

U.S. DEPARTMENT OF TRANSPORTATION
GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEARS 2023-24 MEGA PROGRAM:
FHWA PROJECTS

Revision date: November 4, 2025

Table of Contents

Article 1 Purpose.....	6
1.1 Purpose.....	6
Article 2 USDOT Role.....	6
2.1 Division of USDOT Responsibilities.....	6
2.2 USDOT Program Contacts.....	7
Article 3 Recipient Role.....	7
3.1 Statements on the Project.....	7
3.2 Statements on Authority and Capacity.....	7
3.3 USDOT Reliance.....	8
3.4 Project Delivery.....	8
3.5 Rights and Powers Affecting the Project.....	8
3.6 Notification of Changes to Key Personnel.....	8
3.7 Subaward to Designated Subrecipient.....	8
3.8 Designated Subrecipient Statements and Responsibilities.....	9
3.9 Title 23 Oversight Responsibilities for Subawards.....	9
Article 4 Award Amount, Obligation, and Time Periods.....	9
4.1 Federal Award Amount.....	9
4.2 Federal Funding Source and Year.....	9
4.3 Federal Obligations.....	9
4.4 Budget Period.....	10
4.5 Period of Performance.....	10
4.6 Multi-year Agreements.....	11
Article 5 Statement of Work, Schedule, and Budget Changes.....	11
5.1 Notification Requirement.....	11
5.2 Scope and Statement of Work Changes.....	12
5.3 Schedule Changes.....	12
5.4 Budget Changes.....	12
5.5 USDOT Acceptance of Changes.....	13
Article 6 General Reporting Terms.....	14
6.1 Report Submission.....	14
6.2 Alternative Reporting Methods.....	14
6.3 Paperwork Reduction Act Notice.....	14
Article 7 Progress and Financial Reporting.....	14
7.1 Quarterly Project Progress Reports and Recertifications.....	14
7.2 Final Progress Reports and Financial Information.....	14
Article 8 Performance Measurement and Reporting.....	15
8.1 Baseline Performance Measurement.....	15
8.2 Post-construction Performance Measurement.....	15
8.3 Project Outcomes Report.....	15
8.4 General Performance Measurement Requirements.....	16
8.5 Outcome Measurement and Reporting Survival.....	16
Article 9 Noncompliance and Remedies.....	16
9.1 Noncompliance Determinations.....	16
9.2 Remedies.....	17
9.3 Other Oversight Entities.....	17

Article 10 Agreement Termination.....	18
10.1 USDOT Termination.....	18
10.2 Closeout Termination.....	18
10.3 Post-Termination Adjustments.....	18
10.4 Non-Terminating Events.....	19
10.5 Other Remedies.....	19
Article 11 Monitoring, Financial Management, Controls, and Records.....	19
11.1 Recipient Monitoring and Record Retention.	19
11.2 Financial Records and Audits.	19
11.3 Internal Controls.....	20
11.4 USDOT Record Access.....	20
Article 12 Contracting and Subawards	20
12.1 Minimum Wage Rates.....	20
12.2 Buy America.	20
12.3 Small and Disadvantaged Business Requirements.	21
12.4 Engineering and Design Services.....	21
12.5 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	21
12.6 Pass-through Entity Responsibilities.....	21
12.7 Subaward and Contract Authorization.....	21
Article 13 Costs, Payments, and Unexpended Funds	22
13.1 Limitation of Federal Award Amount.....	22
13.2 Projects Costs.....	22
13.3 Timing of Project Costs.	22
13.4 Recipient Recovery of Federal Funds.....	22
13.5 Unexpended Federal Funds.....	22
13.6 Timing of Payments to the Recipient.....	22
13.7 Payment Method.	23
13.8 Information Supporting Expenditures.....	23
13.9 Reimbursement Frequency.....	23
Article 14 Liquidation, Adjustments, and Funds Availability.....	23
14.1 Liquidation of Recipient Obligations.....	23
14.2 Funds Cancellation.....	23
Article 15 Agreement Modifications	24
15.1 Bilateral Modifications.....	24
15.2 Unilateral Contract Modifications.....	24
15.3 USDOT Unilateral Modifications.....	24
15.4 Other Modifications.	24
Article 16 RESERVED.....	24
Article 17 Civil Right and Title VI.....	24
17.1 Civil Rights and Title VI.....	24
Article 18 Labor and Work	25
18.1 Labor and Work.	25
Article 19 Safety	25
19.1 Safety.....	25
Article 20 Critical Infrastructure Security and Resilience.....	26

20.1	Critical Infrastructure Security and Resilience.	26
Article 21	Federal Financial Assistance, Administrative, and National Policy Requirements	27
21.1	Uniform Administrative Requirements for Federal Awards.	27
21.2	Federal Law and Public Policy Requirements.	27
21.3	Federal Freedom of Information Act.	27
21.4	History of Performance.	28
21.5	Whistleblower Protection.	28
21.6	External Award Terms and Obligations.	28
21.7	Incorporated Certifications.	28
Article 22	Assignment	29
22.1	Assignment Prohibited.	29
Article 23	Waiver.	29
23.1	Waivers.	29
Article 24	Additional Terms and Conditions.	29
24.1	Effect of Urban or Rural Designation.	29
24.2	Effect of Historically Disadvantaged Community or Area of Persistent Poverty Designation.	29
24.3	Effect of Project Size Designation.	29
24.4	Effect of Modal Designation.	30
24.5	Disclaimer of Federal Liability.	30
24.6	Relocation and Real Property Acquisition.	30
24.7	Equipment Disposition.	31
24.8	Environmental Review.	31
24.9	Railroad Coordination.	32
Article 25	Mandatory Award Information.	33
25.1	Information Contained in a Federal Award.	33
25.2	Federal Award Identification Number.	33
25.3	Recipient's Unique Entity Identifier.	33
Article 26	Construction and Definitions	33
26.1	Schedules.	33
26.2	Exhibits.	34
26.3	Construction.	34
26.4	Integration.	34
26.5	Definitions.	34
Article 27	Agreement Execution and Effective Date	35
27.1	Counterparts.	35
27.2	Effective Date.	35

Index of Definitions

Administering Operating Administration	7
Designated Subrecipient	Schedule A, Section 9
Federal Share	13
FHWA	7
General Terms and Conditions	33
IIJA	6
Mega Grant	33
NOFO	6
OMB	13
Program Statute	33
Project	33
Project Closeout	18
Project Cost Savings	12
Recipient	Project-Specific Recitals
Technical Application	33
USDOT	6

GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) (the “**IIJA**”) made funds available to the United States Department of Transportation (the “**USDOT**”) for fiscal years 2023 and 2024 to carry out 49 U.S.C. 6701 by providing Federal financial assistance for national infrastructure projects. The USDOT program administering those funds is the Mega program.

On June 26, 2023, the USDOT posted a funding opportunity at Grants.gov with funding opportunity title “Mega Grants” and funding opportunity number NIPA-23-24-MEGA. The notice of funding opportunity posted at Grants.gov (the “**NOFO**”) solicited applications for Federal financial assistance under the fiscal year 2023-2024 Mega program. Because the NOFO also made funding available for two other programs, DOT also collected Mega applications under funding opportunity numbers NSMFHP-23-24-INFRA and RSTGP-23-24-RURAL. On January 24, 2024, the USDOT announced application selections under the NOFO for the Mega program.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal years 2023-24 Mega program. The term “Recipient” is defined in the project-specific portion of the agreement. The project-specific portion of the agreement includes schedules A through I. The project-specific portion of the agreement may include special terms and conditions in project-specific articles.

ARTICLE 1 PURPOSE

- 1.1 Purpose.** The purpose of this award is to fund an eligible project to help achieve the goals identified in section A.1 of the NOFO. The parties will accomplish that purpose by achieving the following objectives:
- (1) timely completion of the Project; and
 - (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by schedule D.

ARTICLE 2 USDOT ROLE

2.1 Division of USDOT Responsibilities.

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

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

2.2 USDOT Program Contacts.

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

and

FHWA Mega Program Manager
Federal Highway Administration
Office of Freight Management and Operations
1200 New Jersey Avenue SE
Washington, DC 20590
fhwa-mpdg@dot.gov

ARTICLE 3 RECIPIENT ROLE

3.1 Statements on the Project. The Recipient states that:

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

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

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

- (5) it has sufficient funds available to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and
- (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 3 and in section 21.7 on behalf of the Recipient.

3.3 USDOT Reliance. The Recipient acknowledges that:

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

3.4 Project Delivery.

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

3.5 Rights and Powers Affecting the Project.

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

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

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

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

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

ARTICLE 4 AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

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

4.2 Federal Funding Source and Year. The Mega Grant is from funding that was appropriated in IIJA div. J, tit. VIII under the heading "Department of Transportation—Office of the Secretary—National Infrastructure Investments" to carry out 49 U.S.C. 6701 for fiscal years 2023-24. The Mega Grant may be awarded fiscal year 2023 funds, fiscal year 2024 funds, or both.

4.3 Federal Obligations.

- (a) If the Federal Obligation Type identified in section 2 of schedule D is "Single," then this agreement obligates for the budget period the amount listed in section 1 of schedule D as the Mega Grant Amount and sections 4.3(c)–4.3(h) do not apply to this agreement.
- (b) If the Federal Obligation Type identified in section 2 of schedule D is "Multiple," then an amount up to the Mega Grant Amount listed in section 1 of schedule D will be obligated with one initial obligation and one or more subsequent, optional obligations, as described in sections 4.3(c)–4.3(h).

- (c) The Obligation Condition Table in section 2 of schedule D allocates the Mega Grant among separate portions of the Project for the purpose of the Federal obligation of funds. The scope of each portion of the Project that is identified in that table is described in section 2 of schedule B.
- (d) This agreement obligates for the budget period only the amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table does not list an obligation condition.
- (e) This agreement does not obligate amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table lists an obligation condition. The parties may obligate the amounts allocated to those portions of the Project only as described in section 4.3(f) or by modifying this agreement under article 15.
- (f) For each portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, the amount allocated in that table to that portion of the Project is obligated if the parties execute an instrument, in the form provided in Exhibit D, documenting that:
 - (1) the USDOT determines that the obligation condition listed in that table for that portion of the Project is satisfied;
 - (2) the USDOT determines that all applicable Federal requirements for obligating the amount are satisfied; and
 - (3) the Recipient states that it is not required to request a modification of this agreement under article 5.
- (g) The Recipient shall not request reimbursement of costs for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f).
- (h) The Recipient acknowledges that the USDOT is not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f).

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

4.5 Period of Performance.

- (a) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then the period of performance for this award begins on the date of this agreement and ends on project end date in FMIS.

(b) If the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing,” then the period of performance for this award is listed on page 1, line 6 of the project-specific agreement.

(c) In this agreement, “period of performance” is used as defined at 2 CFR 200.1.

4.6 Multi-year Agreements.

(a) If the Single- or Multi-year Designation in section 5 of schedule F is “Single-year,” then this is a single-year grant agreement and sections 4.6(b)–4.6(e) do not apply to this agreement.

(b) If the Single- or Multi-year Designation in section 5 of schedule F is “Multi-year,” then this is a multi-year grant agreement under 49 U.S.C. 6701(j)(1)–(3). The maximum multi-year award under this agreement is listed in section 6 of schedule D.

(c) The USDOT has allocated the amounts obligated under section 4.3 across fiscal year funding sources as described in the Obligation by Fiscal Year Table in section 6 of schedule D.

(d) The USDOT may obligate for the Project an additional amount of future available budget authority specified in law. The Contingent Commitment by Fiscal Year Table in section 6 of schedule D describes the allocation of future available budget authority by fiscal year, as anticipated by the parties on the date of this agreement. This agreement does not obligate amounts described in the Contingent Commitment by Fiscal Year Table in section 6 of schedule F. To obligate amounts described in that table, the parties must amend this agreement under article 15 on or after October 1 of the relevant fiscal year. The USDOT’s obligation of additional amounts under this section 4.6(d) is subject to the availability of Federal funds and the Recipient’s performance under this agreement.

(e) Any funds disbursed under the Mega program for the Project before the completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) may only cover costs associated with development-phase activities described in 49 U.S.C. 6701(h)(1)(A).

ARTICLE 5 STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

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

the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 5.1 is separate from any requirements under this article 5 that the Recipient request modification of this agreement.

5.2 Scope and Statement of Work Changes. If the Project’s activities differ from the activities described in schedule B, then the Recipient shall request a modification of this agreement to update schedule B.

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

- (1) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 2 of schedule C;
- (2) a schedule change would require the final budget period of the project to continue after the final budget period end date listed in section 1 of schedule C (i.e., for projects with multiple phases, changes to the base phase budget period end date for projects with two phases, or changes to base or secondary phase budget period end dates for projects with three phases, etc. will not trigger notification/modification requirements); or
- (3) the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing” and a schedule change would require the period of performance to continue after the period of performance listed on page 1, line 6 of the project-specific agreement.

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

5.4 Budget Changes.

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient’s obligation under this agreement to complete the Project; and
 - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request a modification of this agreement to update schedule D if, in comparing the Project’s budget to the amounts listed in section 3 of schedule D:
 - (1) the total “Non-Federal Funds” amount decreases; or
 - (2) the total eligible project costs amount decreases.

- (c) For budget changes that are not identified in section 5.4(b), the Recipient shall follow the applicable procedures of the Administering Operating Administration and document the changes in writing.
- (d) If there are Project Cost Savings, then the Recipient may propose to the USDOT, in writing consistent with the Administering Operating Administration's requirements, to include in the Project specific additional activities that are within the scope of this award, as defined in section 1.1 and schedule B, and that the Recipient could complete with the Project Cost Savings.

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

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

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

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

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

ARTICLE 6 GENERAL REPORTING TERMS

- 6.1 Report Submission.** The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 5 of schedule A and all USDOT contacts who are listed in section 2.2.
- 6.2 Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 6.3 Paperwork Reduction Act Notice.** Under 5 CFR 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Notwithstanding any other term of this agreement, the due date for any information collections required under this agreement, including the reporting requirements in articles 7 and 8, is the later of (1) the due date stated with the requirement and (2) the 30th day after OMB approves that information collection.

ARTICLE 7 PROGRESS AND FINANCIAL REPORTING

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

ARTICLE 8

PERFORMANCE MEASUREMENT AND REPORTING

8.1 Baseline Performance Measurement.

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

8.2 Post-construction Performance Measurement.

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

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

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

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

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

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

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

9.2 Remedies.

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

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

ARTICLE 10 AGREEMENT TERMINATION

10.1 USDOT Termination.

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

10.2 Closeout Termination.

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

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

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

10.4 Non-Terminating Events.

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

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

ARTICLE 11 MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

11.1 Recipient Monitoring and Record Retention.

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
 - (1) that those activities comply with this agreement; and
 - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 CFR 200. 332(e).
- (c) The Recipient shall retain records relevant to the award as required under 2 CFR 200.334.

11.2 Financial Records and Audits.

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

(c) The Recipient shall separately identify expenditures under the fiscal years 2023-24 Mega program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:

- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 CFR 200 subpart F, including “FYs 2023-24” in the program name; and
- (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2023-24 ” in column c (“Additional Award Identification”).

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

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

ARTICLE 12 CONTRACTING AND SUBAWARDS

12.1 Minimum Wage Rates. The Recipient shall include, in all contracts in excess of \$2,000 for work on the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with the Davis-Bacon Act, 40 U.S.C. 3141–3148, or 23 U.S.C. 113, as applicable, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

12.2 Buy America.

- (a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
- (b) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (c) Under 2 CFR 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The Recipient shall include the requirements of 2 CFR 200.322

in all subawards including all contracts and purchase orders for work or products under this award.

12.3 Small and Disadvantaged Business Requirements.

- (a) If any funds under this award are administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 49 CFR part 26, including any amendments thereto.
- (b) If any funds under this award are not administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 2 CFR 200.321, including any amendments thereto.

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 with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. 1101-1104 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT.

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

12.6 Pass-through Entity Responsibilities. If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 CFR parts 200 and 1201, including 2 CFR 200.331–200.333.

12.7 Subaward and Contract Authorization.

- (a) If the USDOT Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Division,” then the Recipient shall comply with subaward and contract authorization requirements under 23 C.F.R chapter I.
- (b) If the USDOT Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Office of Acquisition and Grants Management,” then the Recipient must follow the requirements in 2 CFR 200.308, 2 CFR 200.333, and 23 CFR part 172, as applicable, for the subaward or contracting out of any work under this agreement. Approvals under 2 CFR 200.308(f)(6) do not apply to the procurement of goods and services.

ARTICLE 13

COSTS, PAYMENTS, AND UNEXPENDED FUNDS

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

13.2 Projects Costs. This award is subject to the cost principles at 2 CFR 200 subpart E, including provisions on determining allocable costs and determining allowable costs.

13.3 Timing of Project Costs.

- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
- (b) The Recipient shall not charge to this award costs that were incurred before the date of this agreement unless those costs are identified in section 5 of schedule D and would have been allowable if incurred during the budget period. This limitation applies to costs incurred under an advance construction authorization (23 U.S.C. 115), costs incurred prior to authorization (23 CFR 1.9(b)), and pre-award costs under 2 CFR 200.458. This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this award for the Project. Section 5 of schedule D is the exclusive USDOT approval of costs incurred before the date of this agreement.

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

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

13.6 Timing of Payments to the Recipient.

- (a) Reimbursement is the payment method for the Mega 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 USDOT agreement officer provides written approval for the Recipient to use a different request and payment method.
- (c) The USDOT may deny a payment request that is not submitted using the method identified in this section 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 SF 270 (Request for Advance or Reimbursement), as applicable, shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

13.9 Reimbursement 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 this agreement not later than 120 days after the end of the period of performance.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 CFR 200.344–200.346.

14.2 Funds Cancellation. Mega program funding that is obligated for this award under section 4.3 remains available until expended.

ARTICLE 15 AGREEMENT MODIFICATIONS

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

15.2 Unilateral Contact Modifications.

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

15.3 USDOT Unilateral Modifications.

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

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

ARTICLE 16 RESERVED

RESERVED.

ARTICLE 17 CIVIL RIGHTS AND TITLE VI

17.1 Civil Rights and Title VI .

- (a) The purpose of sections 17.1(b)–17.1(c) is to ensure that the Recipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 CFR part 21, including any amendments thereto.
- (b) If the Recipient is an Existing Recipient, the Recipient shall submit to the USDOT either:
 - (1) not later than one month after the date of this agreement, documentation showing that the Recipient has complied with all reporting requirements under the Administering Operating Administration’s implementation of Title VI; or
 - (2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.
- (c) If the Recipient is “New,” then the Administering Operating Administration completed a Title VI Assessment of the Recipient, as described in chapter II, section 2 of DOT Order 1000.12C., including any amendments or updates thereto, before entering this agreement.
- (d) In this section 17.1:
 - (1) “Title VI” means Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. 2000d to 2000d-4a).
 - (2) “Existing” means a prior recipient of DOT federal financial assistance since the publication of DOT Order 1000.12C on June 11, 2021.
 - (3) “New” means a recipient who has not received DOT federal financial assistance since the publication of DOT Order 1000.12C on June 11, 2021.

ARTICLE 18 LABOR AND WORK

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

ARTICLE 19 SAFETY

19.1 Safety

- (a) The National Roadway Safety Strategy (NRSS), issued January 27, 2022, commits the Department to respond to the current crisis in roadway fatalities by “taking substantial, comprehensive action to significantly reduce serious and fatal injuries on the Nation’s roadways,” in pursuit of the goal of achieving zero roadway deaths through a Safe System Approach. The outcomes that are anticipated from the roadway projects funded by the Mega programs should align with the NRSS. Schedule I documents the consideration of safety approaches related to the Project that align with the NRSS.
- (i) The Recipient shall work with the Administering Operating Administration to identify, and the Recipient shall carry out, safety-related activities for the Project that respond to priority areas in the strategic highway safety plan for the State in which the Project is located and are likely to yield safety benefits.
 - (ii) In the Project, the Recipient shall incorporate appropriate safety-related activities that are identified as “proven safety countermeasures” at <https://safety.fhwa.dot.gov/provencountermeasures/>.
 - (iii) The Project Sponsor shall describe, in the reports required under article 7, the specific safety-related activities carried out under this section 19.1.
- (b) If Recipient is exempt from the State-specific Highway Safety Plan elements, USDOT will work with those Recipients on a project-by project basis to determine the specific safety requirements that are appropriate.

ARTICLE 20

CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

20.1 Critical Infrastructure Security and Resilience.

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

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

ARTICLE 21

FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

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

21.2 Federal Law and Public Policy Requirements.

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- (b) Pursuant to Section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination And Restoring Merit-Based Opportunity*, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
- (c) Pursuant to Section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination And Restoring Merit-Based Opportunity*, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.
- (d) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

21.3 Federal Freedom of Information Act.

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

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

21.5 Whistleblower Protection.

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

21.6 External Award Terms and Obligations.

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

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

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

ARTICLE 22 ASSIGNMENT

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

ARTICLE 23 WAIVER

23.1 Waivers.

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

ARTICLE 24 ADDITIONAL TERMS AND CONDITIONS

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

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

24.3 Effect of Project Size Designation.

- (a) If section 3 of schedule F lists “\$500M+” for the “Project Size Designation,” then based on information that the Recipient provided to the USDOT, including the Technical

Application, the USDOT determined that the Project has eligible project costs that are reasonably anticipated to equal or exceed the threshold described at 49 U.S.C. 6701(d)(2)(A).

- (b) If section 3 of schedule F lists “\$100M to \$500M” for the “Project Size Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project has eligible project costs that are reasonably anticipated to be in the range described at 49 U.S.C. 6701(d)(2)(B).
- (c) The Recipient states that the reasonably anticipated eligible costs of the Project on the date of this agreement, including costs incurred before that date, are consistent with the USDOT determination described in section 24.3(a)–(b).

24.4 Effect of Modal Designation.

- (a) If section 4 of schedule F lists “Highway, road, or bridge” for the “Modal Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project is a highway, road, or bridge project. Therefore, under 49 U.S.C. 6701(n)(2)(A), the requirements of title 23 apply to this award.
- (b) If section 4 of schedule F lists “Multimodal” for the “Modal Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project is a multimodal project and the predominant modal component of the project is a highway, road, or bridge component. Therefore, under 49 U.S.C. 6701(n)(3), the requirements of title 23 apply to this award.

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

24.6 Relocation and Real Property Acquisition.

- (a) To the greatest extent practicable under State law, the Recipient shall comply with the land acquisition policies in 49 CFR 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 CFR 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 CFR part 24, subparts D–E.
- (c) The Recipient shall make available to displaced persons, comparable replacement dwellings in accordance with 49 CFR part 24.-

24.7 Equipment Disposition.

- (a) In accordance with 2 CFR 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project:
 - (1) if the entity that acquired the equipment is a State, the State shall dispose of that equipment in accordance with State laws and procedures;
 - (2) if the entity that acquired the equipment is an Indian Tribe, the Indian Tribe shall dispose of that equipment in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in 2 CFR 200.313; and
 - (3) if the entity that acquired the equipment is neither a State nor an Indian Tribe, that entity shall request disposition instructions from the Administering Operating Administration.
- (b) In accordance with 2 CFR 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 CFR 200.310–200.316 and 2 CFR 1201.313.
- (c) The Recipient shall ensure compliance with this section 24.7 for all tiers of subawards under this award.

24.8 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 24.8(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 CFR 710.501 or hardship and protective acquisitions of real property 23 CFR 710.503, the Recipient shall comply with 23 CFR 771.113(d)(1).
- (d) The Recipient acknowledges that:
 - (1) the Environmental Review Entity's actions under section 24.8(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 CFR 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (f) The activities described in schedule B and other information described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with schedule B or other information in this agreement, then:
 - (1) the parties may amend this agreement under section 15.1 for consistency with the selected build alternative; or
 - (2) if the USDOT determines that the condition at section 10.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 10.1(a)(5).
- (g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.

24.9 Railroad Coordination. If section 3 of schedule C includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with

23 CFR 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 CFR 200.211:

- (a) the "Federal Award Date" is the date of this agreement, as defined under section 27.2;
- (b) the "Assistance Listings Number" is 20.937 and the "Assistance Listings Title" is "National Infrastructure Project Assistance (Mega Projects)"; and
- (c) 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 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 CFR 25.400, 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 CFR 25.400, 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	Mega Program Designations
Schedule G	Mega Performance Measurement Information
Schedule H	Labor and Work
Schedule I	Safety

26.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to FHWA Grant Agreements Under the Fiscal Years 2023-24 Mega Program,” dated November 4, 2025, and available at <https://www.transportation.gov/grants/mega-grant-implementation>, are part of this agreement.

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

26.3 Construction.

(a) In these General Terms and Conditions:

- (1) unless expressly specified, a reference to a section or article refers to that section or article in these General Terms and Conditions;
- (2) a reference to a section or other subdivision of a schedule listed in section 26.1 will expressly identify the relevant schedule; and
- (3) there are no references to articles or sections in project-specific portions of the agreement that are not contained in schedules listed in section 26.1.

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

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

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

“**General Terms and Conditions**” means this document, including articles 1–27.

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

- (1) at 49 U.S.C. 6701; and
- (2) under the heading “Department of Transportation—Office of the Secretary—National Infrastructure Investments” in title VIII of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading.

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

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

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

ARTICLE 27

AGREEMENT EXECUTION AND EFFECTIVE DATE

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

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