

U.S. DEPARTMENT OF TRANSPORTATION

**GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2021 INFRA PROGRAM:
FHWA PROJECTS**

JUNE 23, 2022

The USDOT published the “Notice of Funding Opportunity for the Department of Transportation’s Infrastructure for Rebuilding America (INFRA) Program for Fiscal Year 2021,” 86 Fed. Reg. 11,572 (February 25, 2021) (the “**NOFO**”). The NOFO solicited applications for Federal financial assistance to highway and freight projects of national or regional significance under the Nationally Significant Freight and Highway Projects program, 23 U.S.C. 117. That program is also referred to as the INFRA program. In these general terms and conditions, “**INFRA 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 term sheet under the fiscal year 2021 INFRA Program. The “Project” and “Project Sponsor” are defined in the project-specific term sheet. In these general terms and conditions, “schedule A,” “schedule B,” “schedule C,” and “schedule D” refer to schedules to the project-specific term sheet.

1. Division of USDOT Responsibilities.

- (a) The Office of the Secretary of Transportation is responsible for the USDOT’s overall administration of the INFRA program and the approval of the term sheet.
- (b) The Federal Highway Administration (the “**FHWA**”) will develop and administer all Fund-Obligating Agreements, administer the reimbursement process, collect and review progress reports from the Project Sponsor submitted in accordance with section 14, coordinate oversight activities, and administer close-out activities. In these general terms and conditions, the “**Administering Operating Administration**” means the FHWA.

2. Fund-Obligating Agreements.

- (a) The term sheet does not commit the USDOT to provide funding for the Project or any component of the Project.
- (b) The USDOT will not commit to provide funding to the Project or any component of the Project except by executing, through the Administering Operating Administration, one or more agreements (collectively, the “**Fund-Obligating Agreements**”).
- (c) The Project Sponsor acknowledges that the Fund-Obligating Agreements will require it to administer all INFRA Grant funds under the terms and conditions of those agreements, including requirements to comply with applicable Federal statutes, regulations, and policies, including the Federal statutes, regulations, and policies listed in appendix I.

- (d) The USDOT will not reimburse the Project Sponsor for expenditures, except under the terms and conditions of the Fund-Obligating Agreements.

3. Project Sponsor Statements.

- (a) The Project Sponsor states that:

- (1) except as expressly documented in schedule D, all material statements of fact in the application were accurate when that application was submitted;
- (2) schedule D documents all material changes since submission in the information contained in that application; and
- (3) it has the legal authority to complete the Project.

- (b) The Project Sponsor acknowledges that

- (1) the USDOT relied on statements of fact in the application to select the Project to receive the INFRA Grant;
- (2) the USDOT relied on statements of fact in both the application and this term sheet to determine that the Project Sponsor and the Project are eligible under the terms of the NOFO; and
- (3) the USDOT's selection of the Project to receive the INFRA Grant prevented awards under the NOFO to other eligible applicants.

4. Costs Incurred Before a Fund-Obligating Agreement. The Project Sponsor acknowledges that the term sheet is not USDOT approval of any pre-award costs and that, unless the USDOT provides written approval of pre-award costs under 2 C.F.R. 200.458, the USDOT will not reimburse from the INFRA Grant amounts expenditures made before the parties have executed a Fund-Obligating Agreement.

5. Project-Specific Terms in the Term Sheet. Schedule A specifically memorializes the agreement of the parties on the following terms for each component of the Project:

- (1) the component's scope of work;
- (2) the component's budget, including identification of all funds necessary to complete the proposed component's scope of work;
- (3) the component's milestone completion schedule, which sets dates for the completion of all major milestones relating to that component, including:
 - (A) completion and receipt of all required environmental approvals (including National Environmental Policy Act (NEPA) approvals);
 - (B) application for and anticipated receipt of all necessary Federal, State, and local permits and approvals;

- (C) any necessary approval by a local transportation planning organization and inclusion in the required Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP); and
- (D) start and completion of construction.

6. Project-Specific Accountability Provisions.

- (a) The USDOT may reduce the INFRA Grant by the lesser of ten percent or \$10,000,000 if the USDOT determines that:
 - (1) the Project does not meet all project delivery milestones enumerated in section 2 of schedule B by the corresponding dates stated for those milestones in schedule A;
 - (2) the Project does not meet an indicator of project success enumerated in section 3 of schedule B; or
 - (3) the Project Sponsor has not provided information that is sufficient to determine if the Project meets an indicator of project success enumerated in section 3 of schedule B.

If the USDOT had reimbursed costs exceeding the reduced amount, the Project Sponsor shall refund to the USDOT the difference between the reimbursed costs and the reduced amount.

- (b) The Project Sponsor acknowledges that amounts that are required to be refunded under this section 6 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).

7. Safety Requirements.

- (a) The Project Sponsor shall work with the Administering Operating Administration to identify, and the Project Sponsor shall carry out, safety-related activities for the Project that are consistent with the priority areas in the strategic highway safety plan for the State in which the Project is located and likely to yield safety benefits.
- (b) In the Project, the Project Sponsor shall incorporate appropriate safety-related activities that are identified as “proven safety countermeasures” at <https://safety.fhwa.dot.gov/provencountermeasures/>.
- (c) The Project Sponsor shall describe, in the reports required under section 14, the specific safety-related activities carried out under this section 7.

8. Climate and Resiliency Requirements.

- (a) If one or more planning or policy documents are identified in section 2 of schedule C, then, the Project Sponsor shall submit to the USDOT a report describing how the Project aligns with each of those documents.
- (b) The Project Sponsor shall work with the Administering Operating Administration to identify actions that satisfy all of the following conditions:
 - (1) the action supports climate change mitigation or adaptation, consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021);
 - (2) the action is appropriate for the Project, as determined by the Project Sponsor and Administering Operating Administration; and
 - (3) the Project Sponsor can carry out the action on the Project.
- (c) If the Project Sponsor and the Administering Operating Administration identify actions satisfying the conditions under section 8(b), then the Project Sponsor shall carry out those actions on the Project and describe the progress of those actions in the reports required under section 14.
- (d) If the Project Sponsor and the Administering Operating Administration do not identify any actions satisfying the conditions under section 8(b), then the Project Sponsor shall submit to the USDOT a report describing the actions considered and describing how each of the actions considered did not satisfy the conditions under section 8(b).
- (e) Under section 8(b), the Project Sponsor shall consider, at minimum, the following actions:
 - (1) incorporating electrification infrastructure, zero-emission vehicle infrastructure, or both;
 - (2) incorporating energy- and location-efficiency requirements in buildings constructed or improved in the project;
 - (3) incorporating accessibility improvements or new or improved pedestrian connections, cycling connections, or multi-modalism; and
 - (4) using demand management strategies to reduce congestion and greenhouse gas emissions.

9. Equity Requirements.

- (a) The Project Sponsor shall submit to the USDOT either an equity impact analysis for the Project or a report explaining why the Project Sponsor did not complete that analysis.

- (b) The Project Sponsor shall submit to the USDOT either an equity and inclusion plan for the Project or a report explaining why the Project Sponsor did not adopt an equity and inclusion plan for the Project. In this subsection (b), an “equity and inclusion plan for the Project” is a plan to ensure equity in the Project, and that plan may address procurement, material sourcing, construction, inspection, or other activities.
- (c) The Project Sponsor shall consider use of local hire preferences in the Project and submit to the USDOT a report describing either the plan to use local hire preferences or explaining why the Project Sponsor will not use those preferences.
- (d) The Project Sponsor shall work with the Administering Operating Administration to identify actions that satisfy all of the following conditions:
 - (1) the action enhances racial equity and support for underserved communities, consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021);
 - (2) the action is appropriate for the Project, as determined by the Project Sponsor and Administering Operating Administration; and
 - (3) the Project Sponsor can carry out the action on the Project.
- (e) If the Project Sponsor and the Administering Operating Administration identify actions satisfying the conditions under section 9(d), then the Project Sponsor shall carry out those actions on the Project and describe the progress of those actions in the reports required under section 14.
- (f) If the Project Sponsor and the Administering Operating Administration do not identify any actions satisfying the conditions under section 9(d), then the Project Sponsor shall submit to the USDOT a report describing the actions considered and describing how each of the actions considered did not satisfy the conditions under section 9(d).
- (g) Under section 9(d), the Project Sponsor shall consider, at minimum, the following actions:
 - (1) incorporating new or improved walking or biking infrastructure or accessibility improvements for individuals with disabilities;
 - (2) partnering with community stakeholders for equitable and fair transfer of excess right-of-way and other properties directly related to the project; and
 - (3) partnering with multimodal mobility providers or appropriate local governments to proactively address potential racial equity and barriers to opportunity or redress past inequities and barriers to opportunity directly related to the project.

10. Buy America Requirements.

- (a) The Project Sponsor acknowledges that the execution of a Fund-Obligating Agreement will subject steel, iron, and manufactured products used in the Project to 23 U.S.C. 313 and the term sheet is neither a waiver of 23 U.S.C. 313(a) nor a finding under 23 U.S.C. 313(b).
- (b) The Project Sponsor acknowledges that the execution of a Fund-Obligating Agreement will subject construction materials used in the Project to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

11. Use of Limited Non-Highway Funds. The Project Sponsor acknowledges that the USDOT selected the Project for award with the expectation that no more than the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in schedule A would be subject to the limitation at 23 U.S.C. 117(d)(2). The Project Sponsor shall not request reimbursements that are subject to the limitation at 23 U.S.C. 117(d)(2) and, in aggregate, exceed the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in schedule A.

12. Environmental Review. The Project Sponsor acknowledges that the term sheet does not commit the USDOT to any determination required under NEPA. The USDOT’s determinations on the Project will be issued in full compliance with its NEPA regulations, 23 C.F.R. part 771, the Council on Environmental Quality’s NEPA regulations, 40 C.F.R. parts 1500–1508, and all other applicable Federal environmental laws and regulations and, State and local laws and regulations, to the extent applicable.

13. Applicability of Federal Law.

- (a) The Project Sponsor 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. In particular, the Project Sponsor shall ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment.
- (b) If the USDOT determines that the Project Sponsor has failed to comply with applicable Federal requirements, the USDOT may take remedial action, including terminating the INFRA Grant, disallowing costs incurred for the Project, requiring the Project Sponsor to refund to the USDOT the INFRA Grant funds, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

14. Quarterly Project Progress Reports.

- (a) On or before the 20th day of January, April, July, and October of each year and until the Project is complete and all Fund-Obligating Agreements under this term sheet have been

closed out, the Project Sponsor shall submit a Quarterly Project Progress Report for each component of the Project. But if the date of the term sheet is in March, June, September, or December, instead of submitting a Quarterly Project Progress Report covering less than one month, the Project Sponsor shall submit the first Quarterly Project Progress Report in the fourth calendar month that begins after the date of the term sheet.

- (b) The Project Sponsor shall submit a Federal Financial Report (SF-425) as part of each Quarterly Project Progress Report.
- (c) The Administering Operating Administration will provide the Project Sponsor with the form and content for these Quarterly Project Progress Reports.

15. Cost Sharing and Changes in Total Project Costs.

- (a) The Project Sponsor hereby certifies that the “State Funds,” “Local Funds,” and “Other Funds” listed in schedule A are committed to fund the Project.
- (b) If the actual eligible project costs are less than the “Total Future Eligible Project Cost” that is listed in schedule A, then the Project Sponsor may propose to the USDOT, in writing consistent with the Administering Operating Administration’s requirements, specific additional activities that are within the scope of the Project, as defined in the Project Sponsor’s application, schedule A, and schedule D, and that the Project Sponsor could complete with the difference between the “Total Future Eligible Project Cost” that is listed in schedule A and the actual eligible project costs.
- (c) If the actual eligible project costs are less than the “Total Future Eligible Project Cost” that is listed in schedule A and either the Project Sponsor does not make a proposal under section 15(b) or the USDOT does not accept the Project Sponsor’s proposal under section 15(b), then:
 - (1) the Project Sponsor shall submit an amendment request under section 16(a) to reduce the Total Federal Assistance by the difference between the “Total Future Eligible Project Cost” that is listed in schedule A and the actual eligible project costs; and
 - (2) if that modification reduces the “INFRA Grant Amount” listed in schedule A and the USDOT had reimbursed costs exceeding the revised amount, the Project Sponsor shall refund to the USDOT the difference between the reimbursed costs and the revised award.

In these general terms and conditions, “**Total Federal Assistance**” means the sum of the “INFRA Grant Amount” and the “Other Federal Funds” amounts that are listed in schedule A.

- (d) The Project Sponsor acknowledges that amounts that are required to be refunded under section 15(c) 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).

16. Term Sheet Modifications.

- (a) The parties may amend, modify, or supplement the term sheet by mutual agreement in writing signed by the USDOT and the Project Sponsor. Either party may request to amend, modify, or supplement the term sheet by written notice to the other party.
- (b) The USDOT may unilaterally modify the term sheet to comply with Federal law. To unilaterally modify this agreement under this section 16(b), the USDOT must provide a notice to the Project Sponsor that includes a description of the modification and state the date that the modification is effective.
- (c) The parties shall not amend, modify, or supplement the term sheet except as permitted under section 16(a) or section 16(b). If an amendment, modification, or supplement is not permitted under section 16(a) and not permitted under section 16(b), it is void.
- (d) The Project Sponsor shall request a modification of the term sheet to update schedule A if:
 - (1) the Project's activities differ from the statement of work that is described in schedule A;
 - (2) the construction complete date for the Project or any component of the Project changes to a date that is more than six months after the construction complete date listed in schedule A;
 - (3) the Project's "Other Federal Funds" increases from the amount listed in schedule A;
 - (4) the Project's "State Funds," "Local Funds," or "Other Funds" decrease from the amounts listed in schedule A; or
 - (5) the "INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)" changes from the amount listed in schedule A.
- (e) The USDOT may accept or reject proposals from the Project Sponsor under section 15 and section 16 and in doing so may elect to consider only the interests of the USDOT. The Project Sponsor acknowledges that making a proposal under section 15 does not amend, modify, or supplement the term sheet unless the parties execute a modification under section 16(a).

17. Noncompliance, Remedies, and Termination.

- (a) The Project Sponsor acknowledges that the USDOT considers all INFRA Grant funds under the term sheet to constitute a single grant under 23 U.S.C. 117, that all Fund-Obligating Agreements entered under the term sheet are inter-related, and that all INFRA Grant funds provided through a Fund-Obligating Agreement are subject to the Project Sponsor's compliance with the term sheet and all other Fund-Obligating Agreements.

- (b) If the Project Sponsor fails to comply with the term sheet or a Fund-Obligating Agreement under the term sheet, then the USDOT may take actions under 2 C.F.R. 200.339 without limiting those actions to the agreement under which the Project Sponsor was noncompliant.
- (c) If the Project Sponsor fails to timely complete a component of the Project, the USDOT may take action under section 17(b), including termination of all Fund-Obligating Agreements and disallowance of costs incurred under those agreements.
- (d) If the USDOT determines either (1) that the Project Sponsor's use of INFRA Grant funds under the term sheet would not advance the purposes of the INFRA program or (2) that termination is in the public interest, the USDOT may terminate one or more Fund-Obligating Agreements and disallow costs incurred under those agreements.
- (e) In terminating one or more Fund-Obligating Agreement under this section 17, the USDOT may elect to consider only the interests of the USDOT.
- (f) Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient's performance under the term sheet when evaluating the risks of making a future Federal financial assistance award to the Recipient.

18. Reporting Requirements.

- (a) The Recipient shall submit reports required under sections 8(a), 8(d), 9(a)–(c), and 9(f) not later than the later of (1) the date that the first Quarterly Project Progress Report is required under section 14(a) and (2) the 30th day after the Office of Management and Budget (“OMB”) approves an information collection titled “Discretionary Grants for Nationally Significant Freight and Highway Projects (FASTLANE/INFRA) Program.”
- (b) The reports identified in section 18(a) are not required unless OMB approves the information collection described in section 18(a). After OMB assigns a control number for that collection, the USDOT will notify the Project Sponsor of that number.

19. Agreement Execution and Effective Date.

- (a) This term sheet may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- (b) The terms and conditions in the term sheet are effective on the Project Sponsor upon execution of the term sheet by both the Project Sponsor and the USDOT. The date of this agreement will be the date this term sheet is signed by the last party to sign it, which will be the USDOT.

APPENDIX I
SELECTED APPLICABLE FEDERAL STATUTES, REGULATIONS, AND POLICIES

When carrying out the INFRA Grant, the Project Sponsor shall comply with all applicable Federal statutes, regulations, and policies, including the following non-exhaustive list.

Federal Statutes

- Letting of Contracts, 23 U.S.C. 112
- Buy America, 23 U.S.C. 313 and Pub. L. No. 117-58, div. G § 70914 (2021)

Federal Regulations

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. parts 200 and 1201

Federal Policies

- Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 13985 (Jan. 20, 2021)
- Ensuring the Future is Made in All of America by All of America's Workers, Executive Order 14005 (Jan. 25, 2021)
- Tackling the Climate Crisis at Home and Abroad, Executive Order 14008 (Jan. 27, 2021)