the Project:
  - (1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and
  - (2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from the FHWA.



- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 24.4 for all tiers of subawards under the Grant Program award.

## **24.5 Environmental Review.**

- (a) In this section, “**Environmental Review Entity**” means:
  - (1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and
  - (2) for all other cases, the FHWA.
- (b) Except as authorized under section 24.5(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
  - (1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
  - (2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.
- (c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).
- (d) The Recipient acknowledges that:
  - (1) the Environmental Review Entity’s actions under section 24.5(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
  - (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (e) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (f) The activities described in schedule B and other information described in the project-specific agreement may inform environmental decision-making processes, but the parties do not intend the project-specific 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 the project-specific agreement, then:

- (1) the parties may amend the project-specific agreement under section 15.1 for consistency with the selected build alternative; or
  - (2) if the FHWA determines that the condition at section 10.1(a)(5) is satisfied, the FHWA may terminate the project-specific agreement under section 10.1(a)(5).
- (g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.

**24.6 Railroad Coordination.** If section 4 of schedule C includes one or more milestones identified as a “Railroad Coordination Agreement,” then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad’s right-of-way.

## **ARTICLE 25**

### **MANDATORY AWARD INFORMATION**

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

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 27.2;
- (2) the “Assistance Listings Number” is 20.205 and the “Assistance Listings Title” is “Highway Planning and Construction”; and
- (3) this award is not for research and development.

**25.2 Federal Award Identification Number.**

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

**25.3 Recipient’s Unique Entity Identifier.**

- (a) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then the Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is available in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the unique entity

identifier from FMIS.

- (b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is listed on page 1, line 4 of the project-specific agreement.

## **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	CFI Program Designations
Schedule G	CFI Performance Measurement Information
Schedule H	Climate Change and Environmental Justice Impacts
Schedule I	Equity and Barriers to Opportunity
Schedule J	Labor and Work
Schedule K	Civil Rights and Title VI

**26.2 Exhibits.** The following exhibits, which are located in the document titled “Exhibits to Project-Specific Agreements under the Fiscal Year 2022 and Fiscal Year 2023 Charging and Fueling Infrastructure Program” dated March 1, 2024, and available at <https://www.fhwa.dot.gov/environment/cfi/resources/fy2022-2023-cfi-exhibits.pdf>, 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 project-specific 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 project-specific agreement, then the project-specific portion of the project-specific 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.** The project-specific agreement constitutes the entire agreement of the parties relating to the Grant Program and awards under that program and supersedes any previous agreements, oral or written, relating to the Grant Program and awards under that program.

**26.5 Definitions.** In the project-specific agreement, the following definitions apply:

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

**“Grant”** means an award of FY 2022 or FY 2023 CFI funds that were made available under the FY 2022 and FY 2023 Charging and Fueling Infrastructure Program Grants Notice of Funding Opportunity 693JJ323NF00004 posted to Grants.gov on March 14, 2023.

**“Grant Amount”** means the amount of the FY 2022 or FY 2023 CFI discretionary grant funds awarded to the Recipient.

**“Grant Program”** means the FY 2022 and FY 2023 CFI discretionary grants program under 23 U.S.C. 151.

**“Private Entity”** means a corporation, partnership, company, or nonprofit organization (23 U.S.C. 151(f)(1)).

**“Program Statute”** means the collective statutory text in schedule F.

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

**“Project-Specific Agreement”** means the agreement executed between the FHWA and Recipient and may be a grant agreement or a project agreement in FMIS.

**“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.** The project-specific 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 project-specific agreement will become effective when all parties have signed it. The date of the project-specific agreement will be the date the project-specific agreement is signed by the last party to sign it. This instrument constitutes a Grant when the FHWA's authorized representative signs it.

**FEDERAL HIGHWAY ADMINISTRATION**  
**EXHIBITS TO PROJECT-SPECIFIC AGREEMENTS**  
**UNDER THE**  
**FISCAL YEAR 2022 and FISCAL YEAR 2023 CHARGING AND FUELING**  
**INFRASTRUCTURE (CFI) GRANT PROGRAM**

**March 1, 2024**

## **EXHIBIT A**

### **APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into this agreement (also referred to as the “project-specific agreement) for a FY 2022 and FY 2023 CFI Grant the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. Such provisions include, but are not limited to, the following:

#### **General Federal Legislation**

- a. Davis-Bacon Act – 40 U.S.C. 3141, et seq., as applicable under 23 U.S.C. 113
- b. Federal Fair Labor Standards Act – 29 U.S.C. 201, et seq.
- c. Hatch Act – 5 U.S.C. 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 – 54 U.S.C. 306108
- f. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501, et seq.
- g. Native American Graves Protection and Repatriation Act – 25 U.S.C. 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. 7401, et seq.
- i. Section 404 of the Clean Water Act, as amended – 33 U.S.C. 1344
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. 1536
- k. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. 1451, et seq.
- l. Flood Disaster Protection Act of 1973 - Section 102(a) – 42 U.S.C. 4012a
- m. Age Discrimination Act of 1975 – 42 U.S.C. 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended – 21 U.S.C. 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended – 42 U.S.C. 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 – 42 U.S.C. 8373
- t. Contract Work Hours and Safety Standards Act – 40 U.S.C. 3701, et seq.
- u. Copeland Anti-kickback Act, as amended – 18 U.S.C. 874 and 40 U.S.C. 3145
- v. National Environmental Policy Act of 1969 – 42 U.S.C. 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. 1271, et seq.
- x. Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- y. Single Audit Act of 1984 – 31 U.S.C. 7501, et seq.
- z. Americans with Disabilities Act of 1990 – 42 U.S.C. 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. 1681 through 1683 and 1685 through 1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. 794
- cc. Title VI of the Civil Rights Act of 1964 – 42 U.S.C. 2000d, et seq.



- dd. Title IX of the Federal Property and Administrative Services Act of 1949 – 40 U.S.C. 1101 -1104, 541, et seq.
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352
- ff. Freedom of Information Act – 5 U.S.C. 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
- hh. Farmland Protection Policy Act of 1981 – 7 U.S.C. 4201, et seq.
- ii. Noise Control Act of 1972 – 42 U.S.C. 4901, et seq.
- jj. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661, et seq.
- kk. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. 401 and 525
- ll. Section 4(f) of the Department of Transportation Act of 1966 – 49 U.S.C. 303 and 23 U.S.C. 138
- mm. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. 9601, et seq.
- nn. Safe Drinking Water Act – 42 U.S.C. 300f to 300j-26
- oo. Wilderness Act – 16 U.S.C. 1131-1136
- pp. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
- qq. Migratory Bird Treaty Act – 16 U.S.C. 703, et seq.
- rr. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- ss. Cargo Preference Act of 1954 – 46 U.S.C. 55305
- tt. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

### **Executive Orders**

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

### **General Federal Regulations**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200

- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)

#### **Office of Management and Budget Circulars**

- a. Any applicable OMB Circular based upon the specific FY 2022 or FY 2023 CFI Grant Recipient.

#### **Highway Federal Legislation**

- a. Highways – Title 23, U.S.C. including but not limited to:
  - a. Brooks Act (for FHWA projects, this incorporates Title IX of the Federal Property and Administrative Services Act of 1949 (formerly 40 U.S.C. 541, et seq.)) – 40 U.S.C. 1101-1104; 23 U.S.C. 112(b)(2)
  - b. Letting of Contracts, 23 U.S.C. 112

- c. Highway Design and Construction Standards, 23 U.S.C. 109
- d. Prevailing Rate of Wage, 23 U.S.C. 113
- e. Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- f. National electric vehicle charging and hydrogen, propane, and natural gas fueling corridors, 23 U.S.C. 151
- g. Tolls, 23 U.S.C. 301 (to the extent the Recipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.
- h. Size, Weight, and Length Limitations – 23 U.S.C. 127, 49 U.S.C. 31101 et seq.
- i. Buy America – 23 U.S.C. 313  
(see [http://www.fhwa.dot.gov/construction/contracts/buyam\\_qa.cfm](http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm))
- j. Nondiscrimination – 23 U.S.C. 140
- k. Efficient Environmental Reviews - 23 U.S.C. 139

### **Federal Highway Regulations**

- a. Highways – Title 23, C.F.R. including but not limited to the specific parts identified herein.
- b. Planning – 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- c. National Highway System Design Standards – 23 C.F.R. Part 625
- d. Preconstruction Procedures – 23 C.F.R. Part 630 Subparts A and B
- e. Construction and Maintenance – 23 C.F.R. Part 635
- f. Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655
- g. National Electric Vehicle Infrastructure Standards and Requirements – 23 C.F.R. Part 680
- h. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- i. Procedures for Abatement of Highway Traffic and Construction Noise – 23 C.F.R. Part 772
- j. Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 C.F.R. Part 774
- k. Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122
- l. Required Contract Provisions – 23 C.F.R. Part 633 (Form 1273)
- m. External Programs – 23 C.F.R. Part 230

Specific assurances required to be included in the FY 2022 and FY 2023 CFI project-specific agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

**EXHIBIT B**  
**ADDITIONAL STANDARD TERMS**

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

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

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

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

**The United States Department of Transportation (USDOT)**

**Standard Title VI/Non-Discrimination Assurances**

**DOT Order No. 1050.2A**

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 and FY 2023 CFI Grant Program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

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

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

### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2022 and FY 2023 CFI:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2022 and FY 2023 CFI Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*
3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

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

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



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

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2022 and FY 2023 CFI. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2022 and FY 2023 CFI.

## APPENDIX A

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

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

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

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58 (Nov. 15, 2021) 23 U.S.C. § 124, the Highway Infrastructure Program (HIP) General Funds (IIJA, division J, title VIII, HIP heading, paragraph (4)), the Regulations for the Administration of FY 2022 and FY 2023 CFI, and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

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

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

absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

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

## APPENDIX C

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

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

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

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

## **APPENDIX D**

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

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

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

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



## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

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

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

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

**2 C.F.R. Parts 180 and 1200**

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

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 and FY 2023 CFI, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2022 and FY 2023 CFI, as set out below.

**1. Instructions for Certification – First Tier Participants:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

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

The Recipient therefore agrees:

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

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

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

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

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

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

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

## **TERM B.4**

### **RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

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

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

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

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

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

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While

Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

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

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

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

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

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

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

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

## EXHIBIT C

### QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS: FORMAT AND CONTENT

- 1. Purpose.** The purpose of the Quarterly Project Progress Reports and Recertifications under this agreement for the FY 2022 and FY 2023 CFI are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible. The Project Progress Report will be submitted as an attachment to the SF-425 form discussed in section 2(g).
- 2. Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the FHWA, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the FHWA. Some projects will have a more extensive quarterly status than others. For smaller projects, the FHWA may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.

  - (a) Project Overall Status.** This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.
  - (b) Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, number of electric vehicle (EV) charging ports and/or Hydrogen stations under construction (for EV charging ports, report by type, e.g., DCFC and level 2), construction completion milestones, submittals related to any FY 2022 and FY 2023 CFI requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.
  - (c) Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.
  - (d) Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the project-specific agreement is still accurate, this section can simply state that the scope is unchanged.

**(e) Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

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

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

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.



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

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

**(h) Certifications.**

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

**EXHIBIT D**  
**FORM FOR SUBSEQUENT OBLIGATION OF FUNDS**

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

As described in section 4.2(f) of the General Terms and Conditions, this instrument obligates **[\$XXX]** for **[insert portion of project listed in the Obligation Condition Table in section 2 of schedule D]**.

**[Recipient name]** states that:

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

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

_____	By:	_____
Date		Signature of Recipient’s Authorized Representative
		<b>[insert name]</b>
		_____
		Name
		<b>[insert title]</b>
		_____
		Title

The FHWA has determined that:

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

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

<hr/>	By: <hr/>
Date	Signature of FHWA Division Administrator
	<b>[insert name]</b>
	<hr/>
	Name
	<b>[insert title]</b>
	<hr/>
	Title