

## **FY 2022 BRIDGE INVESTMENT PROGRAM GRANT PROGRAM RECIPIENT - DESIGNATED SUBRECIPIENT AGREEMENT**

This Fiscal Year 2022 Bridge Investment Program (BIP) Grant Program Recipient - Designated Subrecipient Agreement (Agreement) is between the California Department of Transportation (CALTRANS) Division of Local Assistance (Recipient) and the Tehama County, a municipal corporation (Designated Subrecipient), collectively known as “Parties.”

### **RECITALS**

WHEREAS, on or before July 25, 2022, the Designated Subrecipient applied for BIP Grant funding from the United States Department of Transportation (USDOT) for the Tehama County Feasibility Study Woodson Bridge (Project), which includes rehabilitation, safety, and mobility improvements to the existing bridge structure, and provides traffic operations, system reliability, and pedestrian/mobility enhancements at the Tehama County Feasibility Study Woodson Bridge; and

WHEREAS, in this Agreement “BIP Grant” means an award of funds that were made available in the 2022 Bridge Investment Program (BIP) Grants Notice of Funding Opportunity (NOFO) 693JJ322NF00009 posted to Grants.gov on June 10, 2022, under the authority of Section 11118 of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58, Nov. 15, 2021), which establishment of the BIP is codified at 23 U.S.C. § 124, to solicit applications for Federal financial assistance; and

WHEREAS, on or about October 12, 2022, the Parties were selected for BIP Grant funding in the amount of \$320,000 for the Project; and

WHEREAS, the Recipient and the USDOT, will enter into the Federal Highway Administration FY 2022 Bridge Investment Program Schedules A Through J to the Fiscal Management Information System (FMIS) Project Agreement for the Tehama County Feasibility Study Woodson Bridge (USDOT Agreement) that awards and allocates \$320,000 in BIP Grant funding for the Project; and

WHEREAS, the Federal Highway Administration General Terms and Conditions Under the Fiscal Year 2022 Bridge Investment Program Grant Program (BIP Terms and Conditions) is referenced in the USDOT Agreement and defines additional responsibilities and requirements that must be followed as a condition to receiving and using the BIP Grant funding.

WHEREAS, the Federal Highway Administration Exhibits to Grant Agreements Under the Fiscal Year 2022 Bridge Investment Program (BIP Exhibits and Agreements) is referenced in the BIP Terms and Conditions and further defines responsibilities and requirements that must be followed as a condition to receiving and using the BIP Grant funding.

WHEREAS, the Performance Measurement Guidance for the Bridge Investment Program (BIP) Discretionary Grant Program (Performance Measures) is referenced in this Agreement and used in the USDOT Agreement and the BIP Terms and Conditions to define responsibilities and requirements regarding the development, measurement, and reporting of project performance measures.

WHEREAS, the Federal Highway Administration (FHWA) is the operating administration under the USDOT responsible for the administration of the BIP Grant Program, the approval and execution of the USDOT Agreement, and any modifications to the USDOT Agreement.

WHEREAS, this Agreement reflects the Recipient decision to subaward the Project BIP Grant funding to the Designated Subrecipient; and

WHEREAS, this Agreement reflects the Designated Subrecipient decision to receive the subaward, defined in 2 C.F.R. § 200.1, of the BIP Grant funding for the purpose of carrying out the Federal award; and

WHEREAS, the Parties want the Designated Subrecipient to carry out the Project with the Recipient acting as the “pass-through” entity for purposes of payment of the federal funds to the Designated Subrecipient, per the requirements on pass-through entities under 2 C.F.R. parts 200 et seq. and 1201 et seq., including 2 C.F.R. 200.331–200.333 and 23 U.S.C. 106(g)(4) where applicable; and

WHEREAS, on or about March 21, 2018 the Parties, entered into a Master Agreement Administering Agency-State Agreement for Federal-Aid Projects (Master Agreement); and

WHEREAS, the Parties, will concurrently enter into this Recipient – Designated Subrecipient Agreement (Agreement) which defines specific project responsibilities between the Designated Subrecipient and the Recipient, that includes specific project responsibilities to USDOT that are necessary for the development and timely delivery of the Project; and

WHEREAS, this Agreement further establishes oversight and delegation of responsibilities between the Recipient and the Designated Subrecipient, outlined in this Agreement, the Master Agreement, and as allowed per Article 3.7(2) of the BIP Terms and Conditions.

The Parties therefore agree to the following:

## AGREEMENT

### **ARTICLE I. DESIGNATED SUBRECIPIENT STATEMENTS AND RESPONSIBILITIES**

#### **Section 1.01 General Terms and Conditions**

- (a) The Designated Subrecipient agrees to perform its duties and responsibilities under this Agreement in accordance with the USDOT Agreement that includes and incorporates by this reference the following (as of the date of the Agreement):
- 1) the project-specific USDOT Agreement, Schedules A through J, included as part of this Agreement; and

- 2) the content of the BIP Terms and Conditions dated August 23, 2023, under the FY 2022 BIP discretionary grant program and includes Articles 1 through 26, which is available at:  
[https://www.fhwa.dot.gov/bridge/bip/FY\\_2022\\_BIP\\_Terms\\_and\\_Conditions.pdf](https://www.fhwa.dot.gov/bridge/bip/FY_2022_BIP_Terms_and_Conditions.pdf) ; incorporated by reference in the USDOT Agreement and this Agreement; and
  - 3) the content of the BIP Exhibits and Agreements, dated January 31, 2023, under the FY 2022 BIP discretionary grant program and includes Exhibits A through D, which is available at: [https://www.fhwa.dot.gov/bridge/bip/exhibits\\_to\\_grant\\_agreements.pdf](https://www.fhwa.dot.gov/bridge/bip/exhibits_to_grant_agreements.pdf) ; incorporated by reference in the USDOT Agreement and this Agreement; and
  - 4) the content of the document Performance Measures under the FY 2022 BIP discretionary grant program and includes Table 1: BIP Performance Measures, which is available at:  
[https://www.fhwa.dot.gov/bridge/bip/BIP\\_FY\\_2022\\_Performance\\_Measures.pdf](https://www.fhwa.dot.gov/bridge/bip/BIP_FY_2022_Performance_Measures.pdf) ; incorporated by reference in the USDOT Agreement and this Agreement; and
  - 5) the content of document “FY 2022 Bridge Investment Program (BIP) Planning Projects Application Template” (SF424) (Technical Application), incorporated by reference in the USDOT Agreement.
- (b) During the performance of this Agreement and as a condition of receiving federal funding for Project, the Designated Subrecipient agrees:
- 1) to be bound by the same requirements assigned to the Recipient found in the BIP Exhibits and Agreements including Exhibits A through D, Term B.1 with Appendices A through E, and Terms B.2 through B.4; and
  - 2) to require the contractor, the contractors’ assignees, and the contractors’ successors in interest to agree to be bound by the requirements found in the BIP Exhibits and Agreements including Exhibits A through D, Term B.1 with Appendices A through E, and Terms B.2 through B.4, as applicable.
- (c) Performance under this agreement shall be governed by and in accordance with the requirements referenced and listed in, but not limited to, the applicable provisions listed in Exhibit A of the BIP Exhibits and Agreements.
- (d) Specific covenants and assurances required to be included in the USDOT Agreement or this Agreement by any of the laws, regulations, executive orders, or circulars found in the above lists are hereby incorporated by reference into this agreement.
- (e) The Designated Subrecipient acknowledges and agrees that the USDOT Agreement and this Agreement impose obligations on the Designated Subrecipient and that the Designated Subrecipient’s non-compliance with the USDOT Agreement and this Agreement may result in remedial action, terminating the BIP Grant, disallowing costs incurred for the Project, requiring the Designated Subrecipient to refund BIP Grant funding to the Recipient, and reporting the non-compliance in the Federal-government-wide integrity and performance system.
- (f) The Designated Subrecipient agrees:
- 1) to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the USDOT, the FHWA’s, and the Recipient’s access to records, accounts, documents, information, facilities, and staff.
  - 2) to submit to any program or compliance reviews, and/or complaint investigations conducted by the USDOT, the FHWA, or the Recipient.

- 3) to keep records, reports, and submit the material for review upon request to the USDOT, the FHWA, the Recipient, or their designee in a timely, complete, and accurate way.
  - 4) to comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
  - 5) to affirm all the statements and acknowledgements that are attributed to the Recipient under sections 3.1 and 3.2 of the BIP Terms and Conditions
  - 6) to assume the Recipient's reporting obligations under article 7 of the BIP Terms and Conditions
  - 7) to comply with assurances and covenants assigned to the Recipient in the BIP Exhibits and Agreements, including the associated Exhibits, Terms, and Appendices.
  - 8) to give these assurances and comply with the covenants 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 Designated Subrecipient by the Recipient, the USDOT, and the FHWA under the FY 2022 BIP discretionary grant program.
  - 9) to agree these assurances and covenants are binding on the Designated Subrecipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2022 BIP discretionary grant program.
- (g) The Designated Subrecipient will perform their duties under this Agreement in a manner that is consistent with the most recent version of the USDOT Agreement.

## **ARTICLE II. FHWA, CALTRANS, AND TEHAMA COUNTY ROLES**

### **Section 2.01 Federal Highway Administration (FHWA) Responsibilities.**

- (a) The FHWA is the operating administration under the United State Department of Transportation ("USDOT") responsible for the administration of the Grant Program, the approval and execution of the USDOT Agreement, and any modifications to the USDOT Agreement under section 15.1 of the BIP Terms and Conditions.

### **Section 2.02 Recipient Responsibilities.**

- (a) The Recipient is the pass-through entity for purposes of payment of the federal funds to the Designated Subrecipient per the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333 and 23 U.S.C. 106(g)(4) where applicable.

### **Section 2.03 Designated Subrecipient Responsibilities.**

- (a) The Designated Subrecipient is the project applicant and local agency to which the Recipient subawards the grant of federal funds identified in section 1 of Schedule D of the USDOT Agreement for the purpose outlined in section 1.1 of the BIP Terms and Conditions.
- (b) The Designated Subrecipient is assigned the responsibilities, including but not limited to, the administrative and oversight responsibilities for the purpose outlined in section 1.1 of the BIP Terms and Conditions.

### **ARTICLE III. DESIGNATED SUBRECIPIENT STATEMENTS AND RESPONSIBILITIES**

#### **Section 3.01 Statements on the Project.**

- (a) The Designated Subrecipient states that:
- 1) all statements of fact in the Technical Application were accurate when that application was submitted; and
  - 2) Schedule E in the USDOT Agreement documents all changes in the information contained in that Technical Application.

#### **Section 3.02 Designated Subrecipient Project Contact(s).**

- (a) Designated Subrecipient Information
- 1) Designated Subrecipient Contact(s)

James N. Simon PE  
Director, Tehama County Public Works  
9380 San Benito Ave  
Gerber, CA 96035  
(530) 385-1462  
jsimon@tcpw.ca.gov

- 2) Designated Subrecipient Key Personnel

Jessica Riske-Gomez  
Deputy Director, Tehama County Public Works  
9380 San Benito Avenue  
Gerber, CA 96035  
(530) 602-8282  
jriskegomez@tehamartpa.org

#### **Section 3.03 USDOT FHWA and Caltrans Reliance.**

- (a) The Designated Subrecipient agrees that:
- 1) the USDOT relied on statements of fact in the Technical Application to select the Project to receive this award; and
  - 2) the USDOT and FHWA relied on statements of fact in both the Technical Application and the USDOT Agreement to determine that the Recipient, the Designated Subrecipient, and the Project are eligible under the terms of the 2022 Bridge Investment Program Grants Notice of Funding Opportunity (“NOFO”) 693JJ322NF00009 posted to Grants.gov on June 10, 2022; and
  - 3) the Recipient relied on statements of fact in both the Technical Application, the USDOT Agreement, and award announcement to determine that the Designated Subrecipient and the Project are eligible under the terms of the 2022 Bridge Investment Program Grants NOFO 693JJ322NF00009 posted to Grants.gov on June 10, 2022; and

- 4) the USDOT relied on statements of fact in both the Technical Application and the prior USDOT Agreement to establish the terms of the USDOT Agreement; and
- 5) Caltrans relied on statements of fact in both the Technical Application, the USDOT Agreement to establish the terms of this Agreement; and
- 6) the USDOT's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

**Section 3.04 Project Delivery.**

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

**Section 3.05 Rights and Powers Affecting the Project.**

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

**Section 3.06 Notification of Changes to Key Personnel.**

- (a) The Subrecipient shall notify all USDOT Project Contacts who are identified in section 5 of schedule A of USDOT Agreement and all Recipient Project Contacts who are identified in section 3 of schedule A of USDOT Agreement in writing within 30 calendar days of any change in key personnel who are identified in section 6.01 of this Agreement.

**Section 3.07 Subaward to Designated Subrecipient.**

- (a) Section 9 of schedule A of the USDOT Agreement identifies a Designated Subrecipient, therefore:
  - 1) the Recipient hereby awards a grant subaward to the Designated Subrecipient for the purpose described in section 1.1 of the BIP Terms and Conditions ;
  - 2) the Recipient and the Designated Subrecipient enter into this separate Agreement, to which the FHWA is not a party, to assign responsibilities, including administrative and oversight responsibilities, among the Recipient and the Designated Subrecipient; and
  - 3) for the purpose of 2 C.F.R. parts 200 and 1201, the Recipient is a pass-through entity.

**Section 3.08 Designated Subrecipient Statements and Responsibilities.**

- (a) Section 9 of schedule A of the USDOT Agreement identifies a Designated Subrecipient, therefore:
  - 1) the Designated Subrecipient affirms all statements and acknowledgments that are attributed to the Recipient under sections 3.1 and 3.2 of the BIP Terms and Conditions; and
  - 2) the Designated Subrecipient assumes the Recipient's reporting obligations under article 7 of the BIP Terms and Conditions.

**Section 3.09 Statements on Authority and Capacity.**

- (a) The Designated Subrecipient states that:



- 1) it has the authority to receive Federal financial assistance under this Agreement; and
- 2) it has the legal authority to complete the Project; and
- 3) it has the ability and capacity, including institutional, managerial, and financial resources, to comply with its obligations under this Agreement; and
- 4) not less than the difference between the total eligible project costs listed in section 3 of schedule D of the USDOT Agreement and the Grant Amount listed in section 1 of schedule D of the USDOT Agreement is committed to fund the Project; and
- 5) this BIP award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by Schedule E of the USDOT Agreement; and
- 6) it has sufficient funds available to ensure that infrastructure completed or improved under the USDOT Agreement and this Agreement will be operated and maintained in compliance with this Agreement, the Master Agreement and applicable Federal law; and
- 7) the individual executing this Agreement on behalf of the Designated Subrecipient has authority to enter this Agreement and make the statements in this article III and in section 20.07 on behalf of the Designated Subrecipient.

#### **ARTICLE IV. AWARD AMOUNT, OBLIGATION, AND TIME PERIODS**

##### **Section 4.01 Federal Award Amount.**

- (a) Caltrans hereby awards a grant subaward to the Designated Subrecipient in the amount listed in section 1 of schedule D of the USDOT Agreement as the Grant Amount.

##### **Section 4.02 Reserved.**

##### **Section 4.03 Federal Obligations.**

- (a) The Federal Obligation Type identified in Schedule D, Section 2 of the USDOT Agreement is “Single,” and therefore the USDOT Agreement shall obligate for the budget period the amount listed in section 1 of schedule D of the USDOT Agreement as the Grant Amount; then the Designated Subrecipient shall submit a Request for Authorization to the Recipient, per the process and procedures detailed in the Local Assistance Procedures Manual (LAPM) for the amount of funding and phase of work specified in Schedule D of the USDOT Agreement; and sections 4.03(c)-4.03(f) do not apply to this agreement. The BIP federal reimbursable work on Project shall not begin, until the Designated Subrecipient requests and receives FHWA authorization approval via an “E76” document, that shows the appropriate amount of federal funds have been authorized by FHWA to the appropriate phase of work, as detailed in Schedule D of the USDOT Agreement.
- (b) If the Federal Obligation Type identified in Schedule D, Section 2 of the USDOT Agreement is “Multiple” the USDOT Agreement shall obligate an amount up to the Grant Amount listed in Section 1 of Schedule D with one initial obligation and one or more subsequent, optional obligations, as described in sections 4.03(c)–4.03(f); the Designated Subrecipient shall submit a Request for Authorization to the Recipient, not to exceed the obligated amount, per the process and procedures detailed in the Local Assistance Procedures Manual (LAPM) for the amount of funding and phase of work specified in Schedule D of the USDOT Agreement and section 4.03(a) shall not apply to this agreement. The BIP federal reimbursable work on Project shall not begin, until the Designated Subrecipient requests and receives FHWA authorization approval via an

“E76” document, that shows the appropriate amount of federal funds have been authorized by FHWA to the appropriate phase of work, as detailed in Schedule D of the USDOT Agreement.

- (c) The Obligation Condition Table in section 2 of schedule D of the USDOT Agreement allocates the Grant among separate portions of the Project for the purpose of the Federal obligation of funds. The scope of each portion of the Project that is identified in that table is described in section 2 of schedule B of the USDOT Agreement.
- (d) The USDOT Agreement obligates for the budget period only the amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table does not list an obligation condition.
- (e) The USDOT Agreement does not obligate amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table lists an obligation condition. The parties may obligate the amounts allocated to those portions of the Project only as described in section 4.03(f) or by modifying the USDOT Agreement under article XV of this agreement.
- (f) For each portion of the Project for which the Obligation Condition Table in section 2 of schedule D of the USDOT Agreement lists an obligation condition, the amount allocated in that table to that portion of the Project is obligated if, not later than the statutory lapse date identified in the USDOT Agreement as applicable to the Grant Program
- (g) For that portion of the Project, the Designated Subrecipient shall complete and send to the Recipient Contact(s) listed in the “USDOT Agreement the Designated Subrecipient Form For Subsequent Obligation of Funds,” attached to this Agreement. This attachment documents that the Designated Subrecipient assurance that they are not required to request a modification of the USDOT Agreement under article V of this Agreement. This document is required prior to the Designated Subrecipient requesting authorization of the BIP funds.  
Once this form is received by the Recipient from the Designated Subrecipient, the Recipient and FHWA will execute an instrument, in the form provided in Exhibit D of the BIP Exhibits and Agreements documenting that:
  - 1) the FHWA determines that the obligation condition listed in that table for that portion of the Project is satisfied;
  - 2) the FHWA determines that all applicable Federal requirements for obligating the amount are satisfied; and
  - 3) the Recipient states that it is not required to request a modification of the USDOT Agreement under article V of this Agreement.
- (h) The Designated Subrecipient shall not request reimbursement of costs for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D of the USDOT Agreement lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.03(f) and authorized by FHWA in response to the Designated Subrecipient request for authorization via the procedure outlined in the Local Assistance Procedures Manual (LAPM).
- (i) Reserved.
- (j) The Subrecipient acknowledges and agrees that:
  - 1) the FHWA and the Recipient are not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D of the USDOT



Agreement lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.03(f)-(h);

- 2) any portion of the Grant that is not obligated under this section 4.03 by the statutory lapse date identified in the USDOT Agreement for those funds lapse on the day after that date and becomes unavailable for the Project; and
- 3) the FHWA and the Recipient may consider the failure to obligate funds by the statutory lapse date identified in the USDOT Agreement as applicable to the Grant Program for those funds to be a basis for terminating the USDOT Agreement under section 10.01.

**Section 4.04 Budget Period.**

- (a) The budget period for this award begins on the execution date of the USDOT Agreement and ends on the budget period end date that is listed in section 1 of schedule C of the USDOT Agreement or as determined in the FHWA Fiscal Management Information System (“FMIS”). In the USDOT agreement, “budget period” is used as defined at 2 C.F.R. 200.1.

**Section 4.05 Period of Performance.**

- (a) The USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is “FMIS,” therefore the period of performance for this award begins on the date of the USDOT Agreement and ends on project end date in FMIS.
- (b) Reserved.
- (c) In the USDOT Agreement and this Agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

**Article V. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

**Section 5.01 Notification Requirement.**

- (a) The Designated Subrecipient shall notify all FHWA and Caltrans representatives who are identified in section 5 and section 3 of schedule A of the USDOT Agreement in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Designated Subrecipient’s plan to complete the Project. In that notification, the Designated Subrecipient shall describe the change and what actions the Designated Subrecipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 5.01, is separate from any requirements under this article V that the Designated Subrecipient request modification of the USDOT Agreement.

**Section 5.02 Scope and Statement of Work Changes.**

- (a) If the Project’s activities differ from the activities described in the Technical Application, then the Designated Subrecipient shall request a modification of the USDOT Agreement in Schedule E.

**Section 5.03 Schedule Changes.**

- (a) If one or more of the following conditions are satisfied, then the Designated Subrecipient shall request a modification of the USDOT Agreement to update schedule C:
  - 1) a completion date for the Project or a component of the Project is listed in section 2 of schedule C and the Designated Subrecipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 2 of schedule C;
  - 2) a schedule change would require the budget period to continue after the budget period end date listed in section 1 of schedule C; or

3) Reserved.

(b) For other schedule changes, the Designated Subrecipient shall document the changes in writing by following the applicable procedures of the FHWA and the Recipient.

#### Section 5.04 Budget Changes.

(a) The Designated Subrecipient acknowledges and agrees that if the cost of completing the Project increases:

- 1) that increase does not affect the Designated Subrecipient's obligation under the USDOT Agreement to complete the Project; and
- 2) the FHWA and Caltrans will not increase the amount of this award to address any funding shortfall.

(b) The Designated Subrecipient shall request a modification of the USDOT Agreement to update schedule D if, in comparing the Project's budget to the amounts listed in section 3 of schedule D of the USDOT Agreement:

- 1) the total "Non-Federal Funds" amount decreases; or
- 2) the total eligible project costs amount decreases.

(c) For budget changes that are not identified in section 5.4(b) of the USDOT Agreement, the Designated Subrecipient shall document the changes in writing by following the applicable procedures of the FHWA and the Recipient.

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

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

(e) If there are Project Cost Savings and either the Designated Subrecipient does not make a proposal under section 5.4(d) of the BIP Terms and Conditions or the FHWA does not accept the Designated Subrecipient's proposal under section 5.4(d) of the BIP Terms and Conditions, then:

- 1) in a request under section 5.4(b) of the BIP Terms and Conditions, the Designated Subrecipient shall reduce the Federal Share by the Project Cost Savings; and
- 2) if that modification reduces this award and the FHWA via the Recipient had reimbursed costs exceeding the revised award, the Designated Subrecipient shall refund to the FHWA via the Recipient the difference between the reimbursed costs and the revised award.

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

(f) The Designated Subrecipient acknowledges and agrees that amounts that are required to be refunded under section 5.4(e)(2) of the BIP Terms and Conditions constitute a debt to

the Federal Government that FHWA via the Recipient may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**Section 5.05 FHWA and Recipient Acceptance of Changes.**

- (a) The FHWA and the Recipient may accept or reject modifications requested under this article V and requested per subsection 15.01(b) of this agreement, and in doing so may elect to consider only the interests of the Grant Program, FHWA, and Caltrans. The Designated Subrecipient acknowledges and agrees that requesting a modification under this article V of this Agreement does not amend, modify, or supplement the USDOT Agreement unless the FHWA and Caltrans accept that modification request and the FHWA and Caltrans modify the USDOT Agreement under section 15.01 of this Agreement.

**Article VI. GENERAL REPORTING TERMS**

**Section 6.01 Report Submission.**

- (a) The Designated Subrecipient shall send all reports required by the USDOT Agreement to all Recipient contacts who are listed in section 3 of Schedule A of the USDOT Agreement and all FHWA contacts who are listed in section 5 of schedule A of the USDOT Agreement.

**Section 6.02 Alternative Reporting Methods.**

- (a) The FHWA and the Recipient may establish processes for the Designated Subrecipient to submit reports required by the USDOT Agreement, including electronic submission processes. If the Designated Subrecipient is notified of those processes in writing, the Designated Subrecipient shall use the processes required by the FHWA and Caltrans.

**Section 6.03 Paperwork Reduction Act Notice.**

- (a) Under 5 C.F.R. 1320.6, the Designated Subrecipient 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 the USDOT Agreement are approved under OMB Control No. 2125-0664.

**Article VII. PROGRESS AND FINANCIAL REPORTING**

**Section 7.01 Quarterly Project Progress Reports and Recertifications.**

- (a) On or before the 20th day of the first month of each calendar year quarter and until the end of the period of performance, the Designated Subrecipient shall submit to the FHWA and the Recipient a Quarterly Project Progress Report and Recertification in the format and with the content described in Exhibit C of the BIP Exhibits and Agreements. If the date of this agreement is in the final month of a calendar year quarter, then the Designated Subrecipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.

**Section 7.02 Final Progress Reports and Financial Information.**

- (a) No later than 120 days after the end of the period of performance, the Designated Subrecipient shall submit:
  - 1) a Final Project Progress Report and Recertification in the format and with the content described in Exhibit C of the BIP Exhibits and Agreements for each Quarterly Project

Progress Report and Recertification, including a final Federal Financial Report (SF-425); and

- 2) any other information required under FHWA and the Recipient award closeout procedures.

## **Article VIII. PERFORMANCE REPORTING**

### **Section 8.01 Baseline Performance Measurement.**

- (a) The Designated Subrecipient shall collect data for each performance measure that is identified in the Performance Measure Table in schedule G of the USDOT Agreement, accurate as of the Baseline Measurement Date that is identified in schedule G of the USDOT Agreement; and
- (b) On or before the Baseline Report Date that is stated in schedule G of the USDOT Agreement, the Designated Subrecipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 8.01 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in schedule G of the USDOT Agreement.

### **Section 8.02 Post-construction Performance Measurement.**

- (a) For each performance measure that is identified in the Performance Measure Table in schedule G of the USDOT Agreement with quarterly measurement frequency, for each of 12 consecutive calendar quarters, beginning with the first calendar quarter that begins after the Project substantial completion date, at least once during the quarter, the Designated Subrecipient shall collect data for that performance measure;
- (b) For each performance measure that is identified with annual measurement frequency in the Performance Measure Table in schedule G of the USDOT Agreement, the Designated Subrecipient shall collect data for that performance measure on at least three separate occasions: (i) once during the four consecutive calendar quarters that begin after the Project substantial completion date; (ii) once during the fourth calendar quarter after the first collection; and (iii) once during the eighth calendar quarter after the first collection; and
- (c) Not later than January 31 of each year that follows a calendar year during which data was collected under this section 8.02 of the USDOT Agreement, the Designated Subrecipient shall submit to the USDOT a Post-Project Performance Measurement Report containing the data collected under this section 8.02 in the previous calendar year and stating the dates when the data was collected.
- (d) If an external factor significantly affects the value of a performance measure collected under this section 8.02, then the Designated Subrecipient shall identify that external factor in the Post-Project Performance Measurement Report and discuss its influence on the performance measure.

### **Section 8.03 Project Outcomes Report.**

- (a) The Designated Subrecipient shall submit to the FHWA and the Recipient, no later than January 31 of the year that follows the final calendar year during which data was collected under section 8.02 of this Agreement, a Project Outcomes Report that contains:
  - 1) a narrative discussion detailing project successes and the influence of external factors on project expectations;

- 2) all baseline and post-Project performance measurement data that the Designated Subrecipient reported in the Baseline Performance Measurement Report and the Post-Project Performance Measurement Reports; and
- 3) an ex-post examination of project effectiveness relative to the baseline data that the Designated Subrecipient reported in the Baseline Performance Measurement Report.

Section 8.04 Performance Reporting Survival.

- (a) The data collection and reporting requirements in this article VIII survive the termination of this agreement.

**Article IX. NONCOMPLIANCE AND REMEDIES**

Section 9.01 Noncompliance Determinations.

- (a) If the FHWA or the Recipient determine that the Designated Subrecipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of the USDOT Agreement, this Agreement, the BIP Terms and Conditions, and the BIP Exhibits and Agreements, the FHWA or the Recipient may notify the Designated Subrecipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the FHWA or Recipient must include an explanation of the nature of the noncompliance.
- (b) If the FHWA or the Recipient notifies the Designated Subrecipient of a proposed determination of noncompliance under section 9.01(a), the Designated Subrecipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Designated Subrecipient may:
  - 1) acknowledge the noncompliance and propose a remedy; or
  - 2) dispute the noncompliance.To dispute the noncompliance, the Designated Subrecipient must include in its response documentation or other information supporting the Designated Subrecipient compliance.
- (c) The FHWA or the Recipient may make a final determination of noncompliance only:
  - 1) after considering the Designated Subrecipient response under section 9.01(b); or
  - 2) if the Designated Subrecipient fails to respond under section 9.01(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, the FHWA or the Recipient must provide a notice to the Designated Subrecipient that states the bases for that determination.

Section 9.02 Remedies.

- (a) If the FHWA or the Recipient makes a final determination of noncompliance under section 9.01, the FHWA or the Recipient may take any remedies available to it, including:
  - 1) adding additional conditions or modifying existing conditions on the award;
  - 2) exercising any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Designated Subrecipient to FHWA via the Recipient; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
  - 3) terminating the Agreement.

- (b) If the FHWA or the Recipient determines that it is in the public interest, the FHWA or the Recipient may impose a remedy, including all remedies described in section 9.02(a), before making a final determination of noncompliance under section 9.01. If it does so, then the notice provided under section 9.01(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (c) In imposing a remedy under this section 9.02 or making a public interest determination under section 9.02(c), the FHWA or the Recipient may elect to consider the interests of only the FHWA or the Recipient.
- (d) The Recipient acknowledges and agrees that amounts that the FHWA or the Recipient requires the Designated Subrecipient to refund to the FHWA via the Recipient due to a remedy under this section 9.02 constitute a debt to the Federal Government that the FHWA may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999), which the Recipient may collect from the Designated Subrecipient on behalf of the FHWA per the terms of the Local Agency – Caltrans Master Agreement.

Section 9.03 Other Oversight Entities.

- (a) Nothing in this article IX limits any party’s authority to report activity under the USDOT Agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

**Article X. AGREEMENT TERMINATION**

Section 10.01 FHWA or Recipient Termination.

- (a) The FHWA or Recipient may terminate the USDOT Agreement and all of its obligations under this agreement if any of the following occurs:
  - 1) the Designated Subrecipient fails to obtain or provide any non-Grant contribution or alternatives approved by the FHWA as provided in the USDOT Agreement and in accordance with schedule D of the USDOT Agreement;
  - 2) a completion date for the Project or a component of the Project is listed in section 2 of schedule C of the USDOT Agreement and the Designated Subrecipient fails to meet that milestone by six months after the date listed in section 2 of schedule C of the USDOT Agreement;
  - 3) the Designated Subrecipient fails to meet a milestone listed in section 3 of schedule C of the USDOT Agreement by the deadline date listed in that section for that milestone;
  - 4) the Designated Subrecipient fails to comply with the terms and conditions of the USDOT Agreement, including a material failure to comply with the project schedule in schedule C of the USDOT Agreement even if it is beyond the reasonable control of the Designated Subrecipient;
  - 5) circumstances cause changes to the Project that the FHWA or Recipient determine are inconsistent with the FHWA’s basis for selecting the Project to receive a Grant;
  - 6) the FHWA or Recipient determines that termination of the USDOT Agreement is in the public interest; or
  - 7) the Designated Subrecipient breaches this Agreement and does not remedy the breach within 7 days of written notice by FHWA or Recipient.
- (b) In terminating the USDOT Agreement under this section, the FHWA may elect to consider only the interests of the FHWA, and the Recipient may elect to consider only the interests of the Recipient and FHWA.



- (c) This section 10.01 does not limit the FHWA's or Recipient's ability to terminate the USDOT Agreement as a remedy under section 9.02.
- (d) The Designated Subrecipient may request that the FHWA terminate the USDOT Agreement under this section 10.01.

Section 10.02 Closeout Termination.

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

Section 10.03 Post-Termination Adjustments.

- (a) The Designated Subrecipient acknowledges and agrees that under 2 C.F.R. 200.345–200.346, termination of the USDOT Agreement does not extinguish the FHWA's or the Recipient's authority to disallow costs, including costs that the FHWA or Recipient reimbursed before termination, and recover funds from the Designated Subrecipient.

Section 10.04 Non-Terminating Events.

- (a) The end of the budget period described under section 4.04 does not terminate the USDOT Agreement or the Designated Subrecipient's obligations under the USDOT Agreement.
- (b) The end of the period of performance described under section 4.05 does not terminate the USDOT Agreement or the Designated Subrecipient's obligations under the USDOT Agreement.
- (c) The cancellation of funds under Agreement section 14.01 does not terminate the USDOT Agreement or the Designated Subrecipient's obligations under the USDOT Agreement.

Section 10.05 Other Remedies.

- (a) The termination authority under this article X supplements and does not limit the FHWA's remedial authority under article IX or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340 or the Recipient's remedial authority under the Local Agency – Caltrans Master Agreement and the Project's Program Supplement Agreement.

**Article XI. MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS**

Section 11.01 Designated Subrecipient Monitoring and Record Retention.

- (a) The Designated Subrecipient shall monitor activities under this subaward, including activities under subawards and contracts, to ensure:
  - 1) that those activities comply with the USDOT 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) The Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(d).
- (c) The Designated Subrecipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

Section 11.02 Financial Records and Audits.

- (a) The Designated Subrecipient shall keep all project accounts and records that fully disclose the amount and disposition by the Designated Subrecipient 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 Designated Subrecipient shall keep accounts and records described under section 11.02(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303, 2 C.F.R. 200 subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Designated Subrecipient shall separately identify expenditures under the fiscal year of the Grant Program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Designated Subrecipient shall:
  - 1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including the Federal Fiscal Year (“FY”) in the program name; and
  - 2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including the Federal Fiscal Year (“FY”) in column c (“Additional Award Identification”).

#### Section 11.03 Internal Controls.

- (a) The Designated Subrecipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.

#### Section 11.04 USDOT Record Access.

- (a) The FHWA and Recipient may access Designated Subrecipient records related to this award under 2 C.F.R. 200.337.

#### Section 11.05 Title 23 Oversight Responsibilities.

- (a) This award is subject to the oversight program at 23 U.S.C. 106(g).

### **Article XII. CONTRACTING AND SUBAWARDS**

#### Section 12.01 Minimum Wage Rates.

- (a) The Designated Subrecipient shall include, in all contracts in excess of \$2,000 for construction work to be performed on a Federal-aid highway (or work that is treated as if performed on a Federal-aid highway) under the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with 23 U.S.C. 113, as applicable, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

#### Section 12.02 Buy America.

- (a) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the FHWA. The Designated Subrecipient acknowledges and agrees that the USDOT Agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
- (b) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FHWA. The Designated Subrecipient acknowledges and agrees that the USDOT Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (c) Under 2 C.F.R. 200.322, as appropriate and in accordance with applicable law, the Designated Subrecipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Designated Subrecipient shall include the

requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

**Section 12.03 Small and Disadvantaged Business Requirements.**

- (a) The Designated Subrecipient shall comply with 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”). For the purpose of 49 C.F.R. 26.3 that part applies to the Designated Subrecipient.

**Section 12.04 Engineering and Design Services.**

- (a) The Designated Subrecipient shall award each contract or sub- contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. 1101-1104 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the Designated Subrecipient and approved in writing by the USDOT.

**Section 12.05 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.**

- (a) The Designated Subrecipient acknowledges and agrees that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Designated Subrecipient and all other subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under the Grant award.

**Section 12.06 Pass-through Entity Responsibilities.**

- (a) The Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333 and 23 U.S.C. 106(g)(4), where applicable.

**Section 12.07 Subaward and Contract Authorization.**

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

**Article XIII. COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

**Section 13.01 Limitation of Federal Award Amount.**

- (a) Under the Grant Program award, the FHWA and the Recipient shall not provide funding greater than the amount obligated under section 4.03, and FMIS as applicable. The Designated Subrecipient acknowledges and agrees that the FHWA is not liable for

payments exceeding that amount, and the Designated Subrecipient shall not request reimbursement of costs exceeding that amount.

Section 13.02 Projects Costs.

- (a) The Grant Program award is subject to the cost principles at 2 C.F.R. 200 subpart E, including provisions on determining allocable costs and determining allowable costs.

Section 13.03 Timing of Project Costs.

- (a) The Designated Subrecipient shall not charge to the Grant Program award costs that are incurred after the budget period.
- (b) Except as permitted under sections 13.03(d) and 13.03(f), the Designated Subrecipient shall not charge to the Grant award costs that were incurred before the date of the USDOT Agreement.
- (c) The execution of the USDOT Agreement will terminate and supersede any previous FHWA or Recipient approval for the Designated Subrecipient to incur costs under the Grant Program subaward for the Project. Section 5 of schedule D is the exclusive FHWA approval of costs incurred before the date of the USDOT Agreement.
- (d) If the USDOT Payment System identified in section 6 of schedule A is “FMIS” and section 5 of schedule D of the USDOT Agreement identifies an advance construction authorization under 23 U.S.C. 115, then the Designated Subrecipient may charge to the Grant Program award, for payment from the Grant Program grant or other Federal amounts, costs that were incurred before the date of the USDOT Agreement , and complied with the terms of that authorization, and would have been allowable if incurred during the budget period.
- (e) If the USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is “DELPHI eInvoicing” and section 5 of schedule D identifies a pre-award approval under 2 C.F.R. 200.458, then the Designated Subrecipient may charge to the Grant Program award, for payment from the Grant Program grant or other Federal amounts, costs that were incurred before the date of the USDOT Agreement , and complied with the terms of that approval, and would have been allowable if incurred during the budget period.
- (f) If the USDOT approves a request from the Designated Subrecipient under 23 U.S.C. 117(k)(2) and section 5 of schedule D of the USDOT Agreement describes that approval, then the Designated Subrecipient may charge to this award, for payment from non-Federal amounts, costs that were incurred before the date of this agreement, and complied with the term of that approval, and would have been allowable if incurred during the budget period.

Section 13.04 Recipient Recovery of Federal Funds.

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

Section 13.05 Unexpended Federal Funds.

- (a) Any Federal funds that are awarded at section 4.01 but not expended on allocable, allowable costs remain the property of the United States.

Section 13.06 Timing of Payments to the Recipient.

- (a) Reimbursement is the payment method for the Grant Program.
- (b) The Designated Subrecipient shall not request reimbursement of a cost before the Designated Subrecipient has entered into an obligation for that cost.

Section 13.07 Payment Method.

- (a) If the USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is “FMIS,” then the Designated Subrecipient shall follow FMIS procedures to request and receive reimbursement payments under this award per the procedures outlined in the Caltrans Local Assistance Procedures Manual and related Office Bulletins.
- (b) If the USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is “DELPHI eInvoicing,” then the Designated Subrecipient shall use the DELPHI eInvoicing System to request reimbursement under this award unless the FHWA agreement officer provides written approval for the Recipient to use a different request and payment method.
- (c) The FHWA and the Recipient may deny a payment request that is not submitted using the method identified in this section 13.07.

Section 13.08 Information Supporting Expenditures.

- (a) If the USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is “DELPHI eInvoicing,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Designated Subrecipient shall electronically submit the SF 271 (Outlay Report and Request for Reimbursement for Construction Programs), shall identify the Federal share and the Designated Subrecipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Designated Subrecipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (b) If the Designated Subrecipient submits a request for reimbursement that the FHWA or Recipient determines does not include or is not supported by sufficient detail, the FHWA or Recipient may deny the request or withhold processing the request until the Designated Subrecipient provides sufficient detail.

Section 13.09 Reimbursement Frequency.

- (a) If the USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is “DELPHI eInvoicing,” then the Designated Subrecipient shall not request reimbursement more frequently than monthly.

**Article XIV. LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY**

Section 14.01 Liquidation of Recipient Obligations.

- (a) The Designated Subrecipient shall liquidate all obligations of award funds under the USDOT Agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory funds cancellation date identified in section 10 of schedule F of the USDOT Agreement.
- (b) Liquidation of obligations and adjustment of costs under the USDOT Agreement follow the requirements of 2 C.F.R. 200.344–200.346.

Section 14.02 Reserved.

**Article XV. AGREEMENT MODIFICATIONS**

Section 15.01 Bilateral Modifications.



- (a) The parties may amend, modify, or supplement this Agreement by mutual agreement in writing signed by the Recipient and the Designated Subrecipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- (b) The USDOT Agreement may be amended, modified, or supplemented by mutual agreement in writing signed by the FHWA and the Recipient. The Designated Subrecipient may request to amend, modify, or supplement the USDOT Agreement by written notice to the FHWA and the Recipient.

Section 15.02 Unilateral Contact Modifications.

- (a) The Designated Subrecipient may update the contacts who are listed in section 3.02(a) of this agreement by written notice to all the Recipient Contact(s) in section 3 of schedule A of the USDOT Agreement and all the FHWA contacts who are listed in section 5 of schedule A of the USDOT Agreement.
- (b) The FHWA may update the contacts who are listed in section 5 of schedule A of the USDOT Agreement by written notice to all of the Recipient contacts who are listed in section 3 of schedule A of the USDOT Agreement. The Recipient will provide a copy of the FHWA written notice to the Designated Subrecipient.
- (c) The Recipient may update the contacts who are listed in section 3 of schedule A of the USDOT Agreement by written notice to all of the FHWA Project Contact(s) who are listed in section 3 of schedule A of the USDOT Agreement and all of the Designated Subrecipient Contact(s) listed in section 3.02(a) of this agreement. The Recipient will provide a copy of the FHWA written notice to the Designated Subrecipient.

Section 15.03 FHWA Unilateral Modifications.

- (a) The FHWA and Recipient may unilaterally modify the USDOT Agreement to comply with Federal law, including the Program Statute.
- (b) To unilaterally modify the USDOT Agreement under this section 15.03, the FHWA or Recipient must provide a notice to the Designated Subrecipient that includes a description of the modification and state the date that the modification is effective.

Section 15.04 Other Modifications.

- (a) The parties shall not amend, modify, or supplement the USDOT Agreement except as permitted under sections 15.01, 15.02, or 15.03. If an amendment, modification, or supplement is not permitted under section 15.01, not permitted under section 15.02, and not permitted under section 15.03, it is void.

**Article XVI. CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE**

Section 16.01 Climate Change and Environmental Justice.

- (a) In compliance with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), schedule H of the USDOT Agreement documents the consideration of climate change and environmental justice impacts of the Project.

**Article XVII. RACIAL EQUITY AND BARRIERS TO OPPORTUNITY**

Section 17.01 Racial Equity and Barriers to Opportunity.

- (a) In compliance with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), schedule I of the USDOT Agreement documents activities related to the Project to improve racial equity and reduce barriers to opportunity.



## **Article XVIII. LABOR AND WORK**

### **Section 18.01 Labor and Work.**

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

## **Article XIX. CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE**

### **Section 19.01 Critical Infrastructure Security and Resilience.**

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

## **ARTICLE XX. FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS**

### **Section 20.01 Uniform Administrative Requirements for Federal Awards.**

- (a) The Designated Subrecipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.

### **Section 20.02 Federal Law and Public Policy Requirements.**

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

### **Section 20.03 Federal Freedom of Information Act.**

- (a) The FHWA and the Recipient are subject to the Freedom of Information Act, 5 U.S.C. 552.

- (b) The Designated Subrecipient acknowledges and agrees that the Technical Application and materials submitted to the FHWA and Recipient by the Designated Subrecipient related to this agreement may become FHWA and Recipient records subject to public release under 5 U.S.C. 552.

Section 20.04 History of Performance.

- (a) Under 2 C.F.R 200.206, any Federal awarding agency may consider the Designated Subrecipient's performance under the USDOT Agreement, when evaluating the risks of making a future Federal financial assistance award to the Designated Subrecipient.

Section 20.05 Whistleblower Protection.

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

Section 20.06 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article XXV the USDOT Agreement includes the following additional terms as integral parts:
  - 1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
  - 2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
  - 3) 2 C.F.R 175.15(b): Trafficking in Persons; and
  - 4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.
- (b) The Designated Subrecipient shall comply with:
  - 1) 49 C.F.R. part 20: New Restrictions on Lobbying;
  - 2) 49 C.F.R. part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
  - 3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance;
  - 4) 23 C.F.R. Chapter 1: Federal Highway Administration, Department of Transportation as, applicable to the Recipient.
  - 5) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

Section 20.07 Incorporated Certifications.

- (a) The Designated Subrecipient makes the statements in the following certifications, which are incorporated by reference:
  - 1) Appendix A to 49 CFR part 20 (Certification Regarding Lobbying).

**ARTICLE XXI. ASSIGNMENT**

Section 21.01 Assignment Prohibited.

- (a) The Designated Subrecipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.

## **Article XXII. WAIVER**

### **Section 22.01 Waivers.**

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

## **Article XXIII. ADDITIONAL TERMS AND CONDITIONS**

### **Section 23.01 Effect of Urban or Rural Designation.**

- (a) As applicable to the Grant Program, based on information that the Designated Subrecipient provided to the FHWA, including the Technical Application, if section 1 of schedule F of the USDOT Agreement designates the Grant award as an urban award or a rural award, as defined in the NOFO, then the Designated Subrecipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

### **Section 23.02 Effect of Historically Disadvantaged Community or Area of Persistent Poverty Designation.**

- (a) If section 3 of schedule F of the USDOT Agreement lists “Yes” for the “HDC or APP Designation,” then based on information that the Designated Subrecipient provided to the FHWA, including the Technical Application, the FHWA determined that the Project will be carried out in a historically disadvantaged community or an area of persistent poverty, as defined in the NOFO. The Designated Subrecipient shall incur a majority of the costs under the Grant award in historically disadvantaged communities or areas of persistent poverty.

### **Section 23.03 Reserved.**

### **Section 23.04 Reserved.**

### **Section 23.05 Reserved.**

### **Section 23.06 Disclaimer of Federal Liability.**

- (a) The FHWA and Recipient shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with the USDOT Agreement.

### **Section 23.07 Relocation and Real Property Acquisition.**

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

Section 23.08 Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Designated Subrecipient or a subrecipient acquires equipment under the Grant Program award, then when that equipment is no longer needed for the Project:
  - 1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and
  - 2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from the Recipient.
- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Designated Subrecipient shall ensure compliance with this section 23.08 for all tiers of subawards under the Grant Program award.

Section 23.09 Environmental Review.

- (a) In this section, “Environmental Review Entity” means:
  - 1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and
  - 2) for all other cases, the FHWA.
- (b) Except as authorized under section 23.09, the Designated Subrecipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:
  - 1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
  - 2) if the Environmental Review Entity is not the Designated Subrecipient, the Environmental Review Entity provides the Designated Subrecipient with written notice that the environmental review process is complete.
- (c) If the Designated Subrecipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Designated Subrecipient shall comply with 23 C.F.R. 771.113(d)(1).
- (d) The Designated Subrecipient acknowledges and agrees that:

- 1) the Environmental Review Entity's actions under section 23.09(b) depend on the Designated Subrecipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
  - 2) applicable environmental statutes and regulation may require the Designated Subrecipient to prepare and submit documents to other Federal, State, and local agencies.
- (e) In compliance with 23 C.F.R. 771.105(a) and other Federal law, the Designated Subrecipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (f) The activities described in schedule B and other information described in the USDOT Agreement may inform environmental decision-making processes, but the parties do not intend the USDOT Agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with schedule B or other information in the USDOT Agreement, then:
- 1) the parties may amend the USDOT Agreement under section 15.01 for consistency with the selected build alternative; or
  - 2) if the FHWA and the Recipient determine that the condition at section 10.01(a)(5) is satisfied, the FHWA or the Recipient may terminate the USDOT Agreement under section 10.01(a)(5).
- (g) The Designated Subrecipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.

Section 23.10 Railroad Coordination.

- (a) If section 3 of schedule C of the USDOT Agreement includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the Designated Subrecipient shall enter a standard written railroad coordination agreement, in compliance with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.

**Article XXIV.MANDATORY AWARD INFORMATION**

Section 24.01 Reserved.

Section 24.02 Federal Award Identification Number.

- (a) The USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is "FMIS." The Federal Award Identification Number ("FAIN") will be generated when the FHWA Division authorizes the project in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the FAIN from FMIS. If requested by the Designated Subrecipient, the Recipient will provide the FAIN to the Designated Subrecipient once the FAIN is generated by FHWA in FMIS.

Section 24.03 Recipient's Unique Entity Identifier.

- (a) The USDOT Payment System identified in section 6 of schedule A of the USDOT Agreement is "FMIS." The Designated Subrecipient's Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is available in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the unique entity identifier from FMIS. If requested by the Designated Subrecipient, the Recipient will provide the FAIN to the Designated Subrecipient once the FAIN is generated by FHWA in FMIS.

## **Article XXV. CONSTRUCTION AND DEFINITIONS**

### **Section 25.01 Schedules.**

- (a) This agreement includes the following schedules of the USDOT Agreement as integral parts:

- Schedule A Administrative Information
- Schedule B Project Activities
- Schedule C Award Dates and Project Schedule
- Schedule D Award and Project Financial Information
- Schedule E Changes from Application
- Schedule F BIP Program Designations
- Schedule G BIP Performance Measurement Information
- Schedule H Climate Change and Environmental Justice Impacts
- Schedule I Racial Equity and Barriers to Opportunity
- Schedule J Labor and Work

### **Section 25.02 Exhibits.**

- (a) The following exhibits, which are located in the document titled “Exhibits to Grant Agreements under the Fiscal Year 2022 Bridge Investment Program” dated January 21, 2023, and available at <https://www.fhwa.dot.gov/bridge/bip/index.cfm>, are part of this agreement.

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

### **Section 25.03 Construction.**

- (a) In this agreement:
- 1) unless expressly specified, a reference to a section or article refers to that section or article in these General Terms and Conditions;
  - 2) a reference to a section or other subdivision of a schedule listed in section 25.01 will expressly identify the relevant schedule; and
  - 3) there are no references to articles or sections in project-specific portions of the USDOT Agreement that are not contained in schedules listed in section 25.01.
- (b) If a provision in this agreement, the BIP Terms and Conditions, the BIP Exhibits and Agreements, or the Performance Measures conflicts with a provision in the Project Specific portion of the USDOT Agreement, then the project-specific portion of the USDOT Agreement prevails. If a provision in the BIP Exhibits and Agreements conflicts with a provision in this agreement or the BIP Terms and Conditions, then the provision in this agreement prevails.

### **Section 25.04 Integration.**

- (a) This Agreement constitutes the entire agreement of the parties relating to the Grant Program and awards under that program and supersedes any previous agreements, oral or written, relating to the Grant Program and awards under that program.

### **Section 25.05 Definitions.**

- (a) In this agreement, the following definitions apply:



“**BIP Exhibits and Agreements**” means the Federal Highway Administration Exhibits to Grant Agreements Under the Fiscal Year 2022 Bridge Investment Program, including Exhibits A-D, Appendices A-E, and Terms B.1 -B.4.

“**BIP Terms and Conditions**” means the Federal Highway Administration General Terms and Conditions Under the Fiscal Year 2022 Bridge Investment Program Grant Program, including articles 1–26.

“**General Terms and Conditions**” means this document, including the Recital and articles I-XXVI.

“**Grant**” means an award of FY 2022 BIP funds that were made available under the 2022 Bridge Investment Program Grants Notice of Funding Opportunity 693JJ322NF00009 posted to Grants.gov on June 10, 2022.

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

“**Grant Program**” means the FY 2022 BIP discretionary grants program under 23 U.S.C. 124.

“**Performance Measurement Guidance**” means the FHWA Performance Measurement Guidance for the Bridge Investment Program (BIP) Discretionary Grant Program, including Appendix: Table 1.

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

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

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

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

## **Article XXVI. AGREEMENT EXECUTION AND EFFECTIVE DATE**

### **Section 26.01 Counterparts.**

- (a) The USDOT Agreement and this agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.

### **Section 26.02 Effective Date.**

- (a) The USDOT Agreement and this agreement will become effective when all parties have signed it. The date of this agreement will be the date this Agreement and USDOT Agreements are signed by the last party to sign them. This instrument constitutes a Grant when the Recipient’s authorized representative signs it.

## DESIGNATED SUBRECIPIENT SIGNATURE PAGE

The Designated Subrecipient, intending to be legally bound, is signing this agreement on the date stated opposite that party's signature.

TEHAMA COUNTY

By:

\_\_\_\_\_  
Signature of Designated Subrecipient's Authorized  
Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## RECIPIENT SIGNATURE PAGE

The Recipient, intending to be legally bound, is signing this agreement on the date stated opposite that party's signature.

### CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Recipient's Representative

**DEE LAM**

Chief, Division of Local Assistance

AND

By: \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Recipient's Representative

**DAVE MOORE**

District 2 Director

### ATTACHMENT

[Use this one-page form on "Multiple" Federal Obligation Type projects;

required prior to requesting authorization of the funds (see Sec. 4.03(b)-(f).]

## DESIGNATED SUBRECIPIENT FORM FOR SUBSEQUENT OBLIGATION OF FUNDS

The FHWA and the California Department of Transportation entered a project-specific agreement for the [project name] that was executed by the FHWA on [date of FHWA signature on original “USDOT Agreement”]. Also, the California Department of Transportation (CALTRANS) Division of Local Assistance (Recipient) and the [Designated Subrecipient name] (Designated Subrecipient) entered a separate project-specific agreement for the subaward of this project by the Recipient to the Designated Subrecipient that was executed by the Recipient on [date of Recipient signature on the original Agreement (a.k.a. first executed Recipient – Designated Subrecipient Agreement)].

As described in section 4.03(g) of the FY 2022 Bridge Investment Program (BIP) Grant Program Recipient - Designated Subrecipient Agreement (Agreement), this instrument obligates [\$XXX] for [insert portion of project listed in the Obligation Condition Table in section 2 of schedule D].

[Designated Subrecipient name] states that:

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

[Designated Subrecipient name] acknowledges and agrees that the Recipient and FHWA is acting in reliance on the Designated Subrecipient’s statements above.

\_\_\_\_\_ By: \_\_\_\_\_  
Date Signature of Designated Subrecipient’s Authorized Representative