

## FY 2022 AND FY 2023 CHARGING AND FUELING INFRASTRUCTURE (CFI) DISCRETIONARY GRANT PROGRAM RECIPIENT- DESIGNATED SUBRECIPIENT AGREEMENT

This Federal Fiscal Year (FY) 2022 and FY 2023 project specific Charging and Fueling Infrastructure (CFI) Discretionary Grant Program Recipient - Designated Subrecipient Agreement (Agreement) is between the State of California Department of Transportation (Caltrans) Division of Local Assistance (Recipient or Caltrans) and **Contra Costa County** a **local government agency** (Designated Subrecipient), collectively known as “Parties.”

### RECITALS

WHEREAS, CFI Grant funds were provided under the authority of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) (the “IIJA”) made funds available to the United States Department of Transportation (“USDOT”) for fiscal year (FY) 2022 and FY 2023 for the Charging and Fueling Infrastructure (CFI) Discretionary Grant Program, to carry out 23 U.S.C. 151(f)(2); and

WHEREAS, on March 14, 2023, the USDOT posted a funding opportunity through the Fiscal Year (FY) 2022 and FY 2023 Grant Program at Grants.gov, with the funding opportunity title "Charging and Fueling Infrastructure (CFI) Discretionary Grant Program" and funding opportunity number **693JJ323NF00004**; and

WHEREAS, this notice of funding opportunity posted at Grants.gov, as amended on Mar 28, 2023, and May 12, 2023, (the “NOFO”) solicited applications for Federal financial assistance under the FY 2022 and FY 2023 CFI Program; and

WHEREAS, on or before June 13, 2023, the Designated Subrecipient applied for CFI Grant funding from the United States Department of Transportation (USDOT) for the **EV-4-ALL** project (Project), which **will design and install DC Fast Charging (DCFC) and Level-2 chargers across public-access sites, including local public libraries, and serve rural, low-income and disadvantaged communities**; and

WHEREAS, the Designated Subrecipient’s application for Project (Grant Application), referenced in section 1 of schedule A of the Federal Highway Administration Charging and Fueling Infrastructure Grants Schedules A Through K to the FMIS Project Agreement for the **Contra Costa County EV4All**, between the USDOT and the Recipient, includes Standard Form 424 and all information and attachments the Designated Subrecipient submitted with that form through Grants.gov, and

WHEREAS, on January 11, 2024, the USDOT announced application selections under the NOFO selecting Project for CFI Grant funding in the amount of **\$14,999,200** for the Project; and

WHEREAS, in this Agreement, “CFI Grant” means an award of these funds to Project that were made available through the NOFO; and

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

WHEREAS, the Office of the Secretary of Transportation is responsible for the USDOT's overall administration of the CFI Grant Program; and

WHEREAS, the Federal Highway Administration (Administering Operating Administration) will administer the USDOT Agreement, on behalf of the USDOT; and

WHEREAS, the U.S. Department of Transportation General Terms and Conditions Under the *Federal Highway Administration General Terms and Conditions Under the Fiscal Year 2022 and Fiscal Year 2023 Charging and Fueling Infrastructure (CFI) Grant Program* (CFI Terms and Conditions), dated March 1, 2024, is referenced as part of the USDOT Agreement and defines additional responsibilities and requirements that must be followed as a condition to receiving and using the CFI Grant funding; and

WHEREAS, the *Federal Highway Administration Exhibits to Project-Specific Agreements Under the Fiscal Year 2022 and Fiscal Year 2023 Charging and Fueling Infrastructure (CFI) Grant Program* (Exhibits), dated March 1, 2024, is referenced in the CFI Terms and Conditions and further defines responsibilities and requirements that must be followed as a condition to receiving and using the CFI Grant funding; and

~~WHEREAS, the *Performance Measurement Guidance for the CFI Discretionary Grant Program* (Performance Measures), updated [~~date of Performance Measurement Guidance document – need to double check (DK)~~], is referenced in this Agreement and used in the USDOT Agreement and the [~~Grant Program~~] Terms and Conditions to define responsibilities and requirements regarding the development, measurement, and reporting of project performance measures; 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, for the purpose of 23 U.S.C. 106(g), the Recipient shall act as if funds under this award are Federal funds under title 23, United States Code; and

WHEREAS, on or about **05/31/2016**, the Parties entered into an Administering Agency - State Agreement for Federal-Aid Projects agreement (Master Agreement); and

WHEREAS, the Parties, will concurrently enter into this Agreement, which defines specific project responsibilities between the Designated Subrecipient and the Recipient for Project and include 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 CFI Terms and Conditions.

The Parties therefore agree to the following:

## AGREEMENT

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

#### **Section 1.01 Purpose**

- (a) The purpose of this award is to fund an eligible project defined in this agreement that has been selected to receive a FY 2022 or FY 2023 CFI Grant. The parties will accomplish that purpose by achieving the following objectives:
- 1) timely completing the Project; and
  - 2) ensuring the award funds provided under this Agreement are not used as a substitute for non-Federal investment in the Project, except as proposed in the Grant Application, and as modified by schedule E.

### **Article II. USDOT AND RECIPIENT ROLES**

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

- (a) The FHWA is responsible for the USDOT's overall administration of this Grant Program, the approval and execution of the USDOT Agreement, and any modifications to the Recipient Agreement under section 15.1 of the USDOT Agreement.
- (b) The Federal Highway Administration (the "FHWA") will administer the Recipient Agreement on behalf of the USDOT. The "Administering Operating Administration" means the FHWA.

#### **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.

### **Article III. Designated Subrecipient Role**

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

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

#### **Section 3.02 Statements on Authority and Capacity**

- (a) The Designated Subrecipient states that:
- 1) the Designated Subrecipient has the authority to receive Federal financial assistance under this agreement;
  - 2) the Designated Subrecipient has the legal authority to complete the Project;
  - 3) the Designated Subrecipient has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;

- 4) not less than the difference between the total eligible project costs listed in section 3 of schedule D and the Grant Amount listed in section 1 of schedule D is committed to fund the Project;
- 5) the Designated Subrecipient has sufficient funds available to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and
- 6) the individual executing this agreement on behalf of the Designated Subrecipient has authority to enter this agreement and make the statements in this article 3 and in section 21.07 on behalf of the Recipient.

#### Section 3.03 USDOT FHWA and Recipient Reliance

- (a) The Designated Subrecipient acknowledges that:
  - 1) the USDOT FHWA and the Recipient relied on statements of fact in the Grant Application to select the Project to receive this award;
  - 2) the USDOT FHWA and the Recipient relied on statements of fact in both the Technical Application and this agreement to determine that the Designated Subrecipient and the Project are eligible under the terms of the NOFO;
  - 3) the USDOT FHWA relied on statements of fact in both the Grant Application and the USDOT Agreement to establish the terms of this agreement; and
  - 4) the Recipient relied on statements of fact in both the Grant Application and the USDOT Agreement to establish the terms of this agreement; and
  - 5) the USDOT FHWA 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 Federal laws, regulations, and policies that are applicable to projects of the Administering Operating Administration and the Recipient.

#### Section 3.05 Rights and Powers Affecting the Project

- (a) The Designated Subrecipient shall not take or permit any action that deprive 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 the FHWA.
- (b) The Designated Subrecipient shall act promptly, in a manner acceptable to the FHWA and the Recipient, to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Designated Subrecipient's performance under the USDOT Agreement and to the Designated Subrecipient's performance under this agreement.

#### Section 3.06 Notification of Changes to Key Personnel

- (a) The Designated Subrecipient shall notify all FHWA and all Recipient representatives who are identified in schedule A in writing within 30 calendar days of any change in key personnel who are also identified in schedule A.

### Section 3.07 Subaward to Designated Subrecipient

(a) Schedule A identifies a Designated Subrecipient, therefore:

- 1) the Recipient hereby awards a subaward to the Designated Subrecipient for the purpose described in section 1.01;
- 2) the Recipient and the Designated Subrecipient have chosen to enter into this separate agreement, to which the FHWA is not a party, assigning responsibilities, including administrative and oversight responsibilities, among the Recipient and the Designated Subrecipient; and
- 3) for the purpose of 2 C.F.R. parts 200 and 1201, the Recipient is a pass-through entity.

### Section 3.08 Designated Subrecipient Statements and Responsibilities

(a) Schedule A 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 USDOT Agreement; and
- 2) the Designated Subrecipient assumes Recipient's reporting obligations under articles 7 and 8 of the CFI Terms and Conditions.

## Article IV. AWARD AMOUNT AND FEDERAL OBLIGATION

### Section 4.01 Federal Award Amount

- (a) The FHWA awarded a CFI Grant to the Recipient in the amount listed in section 1 of schedule D as the CFI Grant Amount.
- (b) Therefore, the Recipient hereby subawards a CFI grant to the Designated Subrecipient in the amount listed in section 1 of schedule D of the USDOT Agreement as the CFI subaward Grant Amount.

### Section 4.02 Federal Obligations

- (a) If the Federal Obligation Type identified in section 2 of schedule D is "Single," then:
  - 1) the USDOT Agreement obligates for the budget period the amount listed in section 1 of schedule D as the [Charging and Fueling Infrastructure] Grant Amount and sections 4.3(c)–4.3(h) do not apply to this agreement.
  - 2) 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
  - 3) the CFI 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 section 2 of schedule D is "Multiple," then:
  - 1) an amount up to the [Charging and Fueling Infrastructure] Grant Amount listed in section 1 of schedule D will be obligated with one initial obligation and one or more subsequent, optional obligations, as described in sections 4.3(c)–4.3(h).
  - 2) 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.
- 3) the CFI 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 CFI 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) This agreement does not obligate amounts allocated in the Obligation Condition Table in section 2 of schedule D to portions of the Project for which that table lists an obligation condition. The parties may obligate the amounts allocated to those portions of the Project only as described in section 4.3(f) or by modifying this agreement under article 15.
  - (f) If the USDOT Payment System identified in section 6 of schedule A is “FMIS,” then for each portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition, the amount allocated in that table to that portion of the Project is obligated if, not later than the statutory lapse date identified in the USDOT Agreement as applicable to the Grant Program, the parties execute an instrument, in the form provided in Exhibit D, documenting that:
    - 1) the FHWA and Recipient determines that the obligation condition listed in that table for that portion of the Project is satisfied;
    - 2) the FHWA and Recipient determines that all applicable Federal requirements for obligating the amount are satisfied; and
    - 3) the Designated Subrecipient states that it is not required to request a modification of the project-specific agreement under article 5.
  - (g) 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 lists an obligation condition, unless the amount allocated in that table to that portion of the Project is obligated under section 4.3(f).
  - (h) For information with respect to the Designated Subrecipient’s responsibility to contract with a Private Entity to pay the non-Federal cost share, see section 12.8 Requirement to Contract with a Private Entity under Article 12 titled Contracting and Subawards.
  - (i) The Designated Subrecipient acknowledges that:
    - 1) the FHWA and Recipient are not liable for payments for a portion of the Project for which the Obligation Condition Table in section 2 of schedule D lists an obligation condition **unless the amount allocated in that table to that portion of the Project is obligated under section 4.03(f).**

- 2) any portion of the CFI Grant funds that are not obligated by the Designated Subrecipient under section 4.03 of this Agreement by the statutory lapse date identified for those funds lapses on the day after that date and becomes unavailable for the Project; and
- 3) the FHWA and Recipient may consider the failure to obligate funds by the statutory lapse date identified in the project-specific agreement as applicable to the Grant Program for those funds to be a basis for terminating this agreement under section 10.01.
- 4) the payment of any non-Federal cost share by a Private Entity is solely a contractual matter between the Designated Subrecipient and such Private Entity to which the FHWA and Recipient are not a party.

#### Section 4.03 Budget Period

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

#### Section 4.04 Period of Performance

- (a) If the USDOT Payment System identified in section 6 of schedule A is "FMIS" or "FMIS Current Bill," then the period of performance for this award begins on the date of this agreement and ends on project end date in FMIS.
- (b) Reserved.
- (c) In 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 in writing all FHWA representatives who are identified in section 5 of schedule A of the USDOT Agreement and Recipient representatives who are identified in section 3 of schedule A of the USDOT Agreement within 30 calendar days of any change in circumstances or commitments that adversely affect the Designated Subrecipient's capacity or intent to complete the Project in compliance with this agreement.
- (b) 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.
- (c) The notification requirement under this section 5.01 is separate from any requirements under this article 5 that the Designated Subrecipient request modification of the USDOT Agreement or this 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 of the USDOT Agreement 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 of the USDOT Agreement; or
  - 2) a schedule change would require the budget period to continue after the budget period end date listed in section 1 of schedule C of the USDOT Agreement.
  - 3) Reserved.
- (b) For other schedule changes, the Designated Subrecipient shall follow the applicable procedures of the FHWA and Recipient and document the changes in writing.

#### Section 5.04 Budget Changes

- (a) The Designated Subrecipient acknowledges that if the cost of completing the Project increases:
  - 1) that increase does not affect the Designated Subrecipient's obligation under this Agreement to complete the Project; and
  - 2) the FHWA and Recipient will not increase the amount of the CFI award and this subaward to address any funding shortfall.
- (b) The Designated Subrecipient shall request a modification of the USDOT Agreement to update schedule D in the USDOT Agreement 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 Recipient shall follow the applicable procedures of the FHWA and the Recipient and document the changes in writing.
- (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's and Recipient's requirements, to include in the Project, specific additional activities that are within the scope of this award, as defined in section 1.01 of this Agreement 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 5.04(d) of this Agreement, or the FHWA does not accept the



proposal under section 5.04(d) of the CFI Terms and Conditions, or the Recipient does not accept the Recipient's proposal under section 5.4(d) of this Agreement then:

- 1) in a request under section 5.04(b) of this Agreement, the Designated Subrecipient shall reduce the Federal Share by the Project Cost Savings; and
- 2) if that modification reduces this award and the FHWA through the Recipient had reimbursed costs exceeding the revised award, the Designated Subrecipient shall refund to the FHWA through the Recipient the difference between the reimbursed costs and the revised award.

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

- (f) The Designated Subrecipient acknowledges that amounts that are required to be refunded under section 5.04(e)(2) of this Agreement constitute a debt to the Federal Government that the FHWA and 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 Acceptance of Changes

- (a) The FHWA may accept or reject modifications requested under this article 5, and in doing so may elect to consider only the interests of the CFI Program and the FHWA. The Recipient may accept or reject modifications requested under this article 5, and in doing so may elect to consider only the interests of the CFI Program and the Recipient. The Designated Subrecipient acknowledges that requesting a modification under this article 5 does not amend, modify, or supplement this agreement unless the Recipient accepts that modification request under section 15.02(b) of this Agreement, the FHWA accepts the modification request under section 15.1 of the USDOT Agreement, and the FHWA and the Recipient modify the USDOT agreement under section 15.1 of the USDOT Agreement.

### **Article VI. GENERAL REPORTING TERMS**

#### Section 6.01 Report Submission

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

#### Section 6.02 Alternative Reporting Methods

- (a) The FHWA and Recipient may establish processes for the Designated Subrecipient to submit reports required by this 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 Recipient.

### **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 Exhibits.

- (b) 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 to the FHWA and the Recipient 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 Exhibits for each Quarterly Project Progress Report and Recertification, including a final Federal Financial Report (SF-425); and
  - 2) any other information required under the FHWA's 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, the Designated Subrecipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 8.01 of this Agreement 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.

#### Section 8.02 Post-construction Performance Measurement

- 1) For each performance measure that is identified in the Performance Measure Table in schedule G with quarterly measurement frequency, for each of 12 consecutive calendar quarters, beginning with the first calendar quarter that begins after the Project substantial completion date, at least once during the quarter, the Designated Subrecipient shall collect data for that performance measure; and
- 2) For each performance measure that is identified in the Performance Measure Table in schedule G with annual measurement frequency, 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
- 3) Not later than January 31 of each year that follows a calendar year during which data was collected under this section 8.02, the Designated Subrecipient shall submit to the USDOT and Recipient a Post-construction 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.
- 4) If an external factor significantly affects the value of a performance measure collected under section 8.02, then the Designated Subrecipient shall identify that

external factor in the Post-construction Performance Measurement Report and discuss the external factor's influence on the performance measure.

#### Section 8.03 Project Outcomes Report.

- (a) The Designated Subrecipient shall submit to the FHWA and Recipient, not later than January 31 of the year that follows the final calendar year during which data was collected under section 8.02, 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-construction 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 Reporting Survival.

- (a) The data collection and reporting requirements in this article 8 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 this Agreement, the FHWA or the Recipient may notify the Designated Subrecipient of a proposed determination of noncompliance. For that notice to be effective, FHWA or the Recipient must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Designated Subrecipient may respond to the notice.
- (b) If the FHWA or Recipient notifies the Designated Subrecipient of a proposed determination of noncompliance under section 9.01(a) of this Agreement, 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) accept the remedy;
  - 2) acknowledge the noncompliance, but propose an alternative remedy; or
  - 3) dispute the noncompliance.
- To dispute the noncompliance, the Designated Subrecipient must include in its response documentation or other information supporting the Designated Subrecipient's compliance.
- (c) The FHWA or the Recipient may make a final determination of noncompliance only:
- 1) after considering the Designated Subrecipient's 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 to the Designated Subrecipient a notice 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 impose a remedy, including:
  - 1) adding conditions or modifying existing conditions on the award;
  - 2) any remedy permitted under 2 C.F.R. 200.339-200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Designated Subrecipient to the 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; or
  - 4) any other remedy legally available.
- (b) To impose a remedy, the FHWA or Recipient must provide to the Designated Subrecipient a notice that describes the remedy, but the FHWA or Recipient may make the remedy effective before the Designated Subrecipient receives that notice.
- (c) If the FHWA or Recipient determine that it is in the public interest, the FHWA or Recipient may impose a remedy, including all remedies described in section 9.02(a) of this Agreement, before making a final determination of noncompliance under section 9.01 of this Agreement.  
If FHWA or Recipient do so, then the notice provided under section 9.01(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (d) 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, respectively.
- (e) The Designated Subrecipient acknowledges that amounts that the FHWA or Recipient requires the Designated Subrecipient to refund to the FHWA or Recipient, due to a remedy under this section 9.02 constitute a debt to the Federal Government that the FHWA or Recipient may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900-999).

#### Section 9.03 Other Oversight Entities

- (a) Nothing in this article 9 limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

### **Article X. AGREEMENT TERMINATION**

#### Section 10.01 Recipient Termination

- (a) The Recipient may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
  - 1) the Designated Subrecipient fails to timely obtain or timely provide any non-RAISE Grant contribution or alternatives approved by the FHWA and the Recipient as provided in this agreement and consistent 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 and the Designated Subrecipient fails to meet that milestone by six months after the date listed in section 2 of schedule C;
  - 3) the Designated Subrecipient fails to meet a milestone listed in section 3 of schedule C by the deadline date listed in that section for that milestone;
  - 4) the Designated Subrecipient fails to comply with the terms and conditions of this Agreement, including a material failure to comply with the project schedule in schedule C even if it is beyond the reasonable control of the Designated Subrecipient;
  - 5) circumstances cause changes to the Project that the FHWA or Recipient determines are inconsistent with the FHWA basis for selecting the Project to receive a RAISE Grant; or
  - 6) the FHWA or Recipient determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, the Recipient may elect to consider only the interests of the Recipient.
- (c) This section 10.01 does not limit the Recipient's ability to terminate this agreement as a remedy under section 9.02.
- (d) The Designated Subrecipient may request that the Recipient terminate the agreement under this section 10.01.

#### Section 10.02 Closeout Termination

- (a) This Agreement terminates on Project Closeout.
- (b) In this Agreement, "Project Closeout" means the date that the FHWA informs 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 that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the FHWA' and Recipient's authority to disallow costs, including costs that the FHWA and 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 this Agreement or the Designated Subrecipient's obligations under this Agreement.
- (b) The end of the period of performance described under section 4.05 does not terminate this Agreement or the Designated Subrecipient's obligations under this Agreement.
- (c) The cancellation of funds under section 6 of schedule D does not terminate this agreement or the Designated Subrecipient's obligations under this agreement.

#### Section 10.05 Other Remedies

- (a) The termination authority under this article 10 supplements and does not limit the FHWA's and Recipient's remedial authority under article 16 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340 and the FHWA-Caltrans Stewardship and Oversight Agreement.

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

#### Section 11.01 Recipient Monitoring and Record Retention.

- (a) The Designated Subrecipient 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 Designated Subrecipient makes a subaward under this award, the Designated Subrecipient 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 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 the Recipient may access Recipient records related to this award under 2 C.F.R. 200.337.
- (b) All photographs taken of wildlife within the project area by the Designated Subrecipient shall constitute records for the purpose of 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 and 23 U.S.C. 109(s)(2), as applicable, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

#### 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 that USDOT Agreement and this Agreement are 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 that USDOT Agreement and this Agreement are neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (c) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the 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) As applicable, 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 that is negotiated under the Brooks Act, 40 U.S.C. 1101-1104 as implemented in 23 U.S.C. 112(b)(2), or an equivalent qualifications-based requirement prescribed for or by the 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 that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Designated Subrecipient and all 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) If the Designated Subrecipient makes a subaward under the Grant award, the Designated Subrecipient 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 is “FHWA Division,” then the Designated Subrecipient shall comply with subaward and contract authorization requirements under 23 C.F.R chapter I.
- (b) If the FHWA Office for Subaward and Contract Authorization identified in section 7 of schedule A is “FHWA Office of Acquisition and Grants Management,” then the Designated Subrecipient may be required to obtain prior written approval from the FHWA agreement officer pursuant to 2 C.F.R. 200.308 and 23 C.F.R. 172 as applicable for the subaward or contracting out of any CFI Planning Grant work under the 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 Designated Subrecipient 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.

#### Section 12.08 Requirement to Contract with a Private Entity

- (a) If the award is designated as “Corridor” in section 1 of schedule F, then the Designated Subrecipient must enter into a contract with a Private Entity for the acquisition and installation of the charging and fueling infrastructure provided for under the Grant award as required by 23 U.S.C. 151(f)(6)(A).  
The Designated Subrecipient may also enter into a contract with a Private Entity for the operations and maintenance of the charging and fueling infrastructure provided for under the Grant award as provided by 23 U.S.C. 151(f)(6)(C).
- (b) If the award is designated as “Community” in section 1 of schedule F, then the Designated Subrecipient may enter into a contract with a Private Entity for the acquisition, construction, installation, operations or maintenance of the charging and fueling infrastructure provided for under the Grant award as provided by 23 U.S.C. 151(f)(8)(H).
- (c) For a contract awarded under a Corridor award, the Designated Subrecipient must require the Private Entity to pay the non-Federal cost share for the portion of the contract value that includes acquisition, installation, operations, and maintenance of charging and fueling infrastructure as required by 23 U.S.C. 151(f)(6)(A), 23 U.S.C. 151(f)(6)(C), and 23 U.S.C. 151(f)(10)(B).  
As provided in section 4.2, the Designated Subrecipient shall be ultimately responsible for meeting the non-Federal share under the award.
- (d) For a contract awarded under a Community award, the Designated Subrecipient must require the Private Entity to pay the non-Federal cost share for the portion of the contract value that includes acquisition, construction, installation, operations, and maintenance of charging and fueling infrastructure as required by 23 U.S.C. 151(f)(8)(H) and 23 U.S.C. 151(f)(10)(B).

As provided in section 4.2, the Designated Subrecipient shall be ultimately responsible for meeting the non-Federal share under the award.

- (e) As provided at 23 U.S.C. 151(f)(6)(E)(i), contracts awarded for the acquisition and installation of charging and fueling infrastructure under award may provide for revenue sharing between the Designated Subrecipient and the Private Entity. Pursuant to 23 U.S.C. 151(f)(6)(E)(ii), any revenues received by the Designated Subrecipient under such an arrangement must be used only for projects that are eligible under title 23, United States Code.

#### Section 12.09 Consultation with Indian Tribes.

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

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

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

- (a) Under the Grant Program award, the FHWA and Recipient shall not provide funding greater than the amount obligated under section 4.3, and FMIS as applicable.
- (b) The Designated Subrecipient acknowledges that the FHWA and the Recipient is not liable for payments exceeding that amount, and the Designated Subrecipient shall not request reimbursement of costs exceeding that amount.

##### Section 13.02 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.
- (b) Operating Assistance.
  - 1) As provided at 23 U.S.C. 151(f)(6)(C), if included within the scope of the award, the Designated Subrecipient may use grant funds for operating assistance (as defined at 23 U.S.C. 151(f)(6)(C)(ii)) for any charging and fueling infrastructure that has been acquired and installed with funds awarded under 23 U.S.C. 151(f).
  - 2) Eligibility for any such operating assistance is limited to a period of 5 years after the date of installation, and the amounts allowed for such assistance may not exceed the amount of the contract for the acquisition and installation of the charging and fueling infrastructure.
- (c) Traffic Control Devices.
  - 1) As provided at 23 U.S.C. 151(f)(6)(D), if included within the scope of the award, the Designated Subrecipient may use grant funds to acquire and install traffic control devices for charging and fueling infrastructure that has been acquired and installed with funds awarded under 23 U.S.C. 151(f).

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

#### 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 section 13.3(d)-(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 project-specific agreement will terminate and supersede any previous FHWA and Recipient approval for the Designated Subrecipient to incur costs under the Grant Program award for the Project.  
Section 5 of schedule D is the exclusive FHWA and Recipient approval of costs incurred before the date of the project-specific agreement.
- (d) Reserved.

#### Section 13.04 Designated Subrecipient 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 or Recipient determine, after consultation with the Designated Subrecipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award.
- (b) The Designated Subrecipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the FHWA and Recipient.

#### Section 13.05 Unexpended Federal Funds.

- (a) Any Federal funds that are awarded at section 4.1 but not expended on allocable, allowable costs remain the property of the United States.

#### Section 13.06 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 is “FMIS,” then the Designated Subrecipient shall follow FMIS procedures to request and receive reimbursement payments under this award.
- (b) The FHWA or Recipient may deny a payment request that is not submitted using the method identified in this section 13.7.

**Section 13.08 Information Supporting Expenditures.**

- (a) If the Designated Subrecipient submits a request for reimbursement that the FHWA or Recipient determine 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) Once federal funds are encumbered and all funds have not yet been invoiced, the Designated Subrecipient shall invoice for eligible work performed the unexpended federal Project funds on Project, a minimum of once every 6 months, until the unexpended federal Project funds are exhausted or the project is complete.

**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 this 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 schedule F of the USDOT Agreement.
- (b) Liquidation of obligations and adjustment of costs under this Agreement follow the requirements of 2 C.F.R. 200.344–200.346.

**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 FHWA and the Recipient. 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 Contact Modifications.**

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

**Section 15.03 Provisions that Conflict with Federal law.**

- (a) If any provision of this Agreement conflicts with Federal law including the Program Statute, then the Federal law prevails.

- (b) Either party may notify the other party upon discovery that a provision conflicts with Federal law and the parties may agree to amend this Agreement in accordance with section 20.01.
- (c) Either party must provide written notice to the other party when it acts or refuses to act where its action or inaction conflicts with a provision of this Agreement but complies with Federal law.

#### Section 15.04 Other Modifications

- (a) The parties shall not amend, modify, or supplement the USDOT Agreement or this Agreement except as permitted under sections 20.01, 20.02, or 20.03. If an amendment, modification, or supplement is not permitted under sections 20.01, 20.02, or 20.03, it is void.

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

#### Section 16.01 Climate Change and Environmental Justice.

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

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

#### Section 17.01 Racial Equity and Barriers to Opportunity.

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

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

#### Section 18.01 Labor and Work

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

### **Article XIX. Reserved.**

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

#### Section 20.01 Critical Infrastructure Security and Resilience

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

- 3) summarizes or contains a cybersecurity incident response plan for the transportation infrastructure being improved in the Project;
- 4) documents the results of a self-assessment of the 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 XXI. FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS**

**Section 21.01 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 21.02 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 this agreement or the USDOT Agreement to expressly identify Federal law applicable to the Designated Subrecipient or activities under this agreement does not make that law inapplicable.

**Section 21.03 Federal Freedom of Information Act.**

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

**Section 21.04 History of Performance**

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

**Section 21.05 Whistleblower Protection**

- (a) The Designated Subrecipient acknowledges 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 this 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 21.06 External Award Terms and Obligations**

- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:



- 1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
  - 2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
  - 3) 2 C.F.R. 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; and
  - 4) 23 C.F.R. Chapter 1: Federal Highway Administration, Department of Transportation as, applicable to the Designated Subrecipient.
  - 5) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

#### Section 21.07 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 XXII. ASSIGNMENT**

##### Section 22.01 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 XXIII. Reserved.**

#### **Article XXIV. WAIVER**

##### Section 24.01 Waivers

- (a) A waiver of a term of this Agreement granted by the FHWA and Recipient will not be effective unless it is in writing and signed by an authorized representative of the FHWA and Recipient.
- (b) A waiver of a term of this agreement granted by the FHWA and Recipient on one occasion will not operate as a waiver on other occasions.
- (c) If the FHWA and 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 XXV. ADDITIONAL TERMS AND CONDITIONS**

##### Section 25.01 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 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 geographic location.

#### Section 25.02 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 and this Agreement.

#### Section 25.03 Relocation and Real Property Acquisition

- (a) The Designated Subrecipient shall comply with the land acquisition policies in 49 C.F.R. 24 subpart B and shall pay or reimburse property owners for necessary expenses as specified in that subpart.
- (b) The Designated Subrecipient shall provide a relocation assistance program offering the services described in 49 C.F.R. 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. 24 subparts D–E.
- (c) The 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. 24 subpart E.

#### Section 25.04 Equipment Disposition

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Designated Subrecipient or any subrecipients to the Designated Subrecipient, acquire 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 25.04 for all tiers of subawards under the Grant Program award.

#### Section 25.05 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
- (b) for all other cases, the FHWA. Except as authorized under section 25.05(c), 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 that:
  - 1) the Environmental Review Entity's actions under section 25.05(a) 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) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with 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 Recipient determine that the condition at section 10.1(a)(5) is satisfied, the FHWA and the Recipient may terminate the USDOT and the Recipient may terminate this Agreement under section 10.1(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 25.06 Railroad Coordination

- (a) If schedule C 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, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.

#### **Article XXVI. MANDATORY AWARD INFORMATION**

##### Section 26.01 Information Contained in a Federal Award.

- (a) For 2 C.F.R. 200.211:
  - 1) the "Federal Award Date" is the date of this agreement, as defined under section 28.02;
  - 2) the "Assistance Listings Number" is 20.205 and the "Assistance Listings Title" is "Highway Planning and Construction"; and
  - 3) this award is not for research and development.

Section 26.02 Federal Award Identification Number.

- (a) The USDOT Payment System identified in schedule A is "FMIS" or "FMIS Current Bill," thus the Federal Award Identification Number will be generated when the FHWA Division authorizes the project in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the FAIN from FMIS for the Designated Subrecipient once generated.

Section 26.03 Recipient's Unique Entity Identifier.

- (a) (a) If the FHWA Payment System identified in schedule A is "FMIS" or "FMIS Current Bill," then the Recipient's Unique Entity Identifier, as defined at 2 C.F.R. 25.415, is available in FMIS. The Recipient acknowledges that it has access to FMIS and can retrieve the unique entity identifier from FMIS for the Designated Subrecipient.

**Article XXVII. CONSTRUCTION AND DEFINITIONS**

Section 27.01 Schedules

- (a) This agreement includes the following schedules as integral parts:
- 1) Schedule A Administrative Information
  - 2) Schedule B Project Activities
  - 3) Schedule C Award Dates and Project Schedule
  - 4) Schedule D Award and Project Financial Information
  - 5) Schedule E Changes from Application
  - 6) Schedule F CFI Program Designations
  - 7) Schedule G CFI Performance Measurement Information
  - 8) Schedule H Climate Change and Environmental Justice Impacts
  - 9) Schedule I Equity and Barriers to Opportunity
  - 10) Schedule J Labor and Work
  - 11) Schedule K Civil Rights and Title VI

Section 27.02 Exhibits

- (a) The following exhibits, which are located in the document titled "Federal Highway Administration Exhibits to Project-Specific Agreements Under the Fiscal Year 2022 and Fiscal Year 2023 Charging and Fueling Infrastructure (CFI) Grant Program" (Exhibits), dated March 1, 2024, and available at <https://www.fhwa.dot.gov/environment/cfi/resources/fy2022-2023-cfi-exhibits.pdf>, are part of this agreement:
- 1) Exhibit A Applicable Federal Laws and Regulations
  - 2) Exhibit B Additional Standard Terms
  - 3) Exhibit C Quarterly Project Progress Reports and Recertifications: Format and Content
  - 4) Exhibit D Form for Subsequent Obligation of Funds

Section 27.03 Construction

- (a) In these General Terms and Conditions:
- 1) unless expressly specified, a reference to a section or article refers to that section or article in these General Terms and Conditions;
  - 2) a reference to a section or other subdivision of a schedule listed in section 27.01 will expressly identify the relevant schedule; and

- 3) there are no references to articles or sections in project-specific portions of the agreement that are not contained in schedules listed in section 27.01.
- (b) If a provision in the USDOT Agreement conflicts with a provision in this Agreement, then this Agreement prevails. If a provision in the Exhibits conflicts with a provision in this Agreement, then this Agreement prevails.

#### Section 27.04 Integration

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

#### Section 27.05 Definitions

- (a) In this agreement, the following definitions apply:
  - 1) "General Terms and Conditions" means this Agreement.
  - 2) "Grant" means an award of FY 2022 or FY 2023 CFI funds that were made available under the FY 2022 and FY 2023 Charging and Fueling Infrastructure Program Grants Notice of Funding Opportunity No. 693JJ323NF00004 posted to Grants.gov on March 14, 2023.
  - 3) "Grant Amount" means the amount of the FY 2022 or FY 2023 CFI discretionary grant funds awarded to the Recipient.
  - 4) "Grant Program" means the FY 2022 and FY 2023 CFI discretionary grants program under 23 U.S.C. 151.
  - 5) "Private Entity" means a corporation, partnership, company, or nonprofit organization (23 U.S.C. 151(f)(1)).
  - 6) "Program Statute" means the collective statutory text in schedule F.
  - 7) "Project" means the project proposed in the USDOT Application, as modified by the negotiated provisions of the USDOT Agreement.
  - 8) "Project-Specific Agreement," also referred to as the "USDOT Agreement," means the agreement executed between the FHWA and Recipient and may be a grant agreement or a project agreement in FMIS.
  - 9) "Technical Application" means the application identified in section 1 of schedule A of the USDOT Agreement, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

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

#### Section 28.01 Counterparts

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

#### Section 28.02 Effective Date

- (a) This Agreement will become effective when all parties have signed this Agreement and the USDOT Agreement is signed and executed by FHWA. The date of this Agreement will be the date this Agreement is signed by the last party to sign it or the last date the USDOT Agreement is executed, whichever occurs last. This instrument constitutes a Grant when the Recipient authorized representative signs this Agreement and the FHWA and Recipient sign the USDOT Agreement.

### Section 28.03 Termination

- (a) Should this Grant Agreement be terminated prior to the end date of the Period of Performance, the Recipient reserves the right to require that the Designated Subrecipient return to the DOT, via the Recipient, any of the funds reimbursed for expenses subsequently deemed ineligible.

## **Article XXIX. CIVIL RIGHTS AND TITLE VI**

### Section 29.01 Civil Rights and Title VI

- (a) Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Feb. 16, 2023), and DOT Order 1000.12C, “The U.S. Department of Transportation Title VI Program” (June 11, 2021), the purpose of sections 12.1(b)–12.1(c) is to ensure that the Designated Subrecipient has a plan to comply with civil rights obligations and nondiscrimination laws, including Title VI and 49 C.F.R. part 21.
- (b) If the Recipient Type Designation in section 1 of schedule K is “Existing,” then the Designated Subrecipient shall submit to the FHWA either:
  - 1) not later than one month after the date of this agreement, documentation showing that the Designated Subrecipient has complied with all reporting requirements under the FHWA’s implementation of Title VI; or
  - 2) not later than six months after the date of this agreement, both a Title VI Plan and a Community Participation Plan, as those plans are described in chapter II, sections 3–4 of DOT Order 1000.12C.
- (c) If the Designated Subrecipient Type Designation in section 1 of schedule K is “New,” then the FHWA completed a Title VI Assessment of the Designated Subrecipient, as described in chapter II, section 2 of DOT Order 1000.12C, before entering this agreement, as documented in section 2 of schedule K.
- (d) In this section 12.1, “Title VI” means Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified at 42 U.S.C. 2000d to 2000d-4a).

### Section 29.02 Legacy Infrastructure and Facilities.

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

## 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.

CONTRA COSTA COUNTY  
"DESIGNATED SUBRECIPIENT"

By: \_\_\_\_\_

**WARREN LAI**

Public Works Director

\_\_\_\_\_ Date

## 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 \_\_\_\_\_  
**DEE LAM**  
Chief, Division of Local Assistance

AND

By: \_\_\_\_\_ Date \_\_\_\_\_  
**DINA EL-TAWANSY**  
District 4 Director