



U.S Department of Transportation

Federal Railroad Administration

Grant Agreement

1. RECIPIENT NAME AND ADDRESS

San Juan, County of New Mexico

100 S Oliver Dr

Aztec, NM 87410-2417

2. AGREEMENT NUMBER: 69A36521403000BLDNM

3. AMENDMENT NO. 0

4. PROJECT PERFORMANCE PERIOD: FROM 09/01/2021 TO 10/31/2024

5. FEDERAL FUNDING PERIOD: FROM 09/01/2021 TO 10/31/2024

1A. IRS/VENDOR NO. 856000246

1B. DUNS NO. 078341245

6. ACTION New

7. CFDA#: 20.933

TITLE

FEDERAL

NON-FEDERAL

TOTAL

8. PROJECT TITLE

The San Juan Four Corners Freight Rail Project

9. PREVIOUS AGREEMENTS

0.00

0.00

0.00

10. THIS AGREEMENT

2,000,000.00

0.00

2,000,000.00

11. TOTAL AGREEMENT

2,000,000.00

0.00

2,000,000.00

12. INCORPORATED ATTACHMENTS

THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF:

Project Specific Terms and Conditions, Attachment 1A; Standard Terms and Conditions, Attachment 1B; Statement of Work, Attachment 2; Approved Project Budget, Attachment 3; Performance Measurements, Attachment 4; Changes From Application, Attachment 5; Pre-Award Costs, Attachment 6; Exhibits, Attachment 7

13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT

Further Consolidated Appropriations Act, 2020 (P.L. 116-94)

14. REMARKS

GRANTEE ACCEPTANCE

AGENCY APPROVAL

15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL

Mike Stark

17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL

Jamie Rennert

Director, Office of Railroad Policy & Development

16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL

Electronically Signed

16A. DATE

09/21/2021

18. SIGNATURE OF AUTHORIZED FRA OFFICIAL

Electronically Signed

18A. DATE

09/22/2021

AGENCY USE ONLY

19. OBJECT CLASS CODE: 41010

20. ORGANIZATION CODE: 9000000000

21. ACCOUNTING CLASSIFICATION CODES

DOCUMENT NUMBER

FUND

BY

BPAC

AMOUNT

FR-BLD-0009-21-01-00

2720220143

2021

0143T20220

2,000,000.00

# AWARD ATTACHMENTS

San Juan, County of New Mexico

69A36521403000BLDNM

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1. Project Specific Terms and Conditions, Attachment 1A
2. Standard Terms and Conditions, Attachment 1B
3. Statement of Work, Attachment 2
4. Approved Project Budget, Attachment 3
5. Performance Measurements, Attachment 4
6. Changes From Application, Attachment 5
7. Pre-Award Costs, Attachment 6
8. Exhibits, Attachment 7

**U.S. DEPARTMENT OF TRANSPORTATION**  
**GRANT AGREEMENT UNDER THE**  
**FISCAL YEAR 2020 BUILD TRANSPORTATION GRANTS PROGRAM**  
**ATTACHMENT 1A**

This agreement is between the United States Department of Transportation (the “USDOT”) and the San Juan County, New Mexico (the “**Recipient**”).

This agreement reflects the selection of the Recipient to receive a BUILD Grant for The San Juan Four Corners Freight Rail Project

The parties therefore agree to the following:

**Article 1**  
**GENERAL TERMS AND CONDITIONS**

**1.1 General Terms and Conditions.**

- (a) In this agreement, “**General Terms and Conditions**” means the content of the document titled “General Terms and Conditions Under The Fiscal Year 2020 BUILD Transportation Grants Program: FRA Projects,” dated May 11, 2021, which is available at <http://go.usa.gov/xHHbg>. Attachment 1B and articles 8–24 therein are the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (b) The Recipient states that it has knowledge of the General Terms and Conditions.
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, terminating the BUILD Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the USDOT the BUILD Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

## **Article 2**

### **APPLICATION, PROJECT, AND AWARD**

**2.1 Application.** The application for funding was dated May 18, 2020, and titled “Four Corners Freight Rail Project”. It contained Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

**2.2 Project.** In this agreement, the “**Project**” means the project proposed in the application identified in section 2.1 as modified by the negotiated provisions of this agreement, including article 3 and attachments 2–7.

**2.3 Federal Award and Federal Obligation.**

The USDOT hereby awards a BUILD Grant to the Recipient in the amount of \$2,000,000 and obligates that amount for the budget period.

**2.4 Award Dates.**

Estimated Closeout Date: October 31, 2024

See also ¶ 4 (Project Performance Period) and ¶ 5 (Federal Funding Period) of the agreement cover sheet.

**2.5 Urban or Rural Designation.** The USDOT hereby designates this to be an award to a project in a rural area.

**2.6 Federal Award Identification Number.** The USDOT identifies this award with the federal award identification number listed as the “Agreement Number” in ¶ 2 on the agreement cover sheet.

## **Article 3**

### **SUMMARY PROJECT INFORMATION**

**3.1 Summary of Project’s Statement of Work.** (See Attachment 2 for additional details).

The Study will produce an Economic Feasibility Analysis that will examine the freight traffic demand and other factors relevant to the feasibility of the proposed new rail line, and an Alternatives Analysis to identifying routing, infrastructure investment, and design options to support the movement of freight from the Four Corners region to the national freight network via a connection to the BNSF network in Gallup, NM.

### 3.2 Project's Estimated Schedule.

Milestone	Schedule Date
Planned Pre-NEPA Activities ( <i>i.e.</i> Economic Feasibility Analysis) Completion Date:	June 30, 2024

### 3.3 Project's Estimated Budget. (See Attachment 3 for additional details).

Eligible Project Costs	
BUILD Grant Amount:	\$2,000,000
Other Federal Funds:	\$0
State Funds:	\$0
Local Funds:	\$0
Other Funds:	\$0
Total Eligible Project Cost:	\$2,000,000

In ¶ 11 of the agreement cover sheet, the amount listed in the “Federal” column is the “BUILD Grant Amount” in this section 3.3; the amount listed in the “Non-Federal” column is the sum of the “Other Federal Funds,” “State Funds,” “Local Funds,” and “Other Funds” in this section 3.3.

## Article 4 CRITICAL MILESTONE DEADLINES

### 4.1 Critical Milestone Deadlines.

**None.** The parties have not identified any project-specific critical milestone deadlines for this award. The Recipient acknowledges the USDOT may terminate this award under section 16.1(a) on some conditions related to the Project's estimated schedule, as listed in section 3.2.

## Article 5 PARTY INFORMATION

### 5.1 Recipient's Unique Entity Identifier.

Recipient's Unique Entity Identifier: See ¶ 1B (DUNS No.) of the agreement cover sheet.

### 5.2 Recipient Contact(s).

Name: Mike Stark

Title: County Manager  
Agency: San Juan County, New Mexico  
Mailing Address: 100 South Oliver Aztec, NM 87410  
Phone Number: 505-334-4582  
Email Address:mstark@sjcounty.net

**5.3 Recipient Key Personnel.**

None. The parties have not identified any individuals as key personnel for this award.

**5.4 USDOT Project Contact(s).**

Name: Andrew Peternith  
Title: Project Manager  
Agency: Federal Railroad Administration  
Mailing Address: 1200 New Jersey Ave, SE Washington, DC 20590  
Phone Number: 202-493-1320  
Email Address: andrew.peternith@dot.gov

**Article 6  
USDOT ADMINISTRATIVE INFORMATION**

**6.1 Payment System.**

USDOT Payment System: DELPHI eInvoicing

**6.2 Office for Subaward and Contract Authorization.**

USDOT Office for Subaward and Contract Authorization: None

**Article 7  
SPECIAL GRANT TERMS**

There are no special terms for this award.

**Articles 8–24  
are contained in Attachment 1B, as further described in Article 1.**

**U.S. DEPARTMENT OF TRANSPORTATION**  
**GENERAL TERMS AND CONDITIONS UNDER THE**  
**FISCAL YEAR 2020 BUILD TRANSPORTATION GRANTS PROGRAM:**  
**FRA PROJECTS**

**ATTACHMENT 1B**

**MAY 11, 2021**

The Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 (Dec. 20, 2019) appropriated funds to the United States Department of Transportation (the “USDOT”) under the heading “National Infrastructure Investments.” The funds are available to provide Federal financial assistance for surface transportation infrastructure projects that will have a significant local or regional impact. The USDOT program administering those funds is the BUILD Transportation Grants program.

The USDOT published a “Notice of Funding Opportunity for the Department of Transportation’s National Infrastructure Investments Under the Consolidated Appropriations Act, 2020,” 85 Fed. Reg. 10,811 (Feb. 25, 2020) (the “NOFO”) to solicit applications for Federal financial assistance. In these general terms and conditions, “**BUILD Grant**” means an award of funds that were made available under the NOFO.

These general terms and conditions are part of a project-specific agreement under the fiscal year 2020 BUILD Transportation Grants program. The agreement contains a one-page agreement cover sheet and six attachments. Attachment 1A, which contains articles 1–7, and Attachments 2–6 are project-specific. Attachment 1B contains articles 8–24, which are general terms and conditions. The terms “Project” and “Recipient” are defined in Attachment 1A.

**Article 8**  
**PURPOSE**

**8.1 Purpose.** The purpose of this award is to advance capital investments in surface transportation infrastructure that will have a significant local or regional impact. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Technical Application, as modified by section 3.3 and Attachment 3.

**8.2 Technical Application.** In this agreement, “**Technical Application**” means the application identified in section 2.1.

## **Article 9 USDOT ROLE**

### **9.1 Division of USDOT Responsibilities.**

- (a) The Office of the Secretary of Transportation is responsible for the USDOT's overall administration of the BUILD Transportation Grants program, the approval of this agreement, and any modifications to this agreement under section 21.1.
- (b) The Federal Railroad Administration ("FRA") will administer this agreement on behalf of the USDOT. In this agreement, the "**Administering Operating Administration**" means FRA.

### **9.2 USDOT Program Contacts.**

FRA Office of Infrastructure Investment  
Federal Railroad Administration  
1200 New Jersey Ave, SE  
Washington, DC 20590  
(202) 493-6381  
[FRA-Grants@dot.gov](mailto:FRA-Grants@dot.gov)

and

OST BUILD Transportation Discretionary Grants Coordinator  
United States Department of Transportation  
Office of the Secretary  
1200 New Jersey Avenue SE  
Room W84-227  
Washington, DC 20590  
(202) 366-8914  
[BUILDGrants@dot.gov](mailto:BUILDGrants@dot.gov)

## **Article 10 RECIPIENT ROLE**

### **10.1 Statements on the Project.**

- (a) The Recipient states that:
  - (1) all material statements of fact in the Technical Application were accurate when that application was submitted; and
  - (2) Attachment 5 documents all material changes in the information contained in that application.



(b) The Recipient acknowledges that

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

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

- (1) it has the legal authority to complete the Project;
- (2) not less than the difference between the "Total Eligible Project Cost" and the "BUILD Grant Amount" listed in section 3.3 are committed to fund the Project; and
- (3) it has sufficient funds available to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law.

**10.3 Project Delivery.**

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

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

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

**10.5 Notification of Changes to Key Personnel.** The Recipient shall notify all USDOT representatives who are identified in section 5.4 in writing within 30 calendar days of any change in key personnel who are identified in section 5.3.

## **Article 11**

### **AWARD INFORMATION**

- 11.1 Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated under section 2.3. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 11.2 Budget Period.** The budget period for this award is listed as the “Federal Funding Period” in ¶ 5 on the agreement cover sheet.
- 11.3 Period of Performance.** The period of performance for this award is listed as the “Project Performance Period” in ¶ 4 on the agreement cover sheet.
- 11.4 Assistance Listings Information.** This award is under the program with Assistance Listings Title “National Infrastructure Investments” and Assistance Listings Number 20.933.
- 11.5 Research and Development Designation.** This award is not for research and development.

## **Article 12**

### **STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 12.1 Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 5.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 12.1 is separate from any requirements under this article 12 that the Recipient request modification of this agreement.
- 12.2 Statement of Work Changes.** If the Project’s activities differ from the statement of work that is described in section 3.1 and Attachment 2, then the Recipient shall request a modification of this agreement to update section 3.1 and Attachment 2.
- 12.3 Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request a modification of this agreement to update the relevant dates:
- (1) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2;
  - (2) a schedule change would require the budget period to continue after the budget period end date listed in section 2.4; or

- (3) a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.4.

For other schedule changes, the Recipient shall request a modification of this agreement unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.

#### **12.4 Budget Changes.**

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
  - (1) that increase does not affect the Recipient's obligation under this agreement to complete the Project; and
  - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) If, in comparing the Project's budget to the amounts listed in section 3.3, the "Other Federal Funds" amount increases or one or more of the "State Funds," "Local Funds," "Other Funds," or "Total Eligible Project Cost" amounts decrease, then the Recipient shall request a modification of this agreement to update section 3.3 and Attachment 3. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment 3 unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.
- (c) If the actual eligible project costs are less than the "Total Eligible Project Cost" that is listed in section 3.3, then the Recipient may propose to the USDOT, in writing consistent with the Administering Operating Administration's requirements, specific additional activities that are within the scope of this award, as defined in sections 8.1 and 3.1, and that the Recipient could complete with the difference between the "Total Eligible Project Cost" that is listed in section 3.3 and the actual eligible project costs.
- (d) If the actual eligible project costs are less than the "Total Eligible Project Cost" that is listed in section 3.3 and either the Recipient does not make a proposal under section 12.4(c) or the USDOT does not accept the Recipient's proposal under section 12.4(c), then:
  - (1) in a request under section 12.4(b), the Recipient shall reduce the Federal Share by the difference between the "Total Eligible Project Cost" that is listed in section 3.3 and the actual eligible project costs; and
  - (2) if that modification reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall refund to the USDOT the difference between the reimbursed costs and the revised award.

In this agreement, "**Federal Share**" means the sum of the "BUILD Grant Amount" and the "Other Federal Funds" amounts that are listed in section 3.3.

- (e) The Recipient acknowledges that amounts that are required to be refunded under section 12.4(d)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**12.5 USDOT Acceptance of Changes.** The USDOT may accept or reject modifications requested under this article 12, and in doing so may elect to consider only the interests of the BUILD Transportation Discretionary Grant program and the USDOT. The Recipient acknowledges that requesting a modification under this article 12 does not amend, modify, or supplement this agreement unless the USDOT accepts that modification request and the parties modify this agreement under section 21.1.

### **Article 13 GENERAL REPORTING TERMS**

- 13.1 Report Submission.** The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 5.4 and all USDOT contacts who are listed in section 9.2.
- 13.2 Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 13.3 Reporting as History of Performance.** Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient’s timely submission of the reports that this agreement requires, or the Recipient’s failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.
- 13.4 Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0563.

### **Article 14 PROGRESS AND FINANCIAL REPORTING**

**14.1 Quarterly Project Progress Reports and Recertifications.**

- (a) On or before the 30th day of the first month of each calendar year quarter and until the budget period end date that is listed in ¶ 5 on the agreement cover sheet, the Recipient

shall submit to the USDOT a Quarterly Project Progress Report and Recertification that contains for the previous quarter:

- (1) a complete FRA Form 34<sup>1</sup>;
- (2) a certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements); and
- (3) the certification required under 2 C.F.R. 200.415(a).

If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.

- (b) On or before the 30th day of the first month of each calendar year quarter and until the budget period end date that is listed in ¶ 5 on the agreement cover sheet, the Recipient shall submit to the USDOT through GrantSolutions a Federal Financial Report (SF-425) covering the previous calendar year quarter.

**14.2 Final Progress Reports and Financial Information.** No later than 120 days after the budget period end date that is listed in ¶ 5 on the agreement cover sheet, the Recipient shall submit:

- (1) a final Quarterly Project Progress Report and Recertification in the format and with the content described in Exhibit D for each Quarterly Project Progress Report and Recertification;
- (2) a final SF-425 through GrantSolutions;
- (3) a Final Performance Report FRA Form 33 as provided by FRA<sup>2</sup>; and
- (4) any other information required under the Administering Operating Administration's award closeout procedures.

## **Article 15**

### **PERFORMANCE REPORTING**

**15.1 Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment 4.

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<sup>1</sup> FRA Form 34 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

<sup>2</sup> FRA Form 33 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

- 15.2 Pre-project Performance Measurement Report.** The Recipient shall submit to the USDOT, on or before the Pre-project Report Date that is stated in Attachment 4, a Pre-project Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment 4, accurate as of the Pre-project Measurement Date that is stated in Attachment 4; and
  - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 15.3 Post-construction Performance Measurement Reports.** After project completion, the Recipient shall submit to the USDOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment 4, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table. If an external factor significantly affects the value of a performance measure during a measurement period, then in the Post-construction Performance Measurement Report the Recipient shall identify that external factor and discuss its influence on the performance measure.
- 15.4 Project Outcomes Report.** The Recipient shall submit to the USDOT, on or before the Project Outcomes Report Date that is stated in Attachment 4, 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 interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and
  - (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

## **Article 16**

### **AGREEMENT TERMINATION**

#### **16.1 USDOT Termination.**

- (a) The USDOT may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
  - (1) the Recipient fails to obtain or provide any non-BUILD Transportation Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with article 3;

- (2) a construction start date for the Project or a component of the Project is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (3) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (4) the Recipient fails to meet a milestone listed in section 4.1 by the deadline date listed in that section for that milestone;
  - (5) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; or,
  - (6) the USDOT determines that termination of this agreement is in the public interest.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.

## **16.2 Closeout Termination.**

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, “**Project Closeout**” means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.344, Project Closeout should occur no later than one year after the period of performance end date that is listed in ¶ 4 on the agreement cover sheet.

## **16.3 Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the USDOT’s authority to disallow costs, including costs that USDOT reimbursed before termination, and recover funds from the Recipient.

## **16.4 Non-Terminating Events.**

- (a) The end of the budget period described under section 11.2 does not terminate this agreement or the Recipient’s obligations under this agreement.
- (b) The end of the period of performance described under section 11.3 does not terminate this agreement or the Recipient’s obligations under this agreement.
- (c) The cancellation of funds under section 20.2 does not terminate this agreement or the Recipient’s obligations under this agreement.

## **16.5 Other Remedies.** The termination authority under this article 16 supplements and does not limit the USDOT’s remedial authority under 2 C.F.R. part 200, including 2. C.F.R. 200.339–200.340.

**Article 17**  
**MONITORING, FINANCIAL MANAGEMENT, AND RECORDS**

**17.1 Recipient Monitoring and Record Retention.**

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
  - (1) that those activities comply with this agreement; and
  - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

**17.2 USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.

**17.3 Financial Records and Audits.**

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 17.3(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303 and 2 C.F.R. 200 subpart F and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall make available to the USDOT and the Comptroller General of the United States any books, documents, papers, and records of the Recipient that are related to this award for the purpose of audit and examination.
- (d) If an independent audit is made of the accounts of a Recipient relating to the Project or this award, the Recipient shall file a certified copy of that audit with the Comptroller General of the United States not later than six months following the close of the fiscal year for which the audit was made.
- (e) The Recipient shall separately identify expenditures under the fiscal year 2020 BUILD Transportation Grants program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:



- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart F, including “FY 2020” in the program name; and
- (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC (March 25, 2019), including “FY 2020” in column c (“Additional Award Identification”).

## **Article 18**

### **CONTRACTING AND SUBAWARDS**

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

**18.2 Buy America.**

- (a) The Recipient shall comply with 49 U.S.C. 22905(a) as if this award were to carry out chapter 229 of title 49, United States Code. Steel, iron, and manufactured goods used in the Project are subject to 49 U.S.C. 22905(a), as implemented by the Federal Railroad Administration. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. 22905(a)(1) nor a finding under 49 U.S.C. 22905(a)(2).
- (b) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

**18.3 Small and Disadvantaged Business Requirements.** The Recipient shall expend all other funds under this award in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”), and to the extent applicable, 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”).

**18.4 Engineering and Design Services.** [Reserved.]

**18.5 Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative

as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

- 18.6 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 18.7 Pass-through Entity Responsibilities.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.
- 18.8 Subaward and Contract Authorization.** [Reserved.]

## **Article 19**

### **COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

- 19.1 Projects Costs.** This award is subject to the cost principles at 2 C.F.R. 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- 19.2 Timing of Project Costs.**
- (a) The Recipient shall not charge to this award costs that are incurred after the budget period.
  - (b) The Recipient shall not charge to this award costs that were incurred before the date of this agreement unless those costs are identified in Attachment 6 and would have been allowable if incurred during the budget period. This limitation applies to pre-award costs under 2 C.F.R. 200.458. This agreement hereby terminates and supersedes any previous USDOT approval for the Recipient to incur costs under this award for the Project. Attachment 6 is the exclusive USDOT approval of costs incurred before the date of this agreement.
- 19.3 Recipient Recovery of Federal Funds.** The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the USDOT.
- 19.4 Unexpended Federal Funds.** Any Federal funds that are awarded at section 2.3 but not expended on allocable, allowable costs remain the property of the United States.

### **19.5 Timing of Payments to the Recipient.**

- (a) Reimbursement is the payment method for the BUILD Transportation Grants program.
- (b) The Recipient shall not request reimbursement of a cost before the Recipient has entered into an obligation for that cost.

### **19.6 Payment Method.**

- (a) If the USDOT Payment System identified in section 6.1 is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System (<https://www.dot.gov/cfo/delphi-einvoicing-system.html>) to request reimbursement under this award. If the Recipient requires access to that system, the Recipient shall contact the USDOT contact listed in section 5.4.
- (b) The USDOT may deny a payment request that is not submitted using the method identified in this section 19.6.

### **19.7 Information Supporting Expenditures.**

- (a) If the USDOT Payment System identified in section 6.1 is “DELPHI eInvoicing,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF 270 (Request for Advance or Reimbursement) and shall submit supporting cost detail to document clearly all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred by task and by Federal and Non-Federal funds. The Recipient shall classify all costs by task described in Attachment 2 and by Federal and non-Federal shares.
- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

### **19.8 Reimbursement Request Timing and Frequency.** If the USDOT Payment System identified in section 6.1 is “DELPHI eInvoicing,” the Recipient shall request reimbursement as needed to maintain cash flow sufficient to timely complete the Project. The Recipient shall not submit any single payment request exceeding \$99,999,999.99. The Recipient shall not submit a payment request exceeding \$50,000,000.00 unless the Recipient notifies the USDOT 5 days before submitting the request.

## **Article 20 LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY**

### **20.1 Liquidation of Recipient Obligations.**

- (a) The Recipient shall liquidate all obligations under this award not later than 120 days after the period of performance end date that is listed in ¶ 5 on the agreement cover sheet. The

Recipient acknowledges that this period of availability for liquidation ends before the statutory expenditure deadline identified in section 20.2.

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

**20.2 Funds Cancellation.** Outstanding FY 2020 BUILD Transportation Discretionary Grant balances are canceled by statute after September 30, 2027, and are then unavailable for any purpose, including adjustments and expenditures.

## **Article 21 AGREEMENT MODIFICATIONS**

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

**21.2 Limited Unilateral Modifications.**

- (a) The Recipient may update the contacts who are listed in section 5.2 by written notice to all of the USDOT contacts who are listed in sections 5.4 and 9.2.
- (b) The USDOT may update the contacts who are listed in sections 5.4 and 9.2 by written notice to all of the Recipient contacts who are listed in section 5.2.

**21.3 Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under section 21.1 or section 21.2. If an amendment, modification, or supplement is not permitted under section 21.1 and not permitted under section 21.2, it is void.

## **Article 22 ADDITIONAL TERMS AND CONDITIONS**

**22.1 Effect of Urban or Rural Designation.** Based on information that the Recipient provided to the USDOT, including the Technical Application, at section 2.5 this agreement designates the Project to be a project in an urban area or a project in a rural area, as those areas are defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

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

### **22.3 Relocation and Real Property Acquisition.**

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

### **22.4 Federal Freedom of Information Act.**

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

**22.5 Federal Law and Public Policy Requirements.** The Recipient shall ensure that Federal funding is expended in full accordance with the U.S. 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.

**22.6 Project Maintenance Requirement.** The Recipient shall ensure that the Project Property is maintained in good operating order and in accordance with 2 C.F.R. 200.310–200.316, 1201.313 and any guidelines, directives, or regulations that the USDOT, including FRA, may issue.

## **Article 23 THIS AWARD AGREEMENT**

**23.1 Attachments.** This agreement includes the following attachments as integral parts:

Attachment 1	Terms and Conditions
Attachment 2	Statement of Work
Attachment 3	Estimated Project Budget
Attachment 4	Performance Measurement Table
Attachment 5	Changes from Application
Attachment 6	Approved Pre-Award Costs

**23.2 Exhibits.** The following exhibits, which are located in the document titled “Exhibits to FRA Grant Agreements Under the Fiscal Year 2020 BUILD Transportation Grants Program,” dated May 10, 2021, and available at <http://go.usa.gov/xHA8M>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Grant Assurances
Exhibit C	Grant Requirements and Contract Clauses

**23.3 Construction.** If a provision in the agreement cover sheet, exhibits, or attachments 2–6 conflicts with a provision in articles 1–24, then the provision in articles 1–24 prevails. If a provision in the attachments 2–6 conflicts with a provision in the exhibits, then the provision in the attachments prevails.

## **Article 24**

### **AGREEMENT EXECUTION AND EFFECTIVE DATE**

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

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

**ATTACHMENT 2  
STATEMENT OF WORK**

**FY2020 BUILD TRANSPORTATION GRANTS**

San Juan County, New Mexico  
The San Juan Four Corners Freight Rail Project

**I. AUTHORITY**

<b>Authorization</b>	See funding authority.
<b>Funding Authority/Appropriation</b>	Further Consolidated Appropriations Act, 2020 ( Pub. L. No. 116-94, Dec. 20, 2019)
<b>Notice of Funding Opportunity</b>	Notice of Funding Opportunity for the Department of Transportation’s National Infrastructure Investments Under the Consolidated Appropriations Act, 2020, 85 Fed. Reg. 10811 (Feb. 25, 2020)

This document is Attachment 2 of an agreement between the USDOT and the Recipient. As stated in section 23.3 of Attachment 1, if there is a conflict between Attachment 1 and this Attachment 2, Attachment 1 governs.

**II. BACKGROUND**

The San Juan County – Navajo Nation Coalition (Coalition, “Recipient”) signed a memorandum of understanding in February 2020 to establish a framework for cooperation with respect to future railway, community, and business development in the Four Corners region, located at the convergence of Colorado, New Mexico, Utah, and Arizona.

This Grant Agreement (Agreement) funds the Recipient to support pre-NEPA project development and alternatives analysis study (Study) for a proposed new rail line between San Juan County in the vicinity of Shiprock, NM and a connection to the BNSF Gallup Subdivision near Gallup, NM (Project).

This Agreement between the USDOT and the Recipient provides \$2,000,000, which, when combined with \$0 in matching funds, will fund the Project as defined in Attachment 1 of this agreement. The Project is located in a designated rural area as defined by Section C.3.ii of the Notice of Funding Opportunity. As such, the Federal share of the total project cost is increased above 80 percent.

**III. OBJECTIVE**

The Study will produce an Economic Feasibility Analysis that will examine the freight traffic demand and other factors relevant to the feasibility of the proposed new rail line, and an







*Figure 2 General Study Area*

## **V. DESCRIPTION OF WORK**

The Recipient will complete the Project through the following six tasks:

### **Task 1: Detailed Project Work Plan, Budget, and Schedule**

#### *Subtask 1.1: Detailed Project Work Plan, Budget, and Schedule*

The Recipient will prepare a Detailed Project Work Plan, Budget, and Schedule for the following tasks, which may result in amendments to this Agreement. The Detailed Project Budget will be consistent with the Approved Project Budget but will provide a greater level of

detail. The Detailed Project Work Plan will describe, in detail, the activities and steps necessary to complete the tasks outlined in this Statement of Work. The Detailed Project Work Plan will also include information about the project management approach (including team organization, team decision-making, roles and responsibilities and interaction with FRA), as well as address quality assurance and quality control procedures. In addition, the Detailed Project Work Plan will include the Project Schedule (with Recipient and agency review durations), and a detailed Project Budget. Similarly, agreements governing the construction, operation and maintenance of the Project should also be included. The Detailed Project Work Plan, Budget, and Schedule will be reviewed and approved by the FRA.

The Recipient acknowledges that work on subsequent tasks will not commence until the Detailed Project Work Plan, Budget (including estimated costs for Alternate Task, if provided), and Schedule has been completed, submitted to FRA, and the Recipient has received approval in writing from FRA, unless such work is permitted by pre-award authority in Attachment 6 of this Agreement. The FRA will not reimburse the Recipient for costs incurred in contravention of this requirement.

#### *Subtask 1.2: Final Performance Report*

This report must be submitted as required by section 14.2 of Attachment 1 and should describe the cumulative activities of the project, including a complete description of the Recipient's achievements with respect to the project objectives and milestones.

##### **(i) Task 1 Deliverables:**

- Detailed Project Work Plan, Budget, and Schedule
- Project Agreements (if applicable)
- Final Performance Report

#### **Task 2: Preliminary Purpose & Need and Public Involvement/Agency Coordination Plan**

The Recipient will not commence work Task 2 prior to FRA's acceptance of Task 1 Deliverables. The Recipient acknowledges that work on Tasks 3, 4, 5 and 6 will not commence until the Task 2 Deliverables have been completed, submitted to FRA, and the Recipient has received approval in writing from FRA.

##### *Subtask 2.1: Preliminary Purpose and Need Statement*

The Recipient will develop a preliminary Purpose and Need statement to serve as the foundation for the Alternatives Analysis, described in Task 3. The preliminary Purpose and Need statement is for pre-National Environmental Policy Act (NEPA) planning and will be subject to agency and public review and comment as part of NEPA process. The preliminary Purpose and Need statement will address the requirements for the project to serve as a foundation of the Alternatives Analysis, including the assessment of various route, investment, and design options that are reflected in potential alternatives. The Recipient will submit the preliminary Purpose and Need statement to FRA for review and approval.

### *Subtask 2.2: Public Involvement/Agency Coordination Plan*

The Recipient will prepare a Public Involvement/Agency Coordination Plan and a Tribal Consultation Plan. These plans will identify key contacts within agencies, public officials, tribal agencies/chapters, key contacts within civic and business groups, relevant interest groups, present and potential customers/users, and private service providers/shippers, and other key stakeholder groups and the public. These plans will identify involvement activities linked to key milestones in the planning/engineering and alternatives analysis process, and align with the Detailed Project Schedule from Task 1. The Recipient will submit the Public Involvement/Agency Coordination Plan for FRA review and approval prior to implementation.

### *Subtask 2.3: Freight Demand Forecast*

The Recipient will prepare a Freight Demand Forecast, which will estimate the tonnage and type of freight commodities produced in the Four Corners region. This Freight Demand Forecast will support the development of the preliminary Purpose and Need statement by identifying characteristics of the freight corridor required to effectively move the type and quantity of freight produced in the Four Corners Region. Prior to initiating the Freight Demand Forecast Report, the Recipient will submit to FRA, for approval, a memorandum documenting the methodologies to be employed in carrying out the Freight Demand forecast. The Freight Demand Forecast will determine the level of freight service required to facilitate the transfer of commodities to the national freight network via a connection to BNSF in Gallup, NM. This forecast will translate the projected demand into quantity and types of trains (intermodal, merchandise, unit, local) required to transport goods to the connecting BNSF freight network. The Freight Demand Forecast will also identify, at a high-level, other freight train characteristics that could impact freight operations and required infrastructure such as train length, trailing tons, and horsepower. The Freight Demand Forecast will support the Alternatives Analysis by establishing the volumes of goods to be transported and the infrastructure investment required to efficiently carry freight from the Four Corners region to the BNSF network.

The findings of the Freight Demand Forecast Report will be included in the Economic Impact Analysis report under Task 6 and submitted to FRA for approval.

### **Subtask 2.3 Work Products:**

- Freight Demand Forecast Methodology
- Freight Demand Forecast Report

#### **(ii) Task 2 Deliverables:**

- Preliminary Purpose & Need Statement
- Public Involvement/Agency Coordination Plan
- Tribal Consultation Plan

### **Task 3: Alternatives Analysis**

The Recipient will conduct an alternatives analysis to identify a reasonable range of preliminary alternatives for the proposed infrastructure investments within the Study Area, described in

Section IV. The alternatives analysis will also be informed by Tasks 4 and 5. The preliminary range of alternatives will consist of various options for satisfying the preliminary Purpose and Need statement developed under Task 2, which could be evaluated further in a subsequent environmental analysis.

The Recipient will develop a reasonable range of alternatives, which may vary in terms of routes (“Route Options”), physical infrastructure investments (“Investment Options”), which will be comprised of multiple individual infrastructure projects or “component investments”, and design (“Design Options”) for each component investment in the alternatives.

The Recipient will conduct an assessment of alternatives for each of these types of “Options,” sequentially as separate subtasks (i.e., beginning with Subtask 3.1), as detailed below). Under each subtask, the Recipient will first identify a broad range of “preliminary options” for satisfying the preliminary Purpose and Need statement. Prior to the initiation of work under each subtask, the Recipient will prepare a memorandum describing the methodologies to be employed under the subtask (“Methodology Work Product”), which will include:

- The methods to be used for identifying preliminary options;
- The criteria for determining which of the preliminary options will be carried forward for further analysis, versus those to be screened out and dismissed, including:
  - Metrics (quantitative and qualitative) to be used;
  - Method of evaluating preliminary options against those metrics (i.e. measurement methods); and
  - Standards, based on the assessment of options against the identified metrics, for determining which options will be carried forward for further analysis, versus those to be screened out and dismissed on the basis of not being a reasonable means of the meeting the Purpose and Need.
- The means for incorporating the analytical outputs of Tasks 4 and 5; and
- The means for incorporating agency and public input in accordance with the Public Involvement/Agency Coordination Plan developed under Subtask 2.2.

The Methodology Work Product for each subtask in Task 3 will be submitted to FRA and the Recipient shall not commence work on the subsequent subtask until the Recipient has received approval in writing from FRA. Then, the Recipient will screen the “preliminary options,” using the methods described in the Methodology Work Product, to determine which options will be advanced for further consideration.

Upon completion of subtask 3.3, the Recipient will submit a Preliminary Alternatives Analysis Report that will summarize the work undertaken in each subtask, and identify the reasonable range of preliminary alternatives that will be advanced for further consideration.

#### *Subtask 3.1: Route Options Analysis*

The Recipient will develop and assess, at a high level, potential routes for the proposed new rail line through the Study Area. In conducting the Route Options Analysis, the Recipient will consider the anticipated operating requirements specified in the preliminary Purpose and Need

statement, and identify which Route Options will be carried forward for further analysis, and which will be screened out and dismissed on the basis of not being a reasonable means for satisfying the Purpose and Need.

#### **Subtask 3.1 Work Products**

- Route Options Analysis Methodology Work Product
- Route Options Analysis Final Subtask Work Product

#### *Subtask 3.2: Investments Options Analysis*

For those Route Options carried forward for further analysis under Subtask 3.1, the Recipient will develop and assess potential packages of physical investments along those routes that could achieve the operational requirements specified in the preliminary Purpose and Need statement, and identify which Investments Options will be carried forward for further analysis, and which will be screened out and dismissed based on not being a reasonable means of the meeting the Purpose and Need. The Investment Option Analysis may consider the potential phased implementation of physical investments both in the development of the Investment Options, and in determining which will be carried forward for further analysis.

#### **Subtask 3.2 Work Products**

- Investments Options Analysis Methodology Work Product
- Investments Options Analysis Final Subtask Work Product

#### *Subtask 3.3: Design Options Analysis*

For each component investment included in the Investments Options carried forward for further analysis under Subtask 3.2, the Recipient will develop and assess the potential designs for that component investment. However, for any component investment that is likely to fall within scope of a NEPA categorical exclusion specified under 23 CFR 771, only a single design option will be required to be developed. The Recipient will subsequently identify, for each component investment, which design options will be carried forward for further analysis, and which will be screened out and dismissed on the basis of not being a reasonable means of the meeting the Purpose and Need. Taken together, the route and investments options carried forward under Subtask 3.1 and 3.2, respectively, and the corresponding design options carried forward under Subtask 3.3, will comprise the fully-defined Preliminary Range of Preliminary Alternatives for the proposed infrastructure investments.

#### **Subtask 3.3 Work Products**

- Design Options Analysis Methodology Work Product
- Design Options Analysis Final Subtask Work Product

#### **(iii) Task 3 Deliverable:**

- Preliminary Alternatives Analysis Report

#### **Task 4: Project Development**

The Recipient is responsible for project development work, encompassing project planning and engineering analysis, to support the development and screening of alternatives, concurrently with Tasks 3. Task 4 is divided into subtasks, and the completion of each subtask will result in a Final Subtask Work Product summarizing the work undertaken in and results of that subtask.

The Recipient will provide, prior to the initiation of work under each subtask in Task 4, a Work Product documenting the methodologies to be employed in the work comprising that subtask. The Methodology Work Product for each subtask in Task 4 will be submitted to FRA and work will not commence on a subtask until the Recipient has received approval of the subject Methodology Work Product in writing from FRA.

Task 4 will culminate in a Project Development Report that will document the project development outputs for those alternatives included in the Preliminary Range of Reasonable Alternatives that is identified at the completion of Task 3.

##### *Subtask 4.1: Specification of Detailed Operational Requirements and Data Collection*

The Recipient will begin Task 4 by translating the general operational requirements consistent with the preliminary Purpose and Need statement and described in the Freight Demand Forecast from Task 2 into a set of detailed operating requirements appropriate for supporting service planning, addressing:

- Train volumes (by operator/train type, and including all transfer, yard, local, and deadhead moves)
- Train characteristics (length, trailing tons, horsepower)
- Train routings through the Study Area (entry/exit and origination/destination points)
- Specific operating timetables for scheduled services, or operating windows for unscheduled service
- Maintenance-of-way window requirements
- Public and employee timetables

In support of the detailed operations requirements, the Recipient will also identify preliminary operators and/or organizations responsible for the management, operations, and maintenance of the proposed new rail line.

##### **Subtask 4.1 Work Products**

- Specification of Detailed Operational Requirements Methodology Work Product
- Specification of Detailed Operational Requirements Final Subtask Work Product

##### *Subtask 4.2: Operations Analysis*

In support of the development and screening of alternatives undertaken under Task 3, the Recipient will undertake operations analysis of the various Route Options under consideration to identify infrastructure investments for implementing the Project. The Recipient will use appropriate tools, such as train performance calculators and railroad operations simulation

software, in performing the operations analysis. All inputs and outputs to the operations analysis will be made available to FRA, including any simulation software files in their native format, and the Recipient agrees that it will take no action that could limit FRA's access to such operations analysis data without the expressed prior written approval of FRA.

#### **Subtask 4.2 Work Products**

- Operations Analysis Methodology Work Product
- Operations Analysis Final Subtask Work Product

#### *Subtask 4.3: Support Facilities and Access Analysis*

The Recipient will prepare a Support Facilities and Access Analysis to identify the types and locations of support facilities required to operate freight service, such as yard, transload facilities, and maintenance-of-equipment facilities. Prior to commencing this analysis, FRA will approve the methodology to identify and locate required support facilities. The Recipient will submit the Support Facilities and Access Analysis to be approved by FRA and incorporated into the Operations Requirements (Subtask 4.1) and Conceptual and Early Preliminary Engineering Analysis (Subtask 4.3).

#### **Subtask 4.3 Work Products**

- Draft Support Facility and Access Analysis
- Final Support Facility and Access Analysis

#### *Subtask 4.4: Conceptual and Early Preliminary Engineering*

In support of the development and screening of alternatives undertaken under Task 3, the Recipient will develop conceptual and early preliminary engineering for the Investment and Design Options under consideration.

The Investment Options Analysis will be supported by conceptual-level engineering, which will address, at a minimum, and for each component investment, the following:

- The specific operational objectives and functional requirements of the component investment
- The location of the component investment
- For track designs, a linear scale schematic showing track configuration, turnout sizes and type (powered, hand thrown, etc.), proposed signal locations, distance between signals, limits of signalization, limits of curves with degree of curvature, and proposed speeds, including a comparison (through parallel drawings) of the existing and proposed designs

The Design Option Analysis will be supported by early-preliminary-level engineering, which will address, at a minimum, and for each component investment, the following:

- The physical feasibility of the design

- The ability of the proposed design to fulfill the operational objectives and functional requirements of the specific component investment (as established in the Investment Options Analysis)
- The general constructability of the design, including consideration of potential construction phasing to allow for the continuation of operations during the construction period
- The adequacy of the design to support a future detailed site-specific environmental analysis of the component investment
- Scale drawings of proposed track designs, showing track configuration, turnout sizes and type (powered, hand thrown, etc.), proposed signal locations, distance between signals, limits of signalization, limits of curves and curve geometry, gradients and proposed speeds, including (where appropriate) a comparison (as depicted through parallel drawings) of the existing conditions and the proposed designs.

#### **Subtask 4.4 Work Products**

- Conceptual and Early Preliminary Engineering Methodology Work Product
- Conceptual and Early Preliminary Engineering Final Subtask Work Product

#### *Subtask 4.5: Capital Cost Estimation*

The Recipient will prepare capital cost estimates for each alternative (including unit cost and quantities relating to core track structures and other components), management, design and construction management allowances, and contingencies. At a minimum, these will include an initial high-level cost estimate (based on the Conceptual Engineering developed under Subtask 4.4) to be used to support the Investment Options Analysis, and a more detailed cost estimate (based on the early preliminary-level engineering developed under Subtask 4.4) to be used to support the Design Options Analysis. In developing the Capital Cost Estimation Methodology, the Grantee may refer to FRA's Capital Cost Estimating Guidance.

#### **Subtask 4.5 Work Products**

- Capital Cost Estimation Methodology Work Product
- Capital Cost Estimation Engineering Final Subtask Work Product

#### *Subtask 4.6: Operations & Maintenance Cost Estimation*

The Recipient will prepare general estimates of operating, maintenance, and capital renewal costs for a 40-year period.

#### **Subtask 4.6 Work Products**

- Operations & Maintenance Cost Estimation Methodology Work Product
- Operations & Maintenance Cost Estimation Final Subtask Work Product



**(iv) Task 4 Deliverable:**

- Project Development Report

**Task 5: Environmental Analysis**

The Recipient will perform a high-level environmental analysis as part of the development and screening of alternatives concurrently with Tasks 3 and 4. Using desktop analysis, the Recipient will assess the potential for environmental impacts of the preliminary route, investments, and design options developed under Task 3, and employ the outputs of this environmental analysis in the screening of those options. The Recipient will prepare a Preliminary Environmental Analysis Report that will document the potential environmental impacts of those alternatives included in the Preliminary Range of Reasonable Alternatives that is identified at the completion of Task 3, and which will address possible approaches to completing the environmental review of those alternatives, including the potential class(es) of action for subsequent environmental document(s).

**Task 5 Work Products:**

- Preliminary Environmental Analysis Methodology

**(v) Task 5 Deliverable**

- Preliminary Environmental Analysis Report

**Task 6: Economic Feasibility Analysis**

The Recipient will prepare an Economic Feasibility Study that examines the financial viability of the construction and operation of the freight rail within the Study Area. The Economic Feasibility study will develop a financial appraisal that considers projected revenues and costs based on the volume of freight carried and the operations and maintenance costs required to provide the freight service based on the outputs from Tasks 3, 4 and 5. The Economic Feasibility study will also develop a discount cash flow analysis and net present value indicators to aid in the development of a financing plan. Additionally, the Economic Feasibility Study will produce a benefits-costs analysis following US DOT guidance to determine the value the San Juan Four Corners Freight Rail Project could offer to the Four Corners Region. The Recipient will provide, prior to the initiation of work under Task 6, a Work Product documenting the methodologies to be employed in the work comprising that subtask.

**Task 6 Work Products**

- Economic Feasibility Analysis Methodology

**(vi) Task 6 Deliverables**

- Economic Feasibility Analysis

**VI. ENVIRONMENTAL COMPLIANCE**

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), other environmental statutes, related regulatory requirements, and FRA's NEPA implementing

regulations (23 CFR part 771, Environmental Impact and Related Procedures). FRA has determined that the actions funded under this grant for planning or design activities that do not commit to a particular course of action affecting the environment are categorically excluded from detailed environmental review pursuant to 23 CFR 771.116 (c) (1), (3), (4) and (8). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

In analyzing the applicability of a CE, FRA also considered whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. In accordance with 23 CFR 771.116 (a) and (b), FRA has further concluded that no unusual circumstances exist with respect to development of the activities funded under this grant that might trigger the need for a more detailed environmental review.

## **VII. PROJECT COORDINATION**

The Recipient shall perform all tasks required for the Project through a coordinated process, which will involve affected railroad owners, operators, and funding partners, including:

- The Navajo Nation
- Bureau of Indian Affairs
- Bureau of Land Management
- New Mexico Department of Transportation
- Surface Transportation Board (STB)
- BNSF
- United States Bureau of Reclamation
- FRA

## **VIII. PROJECT MANAGEMENT**

The Recipient is responsible for facilitating the coordination of all activities necessary for implementation of the Project. Upon award of the Project, the Recipient will monitor and evaluate the Project's progress through regular meetings scheduled throughout the period of performance. The Recipient will:

- Participate in a project kickoff meeting with FRA
- Complete necessary steps to hire a qualified consultant/contractor to perform required Project work, as necessary
- Hold regularly scheduled Project meetings with FRA
- Inspect and approve work as it is completed

- Review and approve invoices as appropriate for completed work
- Perform Project close-out audit to ensure contractual compliance and issue close-out report
- Submit to FRA all required Project deliverables and documentation on-time and according to schedule, including periodic receipts and invoices
- Comply with all FRA Project reporting requirements, including, but not limited to:
  - a. Status of project by task breakdown and percent complete
  - b. Changes and reason for changes in and updated versions of Detailed Project Work Plan, Budget, and Schedule
  - c. Description of unanticipated problems and any resolution since the immediately preceding progress report
  - d. Summary of work scheduled for the next progress period
- Read and understand the Terms and Conditions of this Agreement
- Notify FRA of changes to this Agreement that require written approval or modification to the Agreement

**ATTACHMENT 3**  
**ESTIMATED PROJECT BUDGET**

**FY2020 BUILD TRANSPORTATION GRANTS**

San Juan County, New Mexico  
The San Juan Four Corners Freight Rail Project

**I. APPROVED PROJECT BUDGET**

The total estimated cost of the Project is \$2,000,000, for which the grant under this agreement will contribute up to \$2,000,000. The Recipient does not have a non-Federal Contribution. Consistent with sections 12.4 and 11.1 of Attachment 1, any additional expense required beyond that provided in this Agreement to complete the Project will be borne by the Recipient.

Revisions to this Attachment 3 are void unless made in compliance with Attachment 1.

**Project Budget by Task**

<b>Task #</b>	<b>Task Name</b>	<b>Federal (FRA) Contribution</b>	<b>Non-Federal Contribution</b>	<b>Total Cost</b>
1	Detailed Project Work Plan, Budget, and Schedule	\$ 100,000	\$ 0	\$ 100,000
2	Preliminary Purpose & Need, Public Involvement/Agency Coordination Plan, Economic Impact Study	\$ 450,000	\$ 0	\$ 450,000
3	Alternatives Analysis	\$ 950,000	\$ 0	\$ 950,000
4	Project Development	\$ 300,000	\$ 0	\$ 300,000
5	Environmental Analysis	\$ 150,000	\$ 0	\$ 150,000
6	Economic Feasibility Analysis	\$ 50,000	\$ 0	\$ 50,000
<b>Total</b>		<b>\$ 2,000,000</b>	<b>\$ 0</b>	<b>\$ 2,000,000</b>

Consistent with section 19.7 of Attachment 1, the Recipient will document expenditures by task, and by Federal and Non-Federal Contributions, when seeking reimbursement from FRA.

**Project Budget by Source**

<b>Funding Source</b>	<b>Project Contribution Amount</b>	<b>Percentage of Total Project Cost</b>
BUILD Funds	\$ 2,000,000	100 %
Non-Federal Funds	\$ 0	0 %
<b>Total Project Cost</b>	<b>\$ 2,000,000</b>	<b>100%</b>

**ATTACHMENT 4**  
**PERFORMANCE MEASUREMENT TABLE**  
**FY2020 BUILD TRANSPORTATION GRANTS**

San Juan County, New Mexico  
The San Juan Four Corners Freight Rail Project

**Reserved.** Because this award is for a BUILD Transportation planning grant, as defined in section C.3.i.b of the NOFO, article 15 of Attachment 1 does not apply to this award. The Recipient is not required to collect data under section 15.1 of Attachment 1 or to submit a Pre-project Performance Measurement Report under section 15.2 of Attachment 1, any Interim Performance Measurement Reports under section 15.3 of Attachment 1, or a Project Outcomes Report under section 15.4 of Attachment 1.

**ATTACHMENT 5  
CHANGES FROM APPLICATION**

**FY2020 BUILD TRANSPORTATION GRANTS**

San Juan County, New Mexico  
The San Juan Four Corners Freight Rail Project

While the format and presentation of the information in Attachments 1–3 at execution of this agreement may vary from the versions proposed in the application, the table below identifies changes proposed by Recipient between the application and this agreement and discussed with the USDOT.

**Differences between Recipient’s Application and this Agreement**

	<b>Application Version</b>	<b>Obligation Version</b>	<b>Explanation for Change</b>
<b>Attachment 2 Statement of Work</b>	<ol style="list-style-type: none"> <li>Updated Economic Feasibility Study</li> <li>Design and Construction Feasibility Study</li> <li>Public and Stakeholder Outreach</li> </ol>	<ol style="list-style-type: none"> <li>Detailed Project Work Plan, Budget, and Schedule</li> <li>Preliminary Purpose &amp; Need and Public Involvement/Agency Coordination Plan</li> <li>Alternatives Analysis</li> <li>Project Development</li> <li>Environmental Analysis</li> <li>Economic Feasibility Analysis</li> </ol>	The FRA and the Recipient expanded the tasks, work products, and associated deliverables to adhere to the Office of Railroad Policy & Development’s “pre-NEPA” framework. By following this process and completing the deliverables, the Recipient will be better equipped to enter the next stages in the project lifecycle, specifically National Environmental Policy Act (NEPA).
<b>Attachment 3 Estimated</b>	The 3 tasks were to be initiated and	The 6 tasks will be initiated in calendar year 2021 and are expected to be	The application did not provide a detailed schedule

<b>Project Schedule and Deliverables</b>	completed during calendar year 2021.	completed in calendar year 2024.	based on the proposed deliverables. The obligation version accounts for the updated tasks, work products, deliverables, and estimated timeframes for completing the scope of work.
<b>Attachment 4 Estimated Project Budget</b>	<ol style="list-style-type: none"> <li>1. Updated Economic Feasibility Study - \$700,000</li> <li>2. Design and Construction Feasibility Study - \$1,200,000</li> <li>3. Public and Stakeholder Outreach - \$100,000</li> </ol>	<ol style="list-style-type: none"> <li>1. Detailed Project Work Plan, Budget, and Schedule - \$100,000</li> <li>2. Preliminary Purpose &amp; Need and Public Involvement/Agency Coordination Plan - \$450,000</li> <li>3. Alternatives Analysis - \$950,000</li> <li>4. Project Development - \$300,000</li> <li>5. Environmental Analysis - \$150,000</li> <li>6. Economic Feasibility Analysis - \$50,000</li> </ol>	The Total Project Cost and Federal funding share did not change between the application and the obligation version. The cost breakdown of tasks has been updated, as presented in Attachment 4, to adhere to Attachment 2.

Upon execution of this agreement, the Recipient agrees to changes, as reflected Attachments 1–3. In the event of any amendments to Attachments 1–3, this Attachment 5 will not be updated.



**ATTACHMENT 6**  
**APPROVED PRE-AWARD COSTS**  
**FY2020 BUILD TRANSPORTATION GRANTS**

San Juan County, New Mexico  
The San Juan Four Corners Freight Rail Project

**None.** The USDOT has not approved under this award any pre-award costs under 2 C.F.R. 200.458. Because unapproved costs incurred before the date of this agreement are not allowable costs under this award, the USDOT will neither reimburse those costs under this award nor consider them as a non-Federal cost sharing contribution to this award. Costs incurred before the date of this agreement are allowable costs under this award only if approved in writing by USDOT before being included in the project costs and documented in this Attachment 6. See section 19.2(b) of Attachment 1.

**U.S. DEPARTMENT OF TRANSPORTATION**

**EXHIBITS TO FRA GRANT AGREEMENTS UNDER THE  
FISCAL YEAR 2020 BUILD TRANSPORTATION GRANTS PROGRAM**

**MAY 10, 2021**

## **EXHIBIT A**

### **APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into this agreement for a FY 2020 BUILD Transportation Discretionary Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

#### **General Federal Legislation**

- a. Davis-Bacon Act - 40 U.S.C. § 3141 et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. § 201 et seq.
- c. Hatch Act - 5 U.S.C. § 1501 et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. § 4601 et seq.
- e. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501–312508
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001 et seq.
- h. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401 et seq.
- i. Section 404 of the Clean Water Act, as amended - 33 U.S.C. § 1344
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. § 1536
- k. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451 et seq.
- l. Flood Disaster Protection Act of 1973, Section 102(a) – 42 U.S.C. § 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. § 6101 et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. § 4541 et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151 et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701 et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321 et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271 et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. §§1251–1376
- y. Single Audit Act of 1984 - 31 U.S.C. § 7501 et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101 et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. § 2000d et seq.
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C.

§§ 1101-1104

- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ff. Freedom of Information Act - 5 U.S.C. § 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
- hh. Farmland Protection Policy Act of 1981 – 7 U.S.C. § 4201 et seq.
- ii. Noise Control Act of 1972 – 42 U.S.C. § 4901 et seq.
- jj. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661 et seq.
- kk. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- ll. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- mm. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. §§ 9601–9657
- nn. Safe Drinking Water Act – 42 U.S.C. §§ 300f to 300j-26
- oo. The Wilderness Act – 16 U.S.C. §§ 1131–1136
- pp. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901 et seq.
- qq. Migratory Bird Treaty Act 16 U.S.C. § 703 et seq.
- rr. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- ss. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- tt. Buy American Act – 41 U.S.C. § 8301–8305
- uu. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

**Executive Orders**

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers

**General Federal Regulations**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3

- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60 et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38

Specific assurances required to be included in the FY 2020 BUILD Transportation Discretionary Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

**EXHIBIT B**  
**GRANT ASSURANCES**

**EXHIBIT B1**  
**TITLE VI ASSURANCE**  
**(Implementing Title VI of the Civil Rights Act of 1964, as amended)**

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

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

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

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

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

**DOT Order No. 1050.2A**

By signing and submitting the Technical Application and by entering into this agreement under the FY 2020 BUILD Transportation Discretionary Grants program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Railroad Administration (FRA), it is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

*“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including FRA.*

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

### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2020 BUILD Transportation Discretionary Grants program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2020 BUILD Transportation Discretionary Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.



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

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

Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2020 BUILD Transportation Discretionary Grants Program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2020 BUILD Transportation Discretionary Grants Program.

## APPENDIX A

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

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

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

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94, Dec. 20, 2019) the Regulations for the Administration of FY 2020 BUILD Transportation Discretionary Grants Program, and the policies and procedures prescribed by the Federal Railroad Administration (FRA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

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

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

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

## **APPENDIX C**

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

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

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

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

## **APPENDIX D**

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

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

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

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



## APPENDIX E

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

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

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

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

**EXHIBIT B2**  
**DISCLOSURE OF LOBBYING ACTIVITIES**

Certification for Contracts, Grants, Loans, and Agreements

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

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

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

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

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

**EXHIBIT B3**  
**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN**  
**THE PERFORMANCE OF THE FY 2020 BUILD TRANSPORTATION**  
**DISCRETIONARY GRANTS PROGRAM**

**49 C.F.R. PART 32**

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

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

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

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1–6.
8. The Recipient may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to this agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Recipient does so, please insert in article 7 of this agreement the following:

Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of this agreement.

**EXHIBIT B4**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER**  
**RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**

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

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

By signing and submitting the Technical Application and by entering into this agreement under the FY 2020 BUILD Transportation Discretionary Grants program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2020 BUILD Transportation Discretionary Grant, as set out below.

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

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**EXHIBIT B5**  
**REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY**  
**CONVICTION UNDER ANY FEDERAL LAW**

As required by sections 744 and 745 of Title VII, Division C of the Consolidated Appropriations Act, 2020 (Pub. L. 116-93), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

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

The Recipient therefore agrees:

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

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

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

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

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

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:
  - (1) Certify whether the entity has a Tax Delinquency; and
  - (2) Certify whether the entity has a Felony Conviction.
4. **Prohibition.** If
  - (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
  - (2) an entity provides an affirmative response to either certification in section 3; or
  - (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being madethen a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.
5. **Mandatory Notice to the USDOT.**
  - (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
  - (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
  - (c) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.
6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
  - (1) require the SAM check in section 2;
  - (2) require the certifications in section 3;
  - (3) include the prohibition in section 4; and

- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

**EXHIBIT C**  
**GRANT REQUIREMENTS AND CONTRACT CLAUSES**

**EXHIBIT C1**  
**TRANSPARENCY ACT AWARD TERM**

**2 C.F.R. PART 170**

**I. Reporting Subawards and Executive Compensation.**

*a. Reporting of first-tier subawards.*

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

2. *Where and when to report.*

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

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

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

*b. Reporting Total Compensation of Recipient Executives.*

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

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

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

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

c. *Reporting of Total Compensation of Subrecipient Executives.*

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

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of



October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions*

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

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

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

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

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

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

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

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

3. *Subaward*:

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

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

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<sup>1</sup> The language of this Exhibit C1 is required by 2 C.F.R. 170.220. After that rule was issued, OMB Circular A-133 was superseded by 2 C.F.R. Part 200. See 2 C.F.R. 200.104.

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

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

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

- i. *Salary and bonus*.
- ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified*.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**EXHIBIT C2**  
**SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER**  
**REQUIREMENTS**

**2 C.F.R. PART 25**

*A. Requirement for System for Award Management*

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

*B. Requirement for unique entity identifier*

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.

2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

*C. Definitions*

For purposes of this award term:

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

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

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

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

- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward*:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. 200.330).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

**EXHIBIT C3**  
**AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND**  
**PERFORMANCE MATTERS**

**APPENDIX XII TO 2 C.F.R. PART 200**

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

*1. General Reporting Requirement*

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

*2. Proceedings About Which You Must Report*

Submit the information required about each proceeding that:

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

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

c. Is one of the following:

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

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

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

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

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

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

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

### *3. Reporting Procedures*

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

### *4. Reporting Frequency*

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

### *5. Definitions*

For purposes of this award term and condition:

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

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

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

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

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

B. [Reserved]

**EXHIBIT C4  
TRAFFICKING IN PERSONS**

**2 C.F.R. PART 175**

*a. Provisions applicable to a recipient that is a private entity.*

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.

*b. Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or



2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.

*c. Provisions applicable to any recipient.*

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

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

1. “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

5. “Recipient” and “subrecipient” include for-profit entities for the purpose of this exhibit C4 only.

## **EXHIBIT C5**

### **RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this exhibit C5, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this exhibit C5, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this exhibit C5, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this exhibit C5, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts*. To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.