

**Ocean Highway & Port Authority  
Nassau County  
James S Page Government Complex,  
96136 Nassau Place, Yulee FL 32097**

**Special Meeting Agenda**

**Thursday, September 24, 2020  
10:00 AM**

10 AM – Meeting Called to Order

Invocation

Pledge of Allegiance

Roll Call: Robert Sturgess, District 1; Danny Fullwood, District 2; Scott Hanna, District 3; Carrol Franklin, District 4; Mike Cole, District 5.

1. MRAD Grant Provisions to be Discussed
2. Hiring a Grant Administrator for this particular grant

Adjourned

## Items for Discussion regarding the MRAD Grant

All of the items list below are found in the file named "AMH Grant Exhibits FY 2019 (Final)," which is the part that was provided to us at last week's meeting.

1. C1-C3 (.pdf pages 5-7): This is a list of 44 federal laws, eight executive orders, and 20 sets of federal regulations that OHPA must comply with in the administration of this grant and the expenditure of the funding.
2. D2 (.pdf page 10): Item 2 contains a specific notice that OHPA must include in all solicitations for bids and RFPs regarding non-discrimination. Item 3 refers to appendices that must be made part of all contracts entered into with MRAD funds.
3. D3 (.pdf page 11): Item 9 requires OHPA to "provide for such methods of administration for the program . . . to give reasonable guarantee that it . . . will comply with all requirements . . ." This includes insuring that contractors performing grant work comply as well. Ordinarily, this entails hiring a professional administrator to administer the grant. OHPA is also required to keep records to document its compliance. Insuring compliance is OHPA's responsibility, and it cannot be delegated to WTF. The types of compliance and record keeping required by the grant are well beyond the scope of my or Pierre's services.
4. E1 (.pdf page 30): Item 4 requires OHPA to keep detailed financial records that track the receipt and disposition of all grant funds and keep them in compliance with specific federal regulations. Pierre would need to provide his input on his ability to comply with this provision. It might be something he needs outside expertise to comply with.

5. F1 (.pdf page 32): Item 4 requires OHPA to establish a financial management system that complies with specific federal regulations. Again, Pierre would need to provide input on his ability to comply with this provision.
  
6. G-2 (.pdf page 34): This exhibit imposes a series of financial reporting requirements that OHPA must comply with.
  
7. H-1: Every quarter, OHPA must provide the federal government with highly detailed reports that meet very specific requirements. Normally, this kind of reporting would be done by a professional grant administrator.

**UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
WASHINGTON, DC 20590**

**GRANT AGREEMENT UNDER THE  
CONSOLIDATED APPROPRIATIONS ACT, 2019  
(PUB. L. 116-6, February 15, 2019)  
FOR THE SHORT SEA TRANSPORTATION PROGRAM  
(FY 2019 AMERICA’S MARINE HIGHWAY GRANTS)**

**Ocean Highway & Port Authority  
of Nassau County**

**M-95 Fernandina Express Container on Barge Service**

**MARAD FY 2019 America’s Marine Highway Grant No. 693JF72040010**

**70X1750SST 2020 1FE2040010 152001 41010 61006600 – \$1,291,800**

This America’s Marine Highway Grant Agreement (“Agreement”) is entered into between the United States of America, represented by the U.S. Department of Transportation Maritime Administration (“MARAD”), and the Ocean Highway & Port Authority of Nassau County (“Recipient”). It reflects the selection of the Recipient for an award under the provisions of the Consolidated Appropriations Act, 2019 (Pub. L. 116-6, February 15, 2019), regarding the Short Sea Transportation Program (“America’s Marine Highways”) as described in the Notice of Funding Opportunity for America’s Marine Highways Projects, 84 FR 27838 (June 14, 2019) (the “NOFO”). In this Agreement, “America’s Marine Highway Grant” means an award under those provisions.

**ARTICLE 1. AWARD TERMS AND CONDITIONS**

1.1 **Operating Administration.** The Maritime Administration (“MARAD”) will administer this Agreement.

1.2 **Application.**

(a) The application for funding was dated September 20, 2019, and titled “M-95 Fernandina Express Container Barge Service.” It contained Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

(b) The Recipient states that:

(1) all material statements of fact in the Technical Application were accurate when that application was submitted; and

(2) Attachment E documents all known material changes in the information contained in the Technical Application.

(c) The Recipient acknowledges that:

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

1.3 **Purpose.** The purpose of this award is to advance projects related to documented vessels and port and landside infrastructure. 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 application identified in Section 1.2, as modified by Section 2.3 and Attachment C.

In this Agreement, the "**Project**" means the project proposed in the application identified in Section 1.2, as modified by the negotiated provisions of this Agreement, including Sections 2.1, 2.2, and 2.3, and the attachments referenced in Section 1.11.

1.4 **Statements on Capacity.** The Recipient states that:

- (1) it has the legal authority to complete the Project;
- (2) not less than the difference between the "Total Project Cost" and the "America's Marine Highway Grant Amount" listed in Section 2.3 are committed to fund the Project; and
- (3) it has sufficient funds available to ensure that infrastructure or equipment completed, procured, or improved under this Agreement will be operated and maintained in compliance with this Agreement and applicable Federal law.

1.5 **Project Delivery.**

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

1.6 **Rights and Powers Affecting the Project.**

- (a) The Recipient shall not take or permit any action that deprive it of any rights or powers necessary to the Recipient's performance under this Agreement without written approval of MARAD.

(b) The Recipient shall act, in a manner acceptable to MARAD, to promptly acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this Agreement.

1.7 **Federal Award Amount.** MARAD hereby awards an FY 2019 America's Marine Highway Grant in the amount of One Million Two Hundred Ninety-One Thousand Eight Hundred Dollars (\$1,291,800) for the period of performance. MARAD shall not provide funding greater than this amount under this Agreement. The Recipient acknowledges that MARAD is not liable for payments that exceed this amount.

1.8 **Period of Performance.**

(a) The period of performance for this award begins on the date of this Agreement and ends on the period of performance end date that is listed in Section 2.2.

(b) The Recipient shall not charge to this award costs that are incurred after the period of performance.

1.9 **Fund Obligation.** This Agreement obligates the total amount of funds stated in Section 1.7.

1.10 **Federal Award Identification Number.** MARAD identifies this award with the following federal award identification number: **693JF72040010**

1.11 **Attachments.** This Agreement includes the following attachments as integral parts:

Attachment A-	Statement of Work
Attachment B-	Estimated Project Schedule
Attachment C-	Estimated Project Budget
Attachment D-	Performance Measurement Table
Attachment E-	Material Changes from Application

## **ARTICLE 2. PROJECT AND RECIPIENT INFORMATION**

2.1 **Summary of the Project's Statement of Work.** (See Attachment A for additional details).

The purpose of this grant is to purchase marine terminal and handling equipment essential for the efficient loading and unloading for the M-95 Fernandina Express Container on Barge Service between the Port of Fernandina, FL, and the Port of Charleston. The primary purchase is that of a tugboat. The procurement of this tug will reduce in-port operational costs associated with a weekly docking and undocking of a barge and tug. It is anticipated that because of this marine highway service, the Port of Fernandina shall act as a terminus along this M-95 Route, gathering cargo and loading and unloading containers onto and off the Fernandina Express Container Barge. To prepare for the increased container volume due to the barge service, the Recipient will make additional investments in container handling equipment such as procuring an empty handler, additional tractors, and bomb carts that will be used to shuttle containers within the Terminal.

2.2 **Summary of the Project's Estimated Schedule.** (See Attachment B for additional details).

Actual Completion of NEPA:	April 24, 2020
Planned Purchase of Equipment Start Date:	December 31, 2020
Planned Purchase of Equipment Substantial Completion Date:	March 31, 2021
Period of Performance End Date:	May 31, 2022
Planned Project Closeout Date:	July 31, 2022

**2.3 Summary of Project’s Estimated Budget.** (See Attachment C for additional details).

America’s Marine Highway Grant Funds and Additional Sources of Project Funds:

America’s Marine Highway Grant Amount:	\$1,291,800	80%
Other Federal Funds (if any):	\$ 0	0%
State Funds (if any):	\$ 0	0%
Local Funds (if any):	\$ 323,200	20%
Other Funds (if any):	\$ 0	0%
<b>Total Project Cost:</b>	<b>\$1,615,000</b>	<b>100%</b>

**2.4 Recipient Cost Share Certification.**

The Recipient hereby certifies that not less than Three Hundred Twenty-Three Thousand Two Hundred Dollars (\$323,200) in non-Federal funds are committed to fund the Project to satisfy the statutory requirement that at least 20% of the Project’s costs are funded by non-Federal sources.

**2.5 Project’s State and Local Planning Requirements.**

N/A.

**2.6 Project’s Environmental Approvals and Processes.**

Environmental Documentation Type, Titles and Date: Record of Categorical Exclusion (CatEx), approved April 24, 2020

Name of Agency and Office Approving each Environmental Decision Document:  
Maritime Administration, Office of Environment

**2.7 Recipient’s and any Sub-recipient’s Unique Entity Identifiers.**

Dun and Bradstreet Data Universal Numbering System No. (the “**DUNS No.**”) of the Recipient: 124771945

Name of any First-Tier Sub-recipients  
Worldwide Terminals Fernandina LLC

DUNS No. of First-Tier Sub-recipient: 01-612-3398.

## 2.8 Recipient Contacts.

Christopher Ragucci  
Port Director  
Ocean Highway & Port Authority of Nassau County  
501 North 3<sup>rd</sup> Street, Fernandina Beach, FL 32034  
Tel: 904-990-1400  
[chris.ragucci@worldwideterminals.com](mailto:chris.ragucci@worldwideterminals.com)

## ARTICLE 3. GENERAL REPORTING TERMS

- 3.1 **Report Submission.** The Recipient shall send all reports required by this Agreement to all of the MARAD contacts who are listed in Section 9.1.
- 3.2 **Alternative Reporting Methods.** MARAD may establish processes for the Recipient to submit reports required by this Agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by MARAD.
- 3.3 **Reporting as History of Performance.** Under 2 C.F.R 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this Agreement requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.
- 3.4 **Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (*the "OMB"*). Collections of information conducted under this Agreement are approved under OMB Control No. 2133-0541.

## ARTICLE 4. PROGRESS REPORTING

- 4.1 **Quarterly Project Progress Reports.** On or before the 15th day of the first month of each calendar year quarter and until Project Closeout, the Recipient shall submit to MARAD a Quarterly Project Progress Report with the form and content described in Exhibit H. 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 in the second calendar year quarter that begins after the date of this Agreement.
- 4.2 **Closeout Information.** No later than 90 days after the period of performance end date that is listed in Section 2.2, the Recipient shall:
  - (1) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, third-party audit reports, and any other information required under MARAD's closeout procedures; and



- (2) provide a report comparing the final work, schedule, and budget to the statement of work described in Section 2.1, the schedule described in Section 2.2, and the budget described in Section 2.3.

4.3 **Project Closeout.** In this Agreement, “**Project Closeout**” means the date that MARAD notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.343, Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in Section 4.2.

## **ARTICLE 5. PERFORMANCE REPORTING**

5.1 **Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment D.

5.2 **Pre-project Performance Measurement Report.** The Recipient shall submit to MARAD, on or before the Pre-project Report Date that is stated in Attachment D, a Pre-project Performance Measurement Report that contains:

- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Pre-project Measurement Date that is stated in Attachment D; and

- (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.

5.3 **Interim Performance Measurement Reports.** After Project completion, the Recipient shall submit to MARAD on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment D, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table. If an external factor significantly affects the value of a performance measure during a measurement period, then in the Interim Performance Measurement Report the Recipient shall identify that external factor and discuss its influence on the performance measure.

5.4 **Project Outcomes Report.** The Recipient shall submit to MARAD, on or before the Project Outcomes Report Date that is stated in Attachment D, a Project Outcomes Report that contains:

- (1) a narrative discussion detailing project success and the influence of external factors on project expectations;

- (2) data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Project Outcomes Measurement Date that is stated in Attachment D; and

- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

## ARTICLE 6. AGREEMENT MODIFICATIONS

- 6.1 **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.
- 6.2 **Limited Unilateral Modifications.**
- (a) The Recipient may update the contacts who are listed in Section 2.8 (Recipient Contacts) by written notice to all of MARAD contacts who are listed in Section 9.1.
  - (b) The MARAD may update the contacts who are listed in Section 9.1 (MARAD Contacts) by written notice to all of the Recipient contacts who are listed in Section 2.8.
- 6.3 **Other Modifications.** The parties shall not amend, modify, or supplement this Agreement except as permitted under Section 6.1 or Section 6.2. If an amendment, modification, or supplement is not permitted under Section 6.1 and not permitted under Section 6.2, it is void.

## ARTICLE 7. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 7.1 **Notification Requirement.** The Recipient shall notify all MARAD representatives who are identified in Section 9.1 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 7.1 is separate from any requirements under this Article 7 that the Recipient request modification of this Agreement.
- 7.2 **Statement of Work Changes.** If the Project's activities differ from the statement of work that is described in Section 2.1 and Attachment A, then the Recipient shall request a modification of this Agreement to update Section 2.1 and Attachment A.
- 7.3 **Schedule Changes.** If the Project's substantial completion date changes to a date that is more than six months after the substantial completion date listed in Section 2.2 or a schedule change would require the period of performance to continue after the period of performance end date listed in Section 2.2, then the Recipient shall request a modification of this Agreement to update Section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this Agreement to update Section 2.2 and Attachment B unless MARAD has consented, in writing consistent with its requirements, to the change.
- 7.4 **Budget Changes.**
- (a) If in comparing the Project's budget to the amounts listed in Section 2.3, the "Other Federal Funds" amount increases or one or more of the "State Funds," "Local Funds," "Private Funds," "Other Funds," or "Total Project Cost" amounts decrease, then the Recipient shall request a modification of this Agreement to update Section 2.3 and Attachment C. For other budget changes, the Recipient shall request a modification of

this Agreement to update Attachment C unless MARAD has consented, in writing consistent with its requirements, to the change.

- (b) If the actual eligible project costs are less than the “Total Project Cost” that is listed in Section 2.3, then the Recipient may propose to MARAD, in writing consistent with MARAD’s requirements, specific additional activities that are within the scope of this award, as defined in Sections 1.3 and 2.1, and that the Recipient could complete with the difference between the “Total Project Cost” that is listed in Section 2.3 and the actual eligible project costs.
- (c) If the actual eligible project costs are less than the “Total Project Cost” that is listed in Section 2.3 and either the Recipient does not make a proposal under Section 7.4(b) or MARAD does not accept the Recipient’s proposal under Section 7.4(b), then:
  - (1) in a request under Section 7.4(a), the Recipient shall reduce the Federal Share by the difference between the “Total Project Cost” that is listed in Section 2.3 and the actual eligible project costs; and
  - (2) if that modification reduces this award and MARAD had reimbursed costs exceeding the revised award, the Recipient shall refund to MARAD the difference between the reimbursed costs and the revised award.

In this agreement, “**Federal Share**” means the sum of the “America’s Marine Highway Grant Amount” and the “Other Federal Funds (if any)” amounts that are listed in Section 2.3.

- (d) The Recipient acknowledges that amounts that are required to be refunded under Section 7.4(c)(2) constitute a debt to the Federal Government that MARAD may collect under 2 C.F.R. 200.345 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

7.5 **MARAD Acceptance of Changes.** MARAD may accept or reject modifications requested under this Article 7, and in doing so may elect to consider only the interests of the America’s Marine Highway Grant program and MARAD. The Recipient acknowledges that requesting a modification under this Article 7 does not amend, modify, or supplement this Agreement unless MARAD accepts that modification request, and the parties modify this Agreement under Section 6.1.

## **ARTICLE 8. TERMINATION AND EXPIRATION**

### **8.1 MARAD Termination.**

- (a) MARAD may terminate this Agreement and all of its obligations under this Agreement if any of the following occurs:
  - (1) The Recipient fails to obtain or provide any non-America’s Marine Highway Grant contribution or alternatives approved by MARAD as provided in this Agreement and consistent with Sections 2.2 and 2.3;
  - (2) The Recipient fails to begin procurement before February 15, 2021;

- (3) The Recipient fails to begin expenditure of award funds by February 28, 2021;
- (4) The Recipient fails to finish procurement (substantial completion) by May 31, 2021;
- (5) The Recipient fails to meet the conditions and obligations specified under this Agreement, including a material failure to comply with the schedule in Section 2.2 even if it is beyond the reasonable control of the Recipient; or,
- (6) MARAD, in its sole discretion, determines that termination of this Agreement is in the public interest.

(b) In terminating this agreement under this Section, MARAD may elect to consider only the interests of MARAD.

8.2 **Closeout Termination.** This Agreement terminates on Project Closeout.

8.3 **Fund Liquidation and Adjustment.**

(a) The Recipient shall liquidate all obligations under this award not later than 90 days after the period of performance end date that is listed in Section 2.2.

(b) Liquidation and adjustment of funds under this Agreement follow the requirements of 2 C.F.R. 200.343–.345.

8.4 **Reporting Survival.** The reporting requirements set forth in Articles 4 and 5 of this Agreement survive the termination of this Agreement.

8.5 **Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 200.344–200.345, termination of the Agreement does not extinguish MARAD’s authority to disallow costs, including costs that MARAD reimbursed before termination, and recover funds from the Recipient.

**ARTICLE 9. MARAD CONTACTS**

9.1 **MARAD Contacts.** Except as authorized by MARAD under Section 3.2, the Recipient shall send all notices, reports, and information required by this Agreement to all of the following contacts:

Wilbur Turner  
 Grants/Contracting Officer, Office of Acquisition  
 DOT -- Maritime Administration  
 1200 New Jersey Ave, SE  
 Washington, DC 20590  
 MAR-380  
 W26-435  
 Mailstop 5  
 (202) 366-0700  
 wilbur.turner@dot.gov

and

Fred Jones  
Logistics Manager  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 500  
Cube W21-311  
Mailstop 3  
(202) 366-1123  
[fred.jones@dot.gov](mailto:fred.jones@dot.gov)

and

Tim Pickering  
Operations Development Manager  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 500  
Cube W21-312  
Mailstop 3  
(202) 366-0704  
[tim.pickering@dot.gov](mailto:tim.pickering@dot.gov)

## **ARTICLE 10. MONITORING, FINANCIAL MANAGEMENT, AND RECORDS**

### **10.1 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. 200.331(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.333.

10.2 **USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.336.

### **10.3 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 10.3(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303 and 2 C.F.R. 200 Subpart F and will facilitate an effective audit in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501–7507.
- (c) The Recipient shall make available to MARAD and the Comptroller General of the United States any books, documents, papers, and records of the Recipient that are related to this award for the purpose of audit and examination.
- (d) If an independent audit is made of the accounts of a Recipient relating to the Project or this award, the Recipient shall file a certified copy of that audit with the Comptroller General of the United States not later than six months following the close of the fiscal year for which the audit was made.
- (e) The Recipient shall separately identify expenditures under the fiscal year 2019 America’s Marine Highway Grants program in financial records required for audits under Single Audit Act Amendments of 1996, 31 U.S.C. 7501–7507. 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 E, including “FY 2019” 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 (March 25, 2019), including “FY 2019” in column c (“Additional Award Identification”).

## ARTICLE 11. ADDITIONAL TERMS AND CONDITIONS

- 11.1 **Catalog of Federal Domestic Assistance Information.** This award is under the program titled “America’s Marine Highway Grants,” with number 20.816 in the Catalog of Federal Domestic Assistance.
- 11.2 **Research and Development Designation.** This award is not for research and development.
- 11.3 **Exhibits.** This Agreement includes the following exhibits as integral parts located at <https://maradpublicsp.marad.dot.gov>.

Exhibit A	Legislative Authority
Exhibit B	General Terms and Conditions
Exhibit C	Applicable Federal Laws and Regulations
Exhibit D	Grant Assurances
Exhibit E	Responsibility and Authority of the Recipient
Exhibit F	Reimbursement of Project Costs
Exhibit G	Grant Requirements and Contract Clauses
Exhibit H	Quarterly Progress Reports: Format and Content

- 11.4 **Construction.** If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 13, then the provision in Articles 1 – 13 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.
- 11.5 **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.
- 11.6 **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 MARAD by the Recipient related to this agreement may become MARAD records subject to public release under 5 U.S.C. 552.

## **ARTICLE 12. SPECIAL GRANT REQUIREMENTS**

### **12.1 Reimbursement Requests.**

- (a) The Recipient may request reimbursement of costs incurred in the performance of this Agreement if those costs do not exceed the funds available under Section 1.7 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement of a cost more than 180 days after that cost was incurred, MARAD may deny the request for being untimely.
- (c) The Recipient shall request reimbursement by completing forms in iSupplier, which is on-line and paperless. MARAD may deny a payment request that is not submitted through iSupplier.
- (d) The Recipient shall complete training on using iSupplier before submitting a request for reimbursement. To encourage the Recipient to complete this training, MARAD provides the following additional information, which may change after execution of this Agreement:
  - (1) The Recipient may access the training from MARAD “Delphi eInvoicing System” webpage at <https://www.transportation.gov/cfo/delphi-einvoicing-system>. The training is linked on the right side of that page under the heading “Web-Based Training (WBT).” The Recipient should click on “Grant Recipient WBT” to access the training, which is also available directly at [https://www.transportation.gov/sites/all/dot\\_assets/DOT GR 04-24-2012/lessons/index.html](https://www.transportation.gov/sites/all/dot_assets/DOT_GR_04-24-2012/lessons/index.html).
  - (2) A username and password is not required to access the on-line training.
  - (3) The training is currently available and will be accessible 24/7.

- (4) The training will take approximately 1 hour to complete.
- (e) After the Recipient completes training on using iSupplier, the Recipient shall request and complete the External User Access Request form to receive a username and password. The Recipient can request the form by sending an email to Wilbur Turner at [wilbur.turner@dot.gov](mailto:wilbur.turner@dot.gov).
- (f) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF-270 (available at <https://www.grants.gov/forms/post-award-reporting-forms.html>) to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK and the Program Office, DOT/MAR 510 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, ESC will certify and forward the request for reimbursement to the payment office.

## 12.2 Buy American Requirements.

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305.
- (b) This Section 12.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic products or material. The Recipient shall not use foreign products or materials in performing this Agreement, except that:
  - (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the U.S.;
  - (2) the Recipient may use information technology that is a commercial item;
  - (3) the Recipient may use foreign products or materials that are listed at 48 C.F.R. 25.104; and
  - (4) the Recipient may use foreign products or materials if MARAD has authorized their use under Section 12.2(d).
- (c) If the Recipient uses foreign products or material in violation of Section 12.2(b), MARAD may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Section 8.1 and 2 C.F.R. 200.338.
- (d) MARAD may authorize the Recipient to use foreign products or material, by modifying this Agreement under Section 6.1, if MARAD determines that:
  - (1) applying the Buy American statute to the products or material would be impracticable or inconsistent with the public interest;



- (2) the product or material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (3) the cost of domestic product or material is unreasonable.

The cost of a domestic product or material is unreasonable under Section 12.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (e) The Recipient may request that MARAD authorize the Recipient to use foreign products or material under Section 12.2(d). If the Recipient requests under this Section 12.2(e), the Recipient shall provide adequate information for MARAD to evaluate the request, including:

- (1) a description of the foreign and domestic products or materials;
- (2) unit of measure;
- (3) quantity;
- (4) price, including all delivery costs to the project site and any applicable duty (whether or not a duty-free certificate may be issued);
- (5) time of delivery or availability;
- (6) location of the project;
- (7) name and address of the proposed supplier;
- (8) a detailed justification of the reason for use of foreign products or materials identifying the specific basis for an exception under Section 12.2(d);
- (9) if the Recipient requests authorization under Section 12.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign products or materials; and
- (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination; and (B) requested the determination.

- (f) The Recipient acknowledges that (1) this Agreement is not a Government procurement contract; (2) acquisitions of supplies, services, or construction materials by the Recipient under this Agreement are not acquisitions by the Government; and (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this Agreement.

- (g) In this Section 12.2, the following definitions apply:

**“Commercially available off-the-shelf (COTS) item”**

- (1) Means any item or supply that is—

- (i) A commercial item as defined by 48 C.F.R. § 2.101;
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

**“Product or Material”** means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

**“Cost of components”** means—

- (1) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the product or material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the product or material.

**“Domestic product or material”** means—

- (1) An unmanufactured product or material mined or produced in the United States;
- (2) A product or material manufactured in the United States, if—
  - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
  - (ii) The product or material is a COTS item.

**“Foreign products or material”** means a product or material other than a domestic product or material.

**“United States”** means the 50 States, the District of Columbia, and outlying areas.

## **ARTICLE 13. EXECUTION**

**13.1 Counterparts.** This Agreement may be executed in counterparts, which constitute one document. The parties shall execute this Agreement in triplicate and intend each countersigned original to have identical legal effect.

**13.2 Effective Date.** This Agreement is effective when fully executed by authorized representatives of the Recipient and MARAD. The Recipient shall execute this Agreement and

then submit three original signed copies of the Agreement to MARAD for execution. This instrument constitutes an FY 19 America's Marine Highway Grant when it is signed and dated by the authorized official of MARAD.

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**EXECUTION BY THE MARITIME ADMINISTRATION**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Signature of MARAD's Authorized Representative

\_\_\_\_\_  
Name of MARAD's Authorized Representative

\_\_\_\_\_  
Title

**EXECUTION BY OCEAN HIGHWAY & PORT AUTHORITY OF NASSAU COUNTY**

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Signature of Recipient's Authorized Representative

\_\_\_\_\_  
Name of Recipient's Authorized Representative

\_\_\_\_\_  
Title

## **ATTACHMENT A STATEMENT OF WORK**

The Project will establish a US coastwise barge network along what is defined as the M-95 corridor that will seek to compete with trucking and rail networks already established along the I-95 corridor. The goal will be to create an environmentally efficient container barge service that can compete with trucking or rail elements connecting Fernandina to large mega-container terminals, such as Savannah and Charleston. Worldwide Terminals Fernandina LLC (“Worldwide Terminals”) will be the operator of the Port of Fernandina M-95 Fernandina Express Container on Barge Service. Fernandina’s location is close to 3 large-scale manufacturers that export a significant volume of cargo via Savannah, Charleston, and Jacksonville. These manufacturers are expected to provide a captive volume of cargo that Worldwide Terminals will seek to bring on to the barge service.

### **Engage Shipping Partners and Purchase Equipment**

In initiating this service, Worldwide Terminals will need to first reengage the major manufacturers in the area and reaffirm their conceptual commitment to the M-95 Barge. Worldwide Terminals will then seek to find a tug and barge operator to run this service. Worldwide Terminals has already spoken to three such US-flagged operators. To prepare for the increased container volume due to the barge service, Worldwide Terminals will make additional investments in container handling equipment such as an empty handler, additional tractors, and bomb carts that will be used to shuttle containers within the Terminal.

**ATTACHMENT B**  
**ESTIMATED PROJECT SCHEDULE**

Actual Completion of NEPA:	April 24, 2020
Planned Contract Award Date:	October 31, 2020
Planned Purchase of Equipment Start Date:	December 31, 2020
Planned Purchase of Equipment Substantial Completion Date:	March 31, 2021
Period of Performance End Date:	May 31, 2022
Planned Project Closeout Date:	June 30, 2022

**ATTACHMENT C  
ESTIMATED PROJECT BUDGET**

<b>Component</b>	<b>FY19 AMH Grant Funds</b>	<b>Matching Funds</b>	<b>Total Cost</b>
Tugboat	\$800,000	\$200,000	\$1,000,000
Empty Container Handler	\$312,000	\$78,000	\$390,000
Terminal Yard Tractor	\$176,000	\$44,000	\$220,000
Bomb Cart	\$3,800	\$1,200	\$5,000
<b>Totals:</b>	<b>\$1,291,800</b>	<b>\$323,200</b>	<b>\$1,615,000</b>



**ATTACHMENT D  
PERFORMANCE MEASUREMENT TABLE**

**Study Area:** Southeast Coast of the US from Fernandina, FL to Charleston, SC

**Pre-project Measurement Period:** July 31, 2020

**Pre-project Report Date:** December 31, 2020

**Project Outcomes Report Date:** December 31, 2024

**PERFORMANCE MEASURES**

The Recipient agrees to collect the data necessary to track and report on each of the performance measures identified in the Performance Measure Table contained in this Section of the Grant Agreement. The Recipient should include the data collected for each measure in each required report. Reports must be submitted for each performance measure following project completion at the intervals, and for the time periods, specified in the Performance Measurement Table included herein. Reports must include a narrative discussion detailing project successes and/or the influence of external factors on project expectations. The final report must include an *ex post examination* of project effectiveness and a comprehensive "lessons learned" analysis of the project.

<b>Reporting Period</b>	<b>Due</b>
January – March -	April 15
April – June -	July 15
July – September -	October 15
October – December -	January 15

## Performance Measurement Table

Measure	Description of Measure	Measurement Period	Reporting Period
Freight Movements	TEU's movements over project study area.	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date</p> <p>Interim Performance Measures: Quarterly Accurate as of the last day of the quarter that is being reported.</p>	<p>Pre-project (baseline measurement) dates listed in Pre-project Measurement Report Period.</p> <p>Performance Measurements Period: 3 years of reporting starting the first full quarter after the Purchase of Equipment Substantial Completion Date</p>
Greenhouse Gas Emissions	This measure will quantify the emissions and fuel consumed by the Marine Highway service, which, when subtracted from total truck miles eliminated, will result in the net savings in emissions and energy consumption due to the Marine Highway service between the Port of Fernandina, FL, Jacksonville, FL and other Ports along the M-95 Marine Highway Route.	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date</p> <p>Interim Performance Measures: Quarterly Accurate as of the last day of the quarter that is being reported.</p>	<p>Pre-project (baseline measurement) dates listed in Pre-project Measurement Report Period.</p> <p>Performance Measurements Period: 3 years of reporting starting the first full quarter after the Purchase of Equipment Substantial Completion Date</p>
Reduced Infrastructure and Highway Miles Savings	Savings, calculated based on the elimination of highway miles that each container would	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date</p>	<p>Pre-project (baseline measurement) dates listed in Pre-project</p>

	<p>have traveled on surface roads.</p> <p>The Program Office will provide a spreadsheet with the formula needed to make the calculations.</p>	<p>Interim Performance Measures: Quarterly</p> <p>Accurate as of the last day of the quarter that is being reported.</p>	<p>Measurement Report Period.</p> <p>Performance Measurements Period: 3 years of reporting starting the first full quarter after the Purchase of Equipment Substantial Completion Date</p>
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**ATTACHMENT E**  
**MATERIAL CHANGES FROM APPLICATION**

The only material change between the initial grant application submitted by Ocean Highway & Port Authority of Nassau County and this Agreement is found in Attachments A-C. This change includes the reallocation of funds for the purchase of a tugboat in place of some of the cargo handling equipment mentioned in the application. Funds were reallocated from the purchase of a new reach stacker as well as some additional bomb carts and tractors. The reason for this is two-fold. First, we analyzed the costs associated with this project and determined that a tugboat will provide a material reduction in actual “per-box” costs.

Second, after the grant application was submitted but before the grant was awarded, Worldwide Terminals had a successful bond issuance wherein they purchased a reach stacker. This was due to the necessity to acquire this piece of equipment for the terminal. Since that purchase represented much of the funds requested in the grant application, it freed up funds for another item that would be necessary for the barge operation, and thus MARAD and the Recipient settled on the use of a portion of the funds for the purchase of a tug.

**EXHIBIT A**  
**LEGISLATIVE AUTHORITY**

**AUTHORITY:** This America’s Marine Highway Grant Agreement (“Agreement”) is entered into between the United States of America, represented by U.S. Department of Transportation Maritime Administration (“MARAD”). It reflects the selection of the Recipient for an award under the provisions of the Consolidated Appropriations Act, 2019 (Pub. L. 116-6, February 15, 2019) (the “Act”), regarding the Short Sea Transportation Program (America’s Marine Highways) as described in the Notice of Funding Opportunity for America’s Marine Highways Projects, 83 FR 27838 (June 14, 2019) (the “NOFO”). The Short Sea Transportation Program (America’s Marine Highways) was established by Section 55601 of the Energy Independence and Security Act of 2007, and amended by Section 3515 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84, October 28, 2009). MARAD enters into this Agreement on the authority contained in the Act. In this agreement, “America’s Marine Highway Grant” means an award under those provisions.

The awards made under the FY 2019 America’s Marine Highway Grant Program are in full compliance with the Act and the NOFO.

**EXHIBIT B**  
**GENERAL TERMS AND CONDITIONS**

1. The Recipient shall ensure that the project is financed, implemented, operated and maintained in accordance with this Agreement, and all applicable Federal laws, regulations and policies of the Maritime Administration (“MARAD” or the “Government”) will apply to the project.
2. The maximum obligation of the Government payable under this award, hereinafter referred to as the “Grant,” shall be the award as specified in Section 1.7 of the Agreement, subject to all the terms and conditions in this agreement and of all other Federal awards funding the project. Once the Government executes this Agreement for the project, or a segment of the project, the Grant funds will then be authorized for obligation.
3. Reimbursement of costs incurred pursuant to the Agreement will be made pursuant to and in accordance with 2 C.F.R. Part 200 and the provisions of such regulations and procedures as the Government may prescribe. Determination of allowable costs incurred by the Recipient under the Grant shall be made in accordance with applicable government-wide cost principles under 2 C.F.R. Part 200, Subpart E. Closeout of the Grant shall be based upon a determination that all applicable administrative actions and all required work of the Grant have been completed in accordance with 2 C.F.R. 200.343-345. Upon the Government’s review of all financial, performance, and other reports required as a condition of the Grant, the Government may make any upward or downward adjustments to the allowable costs in accordance with 2 C.F.R. 200.344.
4. The Recipient is solely liable for any funding shortfalls pertaining to the project as agreed to in the Agreement. In response to a funding shortfall, the America’s Marine Highway Grant Award Amount will not increase. (See Article 8 of the agreement regarding termination).
5. The Recipient agrees to carry out and complete the project without undue delays and in accordance with the terms of this Agreement, including the Project Schedule set out in Section 2.2, and to comply with such regulations and procedures as the Government may prescribe.
6. The Recipient has submitted a request for Federal assistance, hereinafter referred to as the “Technical Application,” hereby incorporated by reference into this Agreement and the Government is relying upon the Recipient’s assurances, certifications, and other representations made in the Technical Application, or any other related documents submitted to the Government; and, in its submissions, the Recipient has demonstrated justification for the project, and has demonstrated the financial and technical feasibility of the project, including the ability to start the project quickly upon receipt of the Grant; to expend Grant funds once the planning activities or construction starts; and to receive all necessary environmental, state and local planning, and legislative approvals as necessary for the project to proceed in accordance with the Project Schedule.
7. The Government has determined that the Project is eligible for America’s Marine Highway Grant funding because it advances or supports documented vessels and port and landside infrastructure, or other such eligible project as authorized. The Government has determined that

Recipient should receive the award of a Grant based on a review of the Project's Technical Application, as it meets the requirements specified in the Act and the June 14, 2019, *Federal Register* Notice, "Notice of Funding Opportunity for America's Marine Highways Projects" (Available at <https://www.federalregister.gov/documents/2019/06/14/2019-12580/notice-of-funding-opportunity-for-americas-marine-highway-projects>).

8. The Recipient's progress will be monitored periodically by the Government, both programmatically and financially, to ensure that the Project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The Recipient is responsible for monitoring award activities, to include sub-awards, and accountable to the Government for the use of the funds provided and to assure that the Federal award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

9. The Recipient shall take all steps, including initiating litigation, if necessary, to recover Federal funds if the Government determines, after consultation with the Recipient, that such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project. 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 by the Government.

10. The Government encourages the Recipient and the State Department of Transportation ("State DOT") acting as the limited agent on behalf of the Recipient (if applicable), to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or -rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at [http://www.transportation.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](http://www.transportation.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)). This includes, but is not limited to, the Recipient and the State Department of Transportation acting as the limited agent on behalf of the Recipient:

- a) considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- b) conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- c) encouraging voluntary compliance with the agency's text messaging policy while off duty.

The Recipient is encouraged to insert the substance of this clause in all assistance awards.

Where a Recipient, and the State DOT if acting as a limited agent for the Recipient, is located within a State that already has enacted legislation regarding texting while driving, that State's law controls and the requirements of this paragraph will not apply to or be a part of this agreement.

11. The Recipient agrees to expend all funds administered by a direct local recipient in compliance with the requirements set out at 2 C.F.R. 200.321 for Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.



**EXHIBIT C**  
**APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into the agreement for an FY19 America's Marine Highway Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to the Agreement include, but are not limited to, the following:

**General Federal Legislation**

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act – 42 U.S.C. §§ 7401, et seq.
- i. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- j. Endangered Species Act – 16 U.S.C. §§ 1531 et seq.
- k. Coastal Zone Management Act – 16 U.S.C. §§ 1451 et seq.
- l. Flood Disaster Protection Act of 1973 – 42 U.S.C. §§ 4001 et seq.
- m. Age Discrimination Act of 1975 - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act, 42 U.S.C. 1996
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- w. Wild and Scenic Rivers Act – 16 U.S.C. §§ 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- y. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. § 1681 through § 1683, and § 1685 through § 1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- bb. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101 -1104 541, et seq.

- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ee. Freedom of Information Act - 5 U.S.C. § 552, as amended
- ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
- gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. §§ 4201 et seq.
- hh. Noise Control Act of 1972 – 42 U.S.C. §§ 4901, et seq.
- ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. §§ 661 et seq.
- jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- kk. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – 42 U.S.C. §§ 9601 et seq.
- mm. Safe Drinking Water Act -- 42 U.S.C. §§ 300f et seq.
- nn. The Wilderness Act -- 16 U.S.C. §§ 1131 et seq.
- oo. Migratory Bird Treaty Act 16 U.S.C. §§ 703 et seq.
- pp. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- qq. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- rr. Buy American Act – 41 U.S.C. § 8301–8305

### **Executive Orders**

- a. Executive Order 11246 - Equal Employment Opportunity
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13788 – Buy American and Hire American

### **General Federal Regulations**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures - 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates - 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States - 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) - 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity,

Department of Labor (Federal and federally assisted contracting requirements) - 41 C.F.R. Parts 60, et seq.

- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs - 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance - 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors - 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit, including the ADA Accessibility Guidelines in Part 37, Appendix A - 49 C.F.R. Parts 37 and 38
- r. Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 C.F.R. Part 40
- s. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26
- t. Preference for Privately Owned Commercial U.S. Flag Vessels – 46 C.F.R. Part 381

Specific assurances required to be included in the FY 2019 America's Marine Highway Grant Agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into the agreement.

**EXHIBIT D**  
**GRANT ASSURANCES**

## EXHIBIT D 1

### TITLE VI ASSURANCE (Implementing Title VI of the Civil Rights Act of 1964, as amended)

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

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

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

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

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

#### DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into the agreement under the FY 2019 America's Marine Highway Grants program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the Maritime Administration (MARAD), it is subject to and will comply with the following:

#### Statutory/Regulatory Authorities

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

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

#### General Assurances

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

*“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise*

*subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including MARAD.*

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

### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2019 America’s Marine Highway Grants program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2019 America’s Marine Highway Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

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

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing MARAD's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by MARAD. You must keep records, reports, and submit the material for review upon request to MARAD, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal

financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2019 America's Marine Highway Grants Program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-Recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2019 America's Marine Highway Grants Program.



## APPENDIX A

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

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

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

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with The Consolidated Appropriations Act, 2019 (Pub. L. 116-6, February 15, 2019) the Regulations for the Administration of FY 2019 America's Marine Highway Grants Program, and the policies and procedures prescribed by the Maritime Administration (MARAD) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

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

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

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

## APPENDIX C

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

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

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

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

## APPENDIX D

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

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

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

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

## APPENDIX E

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

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

## **EXHIBIT D 2**

### **DISCLOSURE OF LOBBYING ACTIVITIES**

#### **Certification for Contracts, Grants, Loans, and Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and grant agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, title. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **EXHIBIT D 3**

## **CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN THE PERFORMANCE OF THE FY 2019 AMERICA'S MARINE HIGHWAY GRANT PROGRAM**

49 C.F.R. Part 32

The Recipient certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Recipient's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
  - (a) The dangers of drug abuse in the workplace;
  - (b) The Recipient's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
  - (a) Abide by the terms of the statement; and
  - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (4)(b) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
  - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or



(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1-6.
8. The Recipient *may*, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to the agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Recipient does so, please insert in article 11 of the agreement the following information from subsection (a) below:
  - (a) Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the agreement.

## EXHIBIT D 4

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

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

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

By signing and submitting the Technical Application and by entering into the agreement under the FY 2019 America's Marine Highway Grant program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the America's Marine Highway Project, as set out below.

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

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms “covered transaction,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or sub-recipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EXHIBIT D5

### REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW

As required by sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation or Recipient that:

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

The Recipient therefore agrees:

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

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

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

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

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

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (*the “SAM”*) at <http://www.sam.gov/> for an entry describing that entity.

3. **Mandatory Certifications.**

(a) By entering into this grant agreement with the Government, the Recipient shall:

- (1) Certify whether the Recipient has a Tax Delinquency; and
- (2) Certify whether the Recipient has a Felony Conviction.

(b) Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

4. **Prohibition. If**

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. **Mandatory Notice to the USDOT.**

(a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.

(a) If a Participant provides an affirmative response to either certification in section 3, the Recipient shall notify the USDOT in writing of that affirmative response. The Authorizing Official then shall:

- Promptly, upon receipt of notice, request such additional information from the Recipient as the Authorizing Official deems necessary to demonstrate the Participant’s present responsibility;
- Notify, in accordance with agency procedures, the agency’s Suspending and Debarring Official; and



- Not award to the Participant unless an agency or Secretarial Office Suspending and Debarring Official has considered suspension or debarment, and made a determination that suspension or debarment on this tax delinquency or felony basis is not necessary to protect the interest of the Government.

(c) If the Recipient knows that a Participant's certification under section 3 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

- (1) require the SAM check in section 2;
- (2) require the certifications in section 3;
- (3) include the prohibition in section 4; and
- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

**EXHIBIT E**  
**RESPONSIBILITY AND AUTHORITY OF THE RECIPIENT**

**1. Legal Authority.**

The Recipient affirms that it has the legal authority to apply for the grant, and to finance and carry out the proposed project identified in its Technical Application; that a resolution, motion or similar action has been duly adopted or passed as an official act of the Recipient's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Recipient to act in connection with the application and to provide such additional information as may be required.

**2. Funds Availability.**

Recipient affirms that it has sufficient funds available for that portion of the project costs that are not to be paid by the Government. Recipient also affirms that it has sufficient funds available to assure operation and maintenance of items funded under the agreement that it will own or control.

**3. Preserving Rights and Powers.**

Recipient will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the agreement without the written approval of the Government, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Recipient. The Recipient agrees that this will be done in a manner acceptable to the Government.

**4. Accounting System, Audit, and Record Keeping Requirements.**

(a) The Recipient agrees to keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that meets the requirements of 2 C.F.R. 200.301 – 200.303 and 2 CFR 200 Subpart F and will facilitate an effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. §§ 7501-7507).

(b) The Recipient agrees to make available to the Government and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the Recipient that are pertinent to the grant. The Government may require that a Recipient conduct an appropriate audit. In any case in which an independent audit is made of the accounts of a Recipient relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**5. Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this agreement that involve labor, provisions establishing minimum rates of

wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. § 3141, et seq.), which 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.

**6. Engineering and Design Services.** It will 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 as a contract for architectural and engineering services is negotiated under the Brooks Act (40 U.S.C. §§ 1101-1104) or an equivalent qualifications-based requirement prescribed for or by the Recipient as approved by the Secretary.

**7. Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**8. Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 C.F.R. Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 C.F.R. Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 C.F.R. Part 24.

**9. Disposition of Equipment.** If equipment acquired under this award is no longer needed for the project, the Recipient shall request disposition instructions from the Government.

**EXHIBIT F**  
**REIMBURSEMENT OF PROJECT COSTS**

1. The Recipient will be reimbursed in accordance with the terms of a Project Agreement between the Government (MARAD) or other specified form or agreement as determined by the Government that incorporates this agreement by reference.
2. The Recipient shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for costs incurred after execution of a project agreement.
3. The Recipient shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.
4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
5. Financial Management System: By signing this agreement, the Recipient verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 2 C.F.R. Part 200, Subpart D. The Recipient's failure to comply with these requirements may result in agreement termination.
6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 2 C.F.R. Part 200 Subpart E. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this agreement.

**EXHIBIT G**  
**GRANT REQUIREMENTS AND CONTRACT CLAUSES**

1. The Consolidated Appropriations Act, 2019 (Pub. L. 116-6, February 15, 2019) (the “Act”) regarding the Short Sea Transportation Program (referred to as “FY 2019 America’s Marine Highway Grants” or “Marine Highway Grants”) requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code.
2. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. § 3145, the Department of Labor has issued regulations at 29 C.F.R. Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 C.F.R. 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
3. Federal agencies providing grants, grant agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
4. For additional guidance on the wage rate requirements of the Act, contact your awarding agency. Recipients of grants, grant agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

**EXHIBIT G1**  
**TRANSPARENCY ACT AWARD TERM**

I. Reporting Sub-awards and Executive Compensation.

a. *Reporting of first-tier sub-awards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a sub-award to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For sub-award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting Total Compensation of Recipient Executives.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub-awards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub-awards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal

Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Sub-recipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier sub-recipient under this award, you shall report the names and total compensation of each of the sub-recipient's five most highly compensated executives for the sub-recipient's preceding completed fiscal year, if—

- i. in the sub-recipient's preceding fiscal year, the sub-recipient received—
  - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub-awards); and
  - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and sub-awards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report sub-recipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the sub-award. For example, if a sub-award is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the sub-recipient by November 30 of that year.

d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Sub-awards,

and

ii. The total compensation of the five most highly compensated executives of any sub-recipient.

e. *Definitions*. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Sub-award*:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible sub-recipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133,<sup>1</sup> “Audits of States, Local Governments, and Non-Profit Organizations”).

iii. A sub-award may be provided through any legal agreement, including an agreement that you or a sub-recipient considers a contract.

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<sup>1</sup> The language of this Exhibit G1 is required by 2 C.F.R. 170.220. After that rule was issued, OMB Circular A-133 was superseded by 2 C.F.R. Part 200. See 2 C.F.R. 200.104.



4. *Sub-recipient* means an entity that:

- i. Receives a sub-award from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the sub-award.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or sub-recipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. *Salary and bonus.*

ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified.*

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**EXHIBIT G2**  
**Single Audit Information for Recipients of FY 2018 AMERICA’S MARINE HIGHWAY  
GRANT Funds**

1. To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 C.F.R. Part 200 Subparts C – E Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of FY 2019 America’s Marine Highway Grant funds.

2. For recipients covered by the Single Audit Act Amendments of 1996 and the audit requirements of 2 C.F.R. Part 200, Subpart F, recipients agree to separately identify the expenditures for Federal awards under the Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by 2 C.F.R. Part 200. This shall be accomplished by identifying expenditures for Federal awards made under the Act separately on the SEFA, and as separate rows under Item 6 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “FY 2019 America’s Marine Highway -” in identifying the name of the Federal program on the SEFA and as the first characters in Item 6c of Part III on the SF–SAC.

**EXHIBIT G3**  
**SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER**  
**REQUIREMENTS**

*A. Requirement for System for Award Management*

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

*B. Requirement for unique entity identifier*

If you are authorized to make sub-awards under this award, you:

1. Must notify potential sub-recipients that no entity (see definition in paragraph C of this award term) may receive a sub-award from you unless the entity has provided its unique entity identifier to you.
2. May not make a sub-award to an entity unless the entity has provided its unique entity identifier to you.

*C. Definitions*

For purposes of this award term:

1. *System for Award Management (SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).

2. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.

3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Sub-award*:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible sub-recipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).

c. A sub-award may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Sub-recipient* means an entity that:

a. Receives a sub-award from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the sub-award.

**EXHIBIT G4**  
**AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND**  
**PERFORMANCE MATTERS**

**A. Reporting of Matters Related to Recipient Integrity and Performance**

*1. General Reporting Requirement*

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

*2. Proceedings About Which You Must Report*

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### *3. Reporting Procedures*

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### *4. Reporting Frequency*

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### *5. Definitions*

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

## EXHIBIT H

### QUARTERLY PROGRESS REPORTS: FORMAT AND CONTENT

1. The purpose of the calendar quarterly progress reports under the agreement for the FY 2019 America's Marine Highway Grants program is to ensure that the project budget and schedule will be maintained to the maximum extent possible, that the project will be completed with the highest degree of quality, and that compliance with Federal regulations will be met. To that end, the Recipient shall submit a Federal Financial Report (SF-425) as part of each quarterly progress report.
2. The Recipient should develop a project reporting and tracking system to collect, assess and maintain project status information and data that is timely, independent, and accurate. This system should provide current information on project prosecution, progress, changes, and issues. This information should be used to identify trends and forecast project performance and to identify and proactively address challenges to eliminate major project surprises.
3. The need to continuously and accurately report cost increases; schedule changes; deficient quality items; and the causes, impacts, and proposed measures to mitigate these issues is paramount to effectively managing, administering, and protecting the public investment in the project. Any apparent reporting deficiencies or questionable data should be completely resolved. Ultimately, the Recipient and the USDOT must be fully aware of the complete status of the project, and therefore be in a position to take appropriate action if necessary.
4. The Recipient shall produce a quarterly cost, schedule, and status report. The Recipient shall immediately communicate significant issues occurring between quarterly report submittals without waiting for the next quarterly report submittal, with any highly significant or sensitive issues elevated immediately to the executive leadership.
5. 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 quarterly progress report described in this Exhibit H is approved under OMB Control No. 2105-0563.
6. The following list enumerates the required sections in the quarterly progress reports. At the discretion of MARAD, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and MARAD. Some projects will have a more extensive quarterly status than others. For smaller projects, MARAD may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description, and where appropriate, drawings, of the items funded.
  - (a) **Project Overall Status.** This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work described in Section 2.1, the schedule described in Section 2.2, or the budget described in Section 2.3.



- (b) **Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.
- (c) **Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. In general, issues and administrative requirements that could have a significant or adverse impact to the project's scope, budget, schedule, quality, safety, and/or compliance with Federal requirements should be included. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.
- (d) **Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.
- (e) **Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:
- Current overall project completion percentage vs. latest plan percentage.
  - Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
  - Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

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

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

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

(h) **Certifications.** A certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements).