

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

**MARCH 31, 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 (February 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 incorporated by reference in a project-specific agreement under the fiscal year 2020 BUILD Transportation Grants program. Articles 1–7 are in the project-specific portion of the agreement. The terms “Project” and “Recipient” are defined in those articles. Attachments A through E are project-specific attachments.

**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 B.

**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 Maritime Administration (“**MARAD**”) will administer this agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means MARAD.

**9.2 USDOT Program Contacts.**

Robert Bouchard  
Director, Office of Port Infrastructure Development  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR-510  
W21-308  
Mailstop 3  
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[robert.bouchard@dot.gov](mailto:robert.bouchard@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 D 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 begins on the date of this agreement and ends on the budget period end date that is listed in section 2.4.
- 11.3 Period of Performance.** The period of performance for this award begins on the date of this agreement and ends on the period of performance end date that is listed in section 2.4.
- 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 A, then the Recipient shall request a modification of this agreement to update section 3.1 and Attachment A.
- 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 B. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment B 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.** On or before the 20th day of the first month of each calendar year quarter and until the budget period end date that is listed in section 2.4, the Recipient shall submit to the USDOT a Quarterly Project Progress Report and Recertification in the format and with the content described in Exhibit D. 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.
- 14.2 Final Progress Reports and Financial Information.** No later than 90 days after the budget period end date that is listed in section 2.4, the Recipient shall submit
- (1) a Final Project Progress Report and Recertification in the format and with the content described in Exhibit D for each Quarterly Project Progress Report and Recertification, including a final Federal Financial Report (SF-425); and
  - (2) any other information required under the Administering Operating Administration's award closeout procedures.

**Article 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 C.
- 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 C, 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 C, accurate as of the Pre-project Measurement Date that is stated in Attachment C; 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 C, 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 C, 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 section 2.4.

**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 American.**

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The Project is a public work of the Federal Government under 41 U.S.C. § 8301.
- (b) Sections 18.2(a)–(g) implement 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
  - (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the United States;
  - (2) the Recipient may use information technology that is a commercial item;
  - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
  - (4) the Recipient may use foreign construction materials if the USDOT has authorized their use under section 18.2(d).
- (c) If the Recipient uses foreign construction material in violation of section 18.2(b), the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under article 16 and 2 C.F.R. 200.338.
- (d) The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under section 21.1, if the USDOT determines that:
  - (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
  - (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - (3) the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under section 18.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (e) The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under section 18.2(d). If the Recipient makes a request under this section 18.2(e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:
- (1) a description of the foreign and domestic construction materials;
  - (2) unit of measure;
  - (3) quantity;
  - (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);
  - (5) time of delivery or availability;
  - (6) location of the construction project;
  - (7) name and address of the proposed supplier;
  - (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for an exception under section 18.2(d);
  - (9) if the Recipient requests authorization under section 18.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
  - (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.
- (f) The Recipient acknowledges that:
- (1) this agreement is not a Government procurement contract;
  - (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and
  - (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.
- (g) In sections 18.2(a)–(g), the following definitions apply:

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

- (1) means any item of supply (including construction material) that is: (A) a commercial item as defined by 48 C.F.R. § 2.101; (B) sold in substantial quantities in the commercial marketplace; and (C) offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

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

**“cost of components”** means—

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

**“domestic construction material”** means—

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

**“foreign construction material”** means a construction material other than a domestic construction material.

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

(h) 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.** If any funds under this award are administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 49 C.F.R. part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”). 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”).
- 18.4 Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 U.S.C. 1101-1104, or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by the USDOT.
- 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 E 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 E 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 System,” then the Recipient shall complete forms in Delphi eInvoicing System, which is on-line and paperless, to request reimbursement. The Recipient shall complete training on using Delphi eInvoicing System before submitting a request for reimbursement. To guide the Recipient when completing this training, the USDOT provides the following additional information, which may change after execution of this agreement:
  - (1) The Recipient may access the training from the USDOT “Delphi eInvoicing System” webpage at <https://einvoice.esc.gov>. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training.
  - (2) A user name and password are not required to access the on-line training. It is currently available, will be accessible 24/7, and will take approximately 10 minutes to complete.

(3) Once the above referenced training has been completed, Recipients must request and complete the External User Access Request form in order to receive a user name and password. Recipients can request the External User Access Request form by sending an email to a Grants/Contracting Officer who is identified in sections 5.4 or 9.2. A user name and password will be sent once the External User Access Request form is received.

(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 System,” 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), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.

(b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

### **19.8 Reimbursement Request Timing and Frequency.**

(a) If the USDOT Payment System identified in section 6.1 is “Delphi eInvoicing System,” the Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement for a cost more than 180 days after that cost was incurred, the USDOT may deny the request for being untimely.

(b) If the USDOT Payment System identified in section 6.1 is “Delphi eInvoicing System,” then the Recipient shall not request reimbursement more frequently than monthly.

## **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 section 2.4. 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.

**Article 23  
THIS AWARD AGREEMENT**

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

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

**23.2 Exhibits.** The following exhibits, which are located in the document titled “Exhibits to MARAD Grant Agreements Under the Fiscal Year 2020 BUILD Transportation Grants Program,” dated March 31, 2021, and available at <http://go.usa.gov/xH376>, are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Grant Assurances
Exhibit C	Grant Requirements and Contract Clauses
Exhibit D	Quarterly Project Progress Reports and Recertifications: Format and Content

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