

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

SEPTEMBER 1, 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 Federal Highway Administration (the “FHWA”) will administer this agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means the FHWA.

9.2 USDOT Program Contacts.

FHWA BUILD Transportation Program Manager
Federal Highway Administration
Office of Freight Management and Operations
1200 New Jersey Avenue SE
Room E84-429
Washington, DC 20590
(202) 366-2639 or (202) 366-1200
FHWA-TIGER.Reports@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

**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.**
- (a) If the USDOT Payment System identified in section 6.1 is “FMIS,” then the period of performance for this award begins on the date of this agreement and ends on project end date in FMIS.
 - (b) If the USDOT Payment System identified in section 6.1 is “DELPHI eInvoicing,” then 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 Catalog of Federal Domestic Assistance Information.** This award is under the program titled “National Infrastructure Investments,” with number 20.933 in the Catalog of Federal Domestic Assistance.
- 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 of 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) the USDOT Payment System identified in section 6.1 is "DELPHI eInvoicing" and 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 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 end of the period of performance, 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 120 days after the end of the period of performance, 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.

15.5 Performance Reporting Survival. The data collection and reporting requirements in this article 15 survive the termination of this agreement.

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 begin construction 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 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 end of the period of performance.

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, 2 C.F.R. 200 subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7507.
- (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 2019 BUILD Transportation Grants program in financial records required for audits under 31 U.S.C. 7501–7507. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. 200 subpart 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) Steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. 313, as implemented by the Federal Highway Administration. The Recipient acknowledges that this agreement is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
 - (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.** 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 as implemented in 23 U.S.C. 112(b)(2), 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 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.

18.7 Subaward and Contract Authorization.

- (a) If the USDOT Office for Subaward and Contract Authorization identified in section 6.2 is “FHWA Division,” then the Recipient shall comply with subaward and contract authorization requirements under 23 C.F.R chapter I, subchapter G.
- (b) If the USDOT Office for Subaward and Contract Authorization identified in section 6.2 is “FHWA Office of Acquisition and Grants Management,” then the Recipient shall obtain prior written approval from the USDOT agreement officer for the subaward or contracting out of any work under this agreement. That approval will be contingent upon a fair and reasonable price determination on the part of the Recipient and the agreement officer’s concurrence on that determination.

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 costs incurred under an advance construction authorization (23 U.S.C. 115), costs incurred prior to authorization (23 C.F.R. 1.9(b)), and 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 “FMIS,” then the Recipient shall follow FMIS procedures to request and receive reimbursement payments under this award.
- (b) If the USDOT Payment System identified in section 6.1 is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System to request reimbursement under this award unless the USDOT agreement officer provides written approval for the Recipient to use a different request and payment method.
- (c) 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 271 (Outlay Report and Request for Reimbursement for Construction Programs), 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 Frequency. If the USDOT Payment System identified in section 6.1 is “DELPHI eInvoicing,” 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 of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory funds cancellation date identified in 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.

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 fair 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 FHWA Grant Agreements Under the Fiscal Year 2020 BUILD Transportation Grants Program,” dated November 5, 2020, and available at <http://go.usa.gov/x7NNB>, 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 Progress Reports and Recertifications: Format and Content |
| Exhibit E | Form for Subsequent Obligation of Funds |

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.