

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

Revision date: October 1, 2024

Table of Contents

Article 1 Purpose.....	6
1.1 Purpose.....	6
Article 2 USDOT Role.....	7
2.1 Division of USDOT Responsibilities.....	7
2.2 USDOT Program Contacts.....	7
Article 3 Recipient Role.....	8
3.1 Statements on the Project.....	8
3.2 Statements on Authority and Capacity.....	8
3.3 USDOT Reliance.....	8
3.4 Project Delivery.....	9
3.5 Rights and Powers Affecting the Project.....	9
3.6 Notification of Changes to Key Personnel.....	9
3.7 Subaward to Designated Subrecipient.....	9
3.8 Designated Subrecipient Statements and Responsibilities.....	10
Article 4 Award Amount, Obligation, and Time Periods.....	10
4.1 Federal Award Amount.....	10
4.2 Federal Funding Source.....	10
4.3 Federal Obligations.....	10
4.4 Budget Period.....	11
4.5 Period of Performance.....	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.....	13
6.1 Report Submission.....	13
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.....	14
8.1 Baseline Performance Measurement.....	14
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.....	17
10.1 USDOT Termination.....	17

10.2	Closeout Termination.....	18
10.3	Post-Termination Adjustments.....	18
10.4	Non-Terminating Events.....	18
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
11.5	Oversight Responsibilities.....	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.....	24
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	Climate Change and Environmental Justice.....	24
16.1	Climate Change and Environmental Justice.....	24
Article 17	Equity and Barriers to Opportunity.....	25
17.1	Equity and Barriers to Opportunity.....	25
17.2	Community Engagement Activities.....	25
17.3	Activities to Safeguard Affordability.....	25
Article 18	Labor and Work.....	25
18.1	Labor and Work.....	25
18.2	OFCCP Mega Construction Project Program.....	25

Article 19 Critical Infrastructure Security and Resilience.....	25
19.1 Critical Infrastructure Security and Resilience.	25
Article 20 Federal Financial Assistance, Administrative, and National Policy Requirements	26
20.1 Uniform Administrative Requirements for Federal Awards.....	26
20.2 Federal Law and Public Policy Requirements.	26
20.3 Federal Freedom of Information Act.	26
20.4 History of Performance.	27
20.5 Whistleblower Protection.	27
20.6 External Award Terms and Obligations.....	27
20.7 Incorporated Certifications.....	28
Article 21 Assignment	28
21.1 Assignment Prohibited.	28
Article 22 Waiver.....	28
22.1 Waivers.....	28
Article 23 Additional Terms and Conditions.....	28
23.1 Effect of Economically Disadvantaged Community Designation.	28
23.2 Disclaimer of Federal Liability.	28
23.3 Relocation and Real Property Acquisition.	29
23.4 Equipment Disposition.....	29
23.5 Environmental Review.....	29
23.6 Railroad Coordination.	30
Article 24 Mandatory Award Information.....	31
24.1 Information Contained in a Federal Award.....	31
24.2 Federal Award Identification Number.	31
24.3 Recipient’s Unique Entity Identifier.	31
Article 25 Construction and Definitions	31
25.1 Schedules.....	31
25.2 Exhibits.....	32
25.3 Construction.	32
25.4 Integration.	32
25.5 Definitions.....	32
Article 26 Agreement Execution and Effective Date	34
26.1 Counterparts.	34
26.2 Effective Date.....	34

Index of Definitions

Administering Operating Administration	7
Designated Subrecipient	Schedule A, Section 9
Environmental Review Entity.....	29
Federal Share	13
FHWA.....	7
General Terms and Conditions	32
IIJA	6
NAE Grant	33
NOFO.....	6
OFCCP.....	25
OMB	14
Program Statute.....	33
Project	33
Project Closeout.....	19
Project Cost Savings	13
RCN Program.....	6
Recipient	Project-Specific Recitals
Regional Partnership Challenge Grant.....	33
Technical Application.....	33
USDOT	6

GENERAL TERMS AND CONDITIONS

The Inflation Reduction Act, Pub. L. No. 117-169 (Aug. 16, 2022) (the “**IRA**”) made funds available to the United States Department of Transportation (the “**USDOT**”) for fiscal year 2022 to remain available until September 30, 2026, to carry out the Neighborhood Access and Equity (NAE) Grant Program by providing competitive grants to improve walkability, safety, and affordable transportation access; remove, remediate, reuse, replace, retrofit, or cap a dividing or burdening surface transportation facility (as defined in the Notice of Funding Opportunity); build or improve complete streets, multiuse trails, regional greenways, or active transportation networks and spines; provide affordable access to essential destinations, public spaces, or transportation links and hubs; or mitigate or remediate negative impacts on the human or natural environment resulting from a dividing or burdening facility. The USDOT program administering those funds is the Reconnecting Communities and Neighborhoods Program (the “**RCN Program**”). These General Terms and Conditions apply specifically to NAE Program awards.

On July 5, 2023, the USDOT posted a funding opportunity at Grants.gov with funding opportunity title “Neighborhood Access and Equity Discretionary Grant Program” and funding opportunity number DOT-NAE-FY23-01. The notice of funding opportunity posted at Grants.gov, as amended on August 21, 2023, (the “**NOFO**”) solicited applications for Federal financial assistance under the fiscal year 2023 NAE Program. On March 13, 2024, the USDOT announced application selections under the NOFO.

These general terms and conditions are incorporated by reference in a project-specific agreement under the fiscal year 2023 RCN 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 J. The project-specific portion of the agreement may include special terms and conditions in project-specific articles.

ARTICLE 1 PURPOSE

1.1 Purpose. The purpose of this award is to fund an eligible project that improves walkability, safety, and affordable transportation access through context-sensitive strategies; addresses an existing eligible facility that create barriers to community connectivity or negative impacts on the human or natural environment, especially in disadvantaged or underserved communities; conducts planning and capacity building activities in disadvantaged or underserved communities; or conducts technical assistance to units of local government to facilitate efficient and effective contracting, design, and project delivery and to build capacity for delivering surface transportation projects. The parties will accomplish that purpose by achieving the following objectives:

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

In this section, the term “facility,” is used as defined at 23 U.S.C. 177(c).

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 RCN 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.

If the Capital-Planning Designation in section 1 of schedule F is “Planning”:

FHWA NAE Program Manager—Planning Grants
Kenneth Petty
Federal Highway Administration
Office of Planning, Environment, and Realty
1200 New Jersey Avenue SE
Room E72-330
Washington, DC 20590
(202) 366-6654
Kenneth.Petty@dot.gov

If the Capital-Planning Designation in section 1 of schedule F is “Capital Construction”:

FHWA NAE Program Manager—Capital Construction Grants
Karen Perritt
Federal Highway Administration
Office of Planning, Environment, and Realty
1200 New Jersey Avenue SE
Room E76-326
Washington, DC 20590
(202) 366-9482
karen.perritt@dot.gov

And for all awards under the RCN Program:

OST RCN Program Manager
United States Department of Transportation
Office of Infrastructure Deployment (OST P-40)
1200 New Jersey Avenue SE
Washington, DC 20590
ReconnectingCommunities@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 Neighborhood Access and Equity (NAE) Program 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 20.7 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 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. The USDOT hereby awards a Neighborhood Access and Equity (NAE) Program Grant to the Recipient in the amount listed in section 1 of schedule D as the NAE Program Grant Amount.

4.2 Federal Funding Source. If section 4 of schedule F identifies the Funding Source as "General Fund," then the NAE Grant is from NAE Program funding that was made available in fiscal year 2022 to be available until September 30, 2026, to be available until September 30, 2026, at IRA, tit. VI, subt. E § 60501.

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 NAE Program 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 NAE Program 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 NAE Program Grant Amount 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 C.F.R. 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 C.F.R. 200.1.

ARTICLE 5

STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

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

the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 5.1 is separate from any requirements under this article 5 that the Recipient request modification of this agreement.

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

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

- (1) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 2 of schedule C;
- (2) a schedule change would require the budget period to continue after the budget period end date listed in section 1 of schedule C; or
- (3) the USDOT Payment System identified in section 6 of schedule A is “DELPHI eInvoicing” and a schedule change would require the period of performance to continue after the period of performance listed on page 1, line 6 of the project-specific agreement.

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

5.4 Budget Changes.

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient’s obligation under this agreement to complete the Project; and
 - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request a modification of this agreement to update schedule D if, in comparing the Project’s budget to the amounts listed in section 3 of schedule D:
 - (1) the total “Non-Federal Funds” amount decreases; or
 - (2) the total eligible project costs amount decreases.
- (c) For budget changes that are not identified in section 5.4(b), the Recipient shall follow the applicable procedures of the Administering Operating Administration and document the changes in writing.

- (d) If there are Project Cost Savings, then the Recipient may propose to the USDOT, in writing consistent with the Administering Operating Administration's requirements, to include in the Project specific additional activities that are within the scope of this award, as defined in section 1.1 and schedule B, and that the Recipient could complete with the Project Cost Savings.

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

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

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

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

5.1 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 RCN 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 the 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 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). 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.** If the Capital-Planning Designation in section 1 of schedule F is “Capital Construction,” then:
- (1) 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; and

- (2) 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) If the Capital-Planning Designation in section 1 of schedule F is “Capital Construction,” then:
 - (1) 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; and
 - (2) for each performance measure 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.
- (b) Not later than January 31 of each year that follows a calendar year during which data was collected under section 8.2(a), the Recipient shall submit to the USDOT a Post-construction Performance Measurement Report containing the data collected under section 8.2(a) in the previous calendar year and stating the dates when the data was collected.
- (c) If an external factor significantly affects the value of a performance measure collected under section 8.2(a), then the Recipient shall identify that external factor in the Post-construction Performance Measurement Report described in section 8.2(b) and discuss the external factor’s influence on the performance measure.

8.3 Project Outcomes Report. If the Capital-Planning Designation in section 1 of schedule F is “Capital Construction,” then the Recipient shall submit to the USDOT, not later than January 31 of the year that follows the final calendar year during which data was collected under section 8.2(a), 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(b);

- (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(a).

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 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to the USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
 - (3) any other remedy legally available.
- (b) To impose a remedy, the USDOT must provide 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 C.F.R. 200.346 and the [Standards for Administrative Collection of Claims](#) (31 C.F.R. 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-NAE Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with schedule D;
 - (2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Recipient fails to meet that milestone by six months after the date listed in section 2 of schedule C;
 - (3) the Recipient fails to meet a milestone listed in section 3 of schedule C by the deadline date listed in that section for that milestone;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the project schedule in schedule C even if it is beyond the reasonable control of the Recipient;
 - (5) circumstances cause changes to the Project that the USDOT determines are inconsistent with the USDOT's basis for selecting the Project to receive an NAE 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 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 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 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 this agreement; and
 - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(e).
- (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. 200.302–200.307, 2 C.F.R. 200 subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year 2023 RCN Program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:

- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including “FY 2023” in the program name; and
 - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2023” in column c (“Additional Award Identification”).
- 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 USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.
- 11.5 Oversight Responsibilities.** This award is subject to the oversight requirements of title 23, United States Code.

ARTICLE 12 CONTRACTING AND SUBAWARDS

- 12.1 Minimum Wage Rates.** The Recipient shall include, in all contracts in excess of \$2,000 for work on the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with 23 U.S.C. 113, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
- 12.2 Buy America.**
- (a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
 - (b) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
 - (c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The Recipient shall include the requirements of 2 C.F.R.

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

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

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

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 C.F.R. parts 200 and 1201, including 2 C.F.R. 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 shall obtain prior written approval from the USDOT agreement officer pursuant to 2 C.F.R. 200.308, 2 C.F.R. 200.333, and 23 C.F.R. part 172, as applicable, for the subaward or contracting out of any work under this agreement. 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. Approvals under 2 CFR 200.308(f)(6) do not apply to the acquisition of supplies, material, equipment, or general support 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 C.F.R. 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 C.F.R. 1.9(b)), and pre-award costs under 2 C.F.R. 200.458. This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this award for the Project. Section 5 of schedule D is the exclusive USDOT approval of costs incurred before the date of this agreement.
- 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 NAE 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 the SF 270 (Request for Advance or Reimbursement), as applicable, shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

13.9 Reimbursement 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 C.F.R. 200.344–200.346.

- 14.2 Funds Cancellation.** NAE Program funding that is obligated for this award under section 4.3 remains available until September 30, 2031.

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 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 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 equity and reduce barriers to opportunity.
- 17.2 Community Engagement Activities.** This provision is applicable to only Capital Construction Grants and Regional Partnership Challenge Grants, not Planning Grants. The USDOT has determined that, for the purpose of the requirement stated in section F.2.i of the NOFO, through the activities documented in section 3 of schedule I, the Recipient has sufficiently considered community engagement related to the Project.
- 17.3 Activities to Safeguard Affordability.** This provision is applicable to only Capital Construction Grants and Regional Partnership Challenge Grants, not Planning Grants. The USDOT has determined that, for the purpose of the requirement stated in section F.2.i of the NOFO, through the activities documented in section 4 of schedule I, the Recipient has sufficiently considered safeguards to retain affordability for existing residents and businesses in the Project area and surrounding communities.

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.
- 18.2 OFCCP Mega Construction Project Program.** If the total eligible project costs that are listed in section 3 of schedule D are greater than \$35,000,000 and the Department of Labor’s Office of Federal Contract Compliance Programs (the “OFCCP”) selects this award for participation in the Mega Construction Project Program, then the Recipient shall partner with OFCCP, as requested by OFCCP.

ARTICLE 19

CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

- 19.1 Critical Infrastructure Security and Resilience.**
- (a) Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on

Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient shall consider physical and cyber security and resilience in planning, design, and oversight of the Project.

(b) If the Security Risk Designation in section 5 of schedule F is “Elevated,” then, 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 20

FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

20.1 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.

20.2 Federal Law and Public Policy Requirements.

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

20.3 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.

20.4 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.

20.5 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.

20.6 External Award Terms and Obligations.

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

- (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

20.7 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 21 ASSIGNMENT

21.1 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 22 WAIVER

22.1 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 23 ADDITIONAL TERMS AND CONDITIONS

23.1 Effect of Economically Disadvantaged Community Designation. If section 2 of schedule F lists “Yes” for the “Economically Disadvantaged Community Designation,” then based on information that the Recipient provided to the USDOT, including the Technical Application, the USDOT determined that the Project will benefit an economically disadvantaged community, as defined in section H.1 of the NOFO.

23.2 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.

23.3 Relocation and Real Property Acquisition.

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

23.4 Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under 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; and
 - (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 C.F.R. 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 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. 200.310–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 23.4 for all tiers of subawards under this award.

23.5 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 23.5(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 23.5(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 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.

23.6 Railroad Coordination. If section 3 of schedule C includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the

Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.

ARTICLE 24 MANDATORY AWARD INFORMATION

24.1 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 26.2;
- (2) the "Assistance Listings Number" is 20.205 and the "Assistance Listings Title" is "Neighborhood Access and Equity (NAE) Discretionary Grant Program"; and
- (3) this award is not for research and development.

24.2 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.

24.3 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. 25.400, 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 C.F.R. 25.400, is listed on page 1, line 4 of the project-specific agreement.

ARTICLE 25 CONSTRUCTION AND DEFINITIONS

25.1 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	NAE Program Designations
Schedule G	NAE Performance Measurement Information
Schedule H	Climate Change and Environmental Justice Impacts
Schedule I	Equity and Barriers to Opportunity
Schedule J	Labor and Work

25.2 Exhibits. The following exhibits, which are located in the document titled “Exhibits to FHWA Grant Agreements Under the Fiscal Year 2023 Reconnecting Communities and Neighborhoods Program,” dated April 8, 2024, and available at <https://www.transportation.gov/grants/reconnecting-communities/reconnecting-communities-grant-agreements>, are part of this agreement.

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

25.3 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 25.1 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 25.1.

(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.

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

25.5 Definitions.

In this agreement, the following definitions apply:

“Capital Construction Grant” means this project will remove, retrofit, mitigate, or replace an existing eligible dividing transportation facility with a new facility that reconnects communities; mitigates a burdening transportation facility that is a source of air pollution, noise, stormwater, heat, or other burdens; or implements a strategy to reduce environmental harm and/or improve access through transportation improvements.

“Community Planning Grant” means this project will conduct planning activities for future construction projects and allow for innovative community planning to address localized transportation challenges.

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

“NAE Grant” refers to an award of funds made available via the Section 60501 of the Inflation Reduction Act (Pub. L. 117-169, August 16, 2022, “Inflation Reduction Act” or IRA).

“Program Statute” means the collective statutory text:

- (1) at IRA, tit. VI, subt. E § 60501; and
- (2) all other provisions of that act that apply to amounts appropriated under that paragraph.

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

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

“Regional Partnerships Challenge Grants” means a project led by two or more eligible applicants to address a persistent regional challenge related to equitable access and mobility. Eligible activities for Regional Partnerships Challenge Grants are the same as those listed under Capital Construction and Community Planning Grants but must have a regional focus, and clearly demonstrate regional coordination and leveraging of local, State, and Federal resources and policies. See Section C for further eligibility information.

“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 26
AGREEMENT EXECUTION AND EFFECTIVE DATE

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