

U.S. DEPARTMENT OF TRANSPORTATION

GENERAL TERMS AND CONDITIONS UNDER THE STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANT PROGRAM

GENERAL TERMS AND CONDITIONS Articles 7-30

Version Date: May 09, 2025

The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, November 15, 2021) established the Strengthening Mobility and Revolutionizing Transportation (**SMART**) Discretionary Grant Program (IIJA Section 25005) and appropriated additional funds to the United States Department of Transportation (the “**USDOT**”) under Division J, Title VIII of IIJA to implement the program. The funds are available to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The program funds projects that are focused on using technology interventions to solve real-world challenges and build data and technology capacity and expertise in the public sector.

The USDOT published a Notice of Funding Opportunity (the “**NOFO**”) to solicit applications for Federal Financial assistance for the **SMART** program.

These general terms and conditions are incorporated by reference in a project-specific Financial Assistance agreement under the SMART Grants Program. The project specific portion of the agreement can be found in the document titled “Specific Terms and Conditions Articles 1-6”. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through F in Article 6 of that document are project-specific attachments.

ARTICLE 7 PURPOSE

7.1 Purpose.

The purpose of this award is to is to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The program funds projects that are focused on using technology interventions to solve real-world challenges and build data and technology capacity and expertise in the public sector. The parties will accomplish that purpose by achieving the following objectives:

- a) timely completing the Project; and
- b) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by Attachment B in Article 6 of the Specific Terms and Conditions Articles 1-6.

ARTICLE 8 USDOT ROLE

8.1 Division of USDOT Responsibilities.

The Office of the Secretary of Transportation—Research and Technology (OST-R) is ultimately responsible for the USDOT’s administration of the SMART Grant Program.

8.2 USDOT Program Contacts.

U.S. Department of Transportation
Office of the Assistant Secretary for Research and Technology
1200 New Jersey Avenue, SE
Washington, DC 20590 SMART@dot.gov

ARTICLE 9 RECIPIENT ROLE

9.1 Statements on the Project

The Recipient states that:

- a) all material statements of fact in the Grant Application were accurate when the application was submitted; and
- b) Attachment B of Article 6 in the Specific Terms and Conditions Articles 1-6 documents all material changes in the information contained in that application.

9.2 Statements on Authority and Capacity

The Recipient states that:

- a) it has the authority to receive Federal Financial Assistance under this agreement, and it has the legal authority to complete the Project
- b) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement
- c) not less than the difference between the “Total Eligible Project Cost” and the SMART “Award Amount” listed in Article 2 of the Specific Terms and Conditions Articles 1-6 are committed to fund the Project
- d) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this Article 9 and in Article 24.7 on behalf of the Recipient.

9.3 USDOT Reliance

The Recipient acknowledges that:

- a) the USDOT relied on statements of fact in the Grant Application to select the Project to receive this award
- b) the USDOT relied on statements of fact in both the Grant Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO
- c) the USDOT relied on statements of fact in both the Grant Application and this agreement to establish the terms of this agreement; and
- d) the USDOT's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

9.4 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 applicable Federal laws, regulations, and policies
- c) the Recipient shall provide any certifications or assurances deemed necessary by the USDOT in ensuring the Recipient's compliance with all applicable laws, regulations, and policies
- d) the Recipient shall provide access to records as provided at 2 CFR 200.337.

9.5 Rights and Powers Affecting the Project

- a) the Recipient shall not take or permit any action that deprives 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, 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
- c) the Recipient shall ensure that the funds provided by USDOT are not misappropriated or misdirected to any other account, need, project, line-item, or the like.

9.6 Notification of Changes to Key Personnel.

The Recipient shall notify all USDOT representatives who are identified in section 4 of Article 4 in the Specific Terms and Conditions Articles 1-6 in writing within 30 calendar days of any change in key personnel who are identified in section 3 of Article 4.

ARTICLE 10 AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

10.1 Federal Award Amount

The USDOT hereby awards to the Recipient the amount listed in section 2 of Article 2 in the Specific Terms and Conditions Articles 1-6 as the SMART Grant amount.

10.2 Federal Obligations.

This agreement obligates funds for the Period of Performance listed in section 2 of Article 3 in the Specific Terms and Conditions Articles 1-6.

10.3 Budget Period

The Budget Period for this award begins on the date of this agreement and ends on the budget period end date as specified in section 3 of Article 2 in the Specific Terms and Conditions Articles 1-6.

In this agreement, "Budget Period" is used as defined at 2 CFR 200.1.

10.4 Period of Performance

This award begins on the "Effective date" and ends on the "End date" as specified in section 2 of Article 3 in the Specific Terms and Conditions Articles 1-6.

In this agreement, "Period of Performance" is used as defined at 2 CFR 200.1.

ARTICLE 11 STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

11.1 Notification Requirement

The Recipient shall notify all USDOT representatives who are identified in section 4 of Article 4 in the Specific Terms and Conditions Articles 1-6 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.

11.2 Statement of Work Changes

If the Project's activities differ from the statement of work that is described in section 3 of Article 3 and Attachment B of Article 6 in the Specific Terms and Conditions Articles 1-6, then the Recipient shall request an amendment of this agreement.

11.3 Schedule Changes

If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement:

- a) a substantial completion date for the Project or a component of the Project

- b) a schedule change would require the Period of Performance to continue after the period of performance end date listed in Section 2 of Article 3 in the Specific Terms and Conditions Articles 1-6.

For other schedule changes, the Recipient shall request an amendment of this agreement unless the USDOT has consented, in writing consistent with applicable requirements, to the change.

11.4 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
 - 2. the USDOT will not increase the amount of this award to address any funding shortfall
- b) For budget changes, the Recipient shall request an amendment of this agreement to update section 2 of Article 2 unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- c) If the actual eligible project costs are less than the "Total Eligible Project Cost" that is listed in section 2 of Article 2 in the Specific Terms and Conditions Articles 1-6, the Recipient may propose to the USDOT, in writing consistent with applicable requirements, specific additional activities that are within the scope of this award, as defined in section 1 of Article 7.
- d) If the actual eligible project costs are less than the "Total Eligible Project Cost" and the Recipient does not make a proposal in accordance with the guidance in Article 11 or the USDOT does not accept the Recipient's proposal, then:
 - 1. in a request accordance with section 11.4(b), the Recipient shall reduce the Federal Share by the difference between the "Total Eligible Project Cost" and the actual eligible project costs; and
 - 2. if that amendment reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall request to add additional project work that is within the scope of this project.

In this agreement, "**Federal Share**" means the sum of the "SMART Action Plan or Implementation Grant Amount" and the "Other Federal Funds" amounts that are listed in section 2 of Article 2 in the Specific Terms and Conditions Articles 1-6.

- a) The Recipient acknowledges unexpended amounts are required to be refunded, and constitute a debt to the Federal Government that the USDOT may collect under 2 CFR 200.346 and the Federal Claims Collection Standards (31 CFR parts 900–999)

- b) The Recipient shall ensure compliance with Federal regulations requiring conduct of a Federally approved audit of any expenditure of funds of \$750,000 or more in a year in Federal awards.

11.5 USDOT Acceptance of Changes

The USDOT may accept or reject amendments requested under this Article 11, and in doing so may elect to consider only the interests of the SMART grant program and the USDOT. The Recipient acknowledges that requesting an amendment under this Article 11 does not amend, modify, or supplement this agreement unless the USDOT accepts that amendment request and the parties modify this agreement per guidance provided in Article 21, Agreement Modifications.

ARTICLE 12 GENERAL REPORTING TERMS

12.1 Report Submission

The Recipient shall send all reports required by this agreement in accordance with the instructions provided in the SMART Reporting Requirements Checklist.

12.2 Paperwork Reduction Act Notice

Under 5 CFR 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. 2105-0520.

ARTICLE 13 PROGRESS AND FINANCIAL REPORTING

13.1 Quarterly Program Performance Reports

The recipient shall submit to USDOT Quarterly Project Progress Reports in the format and with the content described in Exhibit C of the Program Exhibits attachment.

Due dates for reporting periods are **3/31, 6/30, 9/30, or 12/31**, regardless of budget period start dates. Recipients shall submit quarterly reports no later than **30 days after** the end of the reporting period. Annual reports are due no later than **90 days after** the end of the reporting period.

13.2 Quarterly Financial Status

Recipient shall submit a Federal Financial Report using SF- 425 in accordance with specified due dates.

ARTICLE 14 PERFORMANCE REPORTING

14.1 Evaluation and Data Management Plans

The Recipient shall submit to the USDOT, no later than **90 days after** receiving the award, a report that provides an overview of how the project will be evaluated ('Evaluation Plan') and a report that describes how the data collected will be managed and stored ('Data management Plan') including:

- a) an overview of how the proof-of-concept or prototype will be evaluated and how the data collected will be managed and stored
- b) a description of the anticipated impact areas (i.e. goals) of the project if implemented at scale and the methods that will be used to estimate the anticipated benefits and costs associated with implementation
- c) robust performance metrics and measurable targets based on the project goals to inform whether the proof-of-concept or prototype meets expectations and whether full implementation would meet program goals, and
- d) the baseline data for each performance measure that is identified in the Performance Measure Table in Attachment A of Article 6, accurate as of the Baseline Measurement Date that is identified in Attachment A and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in Attachment A.

Guidance on the preparation and submission of each of these reports is available on the SMART Grants website under 'Resources for all Grantees'.

14.2 Implementation Report

The Recipient shall submit to the USDOT, not later than **1 year after** receiving the grant award, a report that describes, consistent with section 25005(f) of IJJA:

- a) the deployment and operational costs of the project, as compared to the benefits and savings from the project
- b) the means by which the project has met the original expectation, as projected in the SMART grant application, including data describing the means by which the project met the specific goals for the project
- c) lessons learned and recommendations for future deployment strategies to optimize transportation efficiency and multimodal system performance
- d) a description of the requirements for a successful at-scale deployment, an assessment of the feasibility of at-scale implementation, and an analysis of the success, challenges, and validity of the initial approach

- e) the performance measurement data for each performance measure that is identified in the Performance Measure Table in Attachment A of Article 6 in the Specific Terms and Conditions Articles 1-6.

*****Implementation Report. A final version of this report is due at the end of the Period of Performance.***

14.3 Performance Reporting Survival

The data collection and reporting requirements in this Article 14 survive three years post period of performance.

14.4 Program Evaluation

As a condition of grant award, the recipient may be required to participate in an evaluation undertaken by USDOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across Grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or USDOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or USDOT staff.

ARTICLE 15 NONCOMPLIANCE AND REMEDIES

15.1 Noncompliance Determinations

- a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or any of the Terms and Conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- b) If the USDOT notifies the Recipient of a proposed determination of noncompliance, the Recipient may, no later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
 - 1. accept the remedy
 - 2. acknowledge the noncompliance, but propose an alternative remedy; or

3. dispute the noncompliance.

**To dispute the noncompliance, the Recipient must include in its response documentation or other information supporting the Recipient's compliance.

- c) The USDOT may make a final determination of noncompliance only:
 1. after considering the Recipient's response in accordance 15.1(b);
 2. if the Recipient fails to respond under in accordance with 15.1(b), after the time for that response has passed.
- d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the bases for that determination.

15.2 Remedies.

- a) If the USDOT makes a final determination of noncompliance under in accordance with 15.1(d), the USDOT may impose a remedy, including:
 1. additional conditions on the award
 2. any remedy permitted under 2 CFR 200.339–200.340, including withholding of payments, disallowance of previously reimbursed costs, requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 CFR part 180
 3. requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 CFR part 180; or
 4. any other remedy legally available.
- b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
- c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 15.2(a), before making a final determination of noncompliance under section 15.1(d). If it does so, then the notice provided under section 15.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- d) In imposing a remedy or making a public interest determination under section 15.2, USDOT may elect to consider the interests of only the USDOT
- e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under section 15.2 constitute a debt to the Federal Government that the USDOT may collect under 2 CFR 200.346 and the Standards for Administrative Collection of Claims Federal Claims Collection Standards (31 CFR Part 901).

15.3 Other Oversight Entities

Nothing in this Article 15 limits any party's authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 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. Recipient fails to meet any milestone by six months
 - 2. the Recipient fails to comply with the Terms and Conditions of this agreement, including a material failure to comply, even if it is beyond the reasonable control of the Recipient; or
 - 3. the USDOT determines that termination of this agreement is in the public interest.
 - 4. the Recipient fails to expend the funds within 2 years after the date on which the government executes the grant agreement, which is the date funds are provided for the project.
- b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
- c) This section 16.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 15.2.
- d) The Recipient may request that the USDOT terminate the agreement.

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 CFR 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 CFR 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

- e) The end of the Period of Performance does not terminate this agreement or the Recipient's obligations under this agreement.
- f) The liquidation of funds as specified in section 1 of Article 20 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 Article 15 or 2 CFR Part 200, including 2 CFR 200.339–200.340.

ARTICLE 17 MONITORING, FINANCIAL MANAGEMENT, CONTROLS, 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
 - 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 CFR 200.332(e).
- c) The Recipient shall retain records relevant to the award as required under 2 CFR 200.334.

17.2 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 in section 17.2(a) in accordance with a financial management system that meets the requirements of 2 CFR 200.301–200.307, 2 CFR Part 200 subpart F, will facilitate an effective audit in accordance with 31 U.S.C. 7501– 7506
- c) the Recipient shall separately identify expenditures under the SMART program, a 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 CFR Part 200, subpart F, including "DOT SMART" in the program name; and
2. list expenditures under that program on a separate row under Part II, Item 1 ("Federal Awards Expended During Fiscal Period") of Form SF-SAC, including "DOT SMART" in column c ("Additional Award Identification").

17.3 Internal Controls.

The Recipient shall establish and maintain internal controls as required under 2 CFR 200.303.

17.4 USDOT Record Access

The USDOT may access Recipient records related to this award under 2 CFR 200.337.

ARTICLE 18 CONTRACTING AND SUBAWARDS

For domestic sourcing compliance purposes and to ensure proper procurement, recipients shall coordinate with the SMART Program office to identify if their project is considered an Infrastructure project. If USDOT determines that a project is a "project for infrastructure," the recipient will comply with Build America Buy America requirements. If USDOT determines that a project is not a "project for infrastructure," the recipient will comply with Buy American Act requirements. The Recipient may participate in planning activities before project identification, as long as it does not include the purchasing of physical materials or a commitment to do so.

18.1 Build America, Buy America.

This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtitle A, 135 Stat. 429, 1294 (2021). and Office of Management and Budget (OMB) Memorandum M-24-02, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure."

For BABA compliance purposes and to ensure proper procurement, recipients shall coordinate with the SMART Program office to identify if their project is considered an Infrastructure project. If USDOT determines that a project is a "project for infrastructure," the recipient will comply with Build America Buy America requirements. If USDOT determines that a project is not a "project for infrastructure," the recipient will comply with Buy American Act requirements. The Recipient may participate in planning activities before project identification, as long as it does not include the purchasing of physical materials or a commitment to do so.

Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.

The Recipient shall not use funds provided under this award for a project for infrastructure unless:

- a) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States
- b) all manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and
- c) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

Inapplicability

The domestic content procurement preference in this award term only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers

When necessary, the Recipient may apply for, and the USDOT may grant, a waiver from the domestic content procurement preference in this award term.

A request to waive the application of the domestic content procurement preference must be in writing. The USDOT will provide instructions on the waiver process and on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office.

When the USDOT has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the USDOT determines that:

- a) applying the domestic content procurement preference would be inconsistent with the public interest
- b) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality

- c) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

Definitions

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material:

- (i) Non-ferrous metals
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- (iii) Glass (including optic glass)
- (iv) Fiber optic cable (including drop cable)
- (v) Optical fiber
- (vi) Lumber
- (vii) Engineered wood
- (viii) Drywall

“Predominantly of iron or steel” means that the cost of the iron and steel content in the article, material, or supply exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Infrastructure Project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

- a) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117- 58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1294 (2021), as implemented by OMB, USDOT, and OST. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- b) Under 2 CFR 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 CFR 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

18.2 Buy American Act

The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305.

For the purpose of Article 18 of this agreement, the Project is deemed a public work of the Federal Government under 41 U.S.C. § 8301.

Article 18 implements 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:

- a) 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
- b) the Recipient may use information technology that is a commercial item
- c) the Recipient may use foreign construction materials that are listed at 48 CFR 25.104
- d) the Recipient may use foreign construction materials if the USDOT has authorized their use under subsection (d) of Article 18.

If the Recipient uses foreign construction material in violation of Article 18, the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Article 15 and 2 CFR 200.339.

- a) The USDOT may authorize the Recipient to use foreign construction material, 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
 - 3. the cost of domestic construction material is unreasonable. To determine if a cost is unreasonable, the USDOT will follow processes described in 48 CFR 25.106.

The Recipient may request that the USDOT authorize the Recipient to use foreign construction materials. The Recipient shall provide adequate information for the USDOT to evaluate the request, including:

- a) a description of the foreign and domestic construction materials
- b) unit of measure
- c) quantity
- d) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued)
- e) time of delivery or availability
- f) location of the construction project
- g) name and address of the proposed supplier
- h) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for an exception under subsection (d) of this term
- i) if the Recipient requests authorization under subsection (d)(3) of Article 18, a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
- j) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award:
 - 1. reasonably foreseen the need for the determination and
 - 2. requested the determination.

The Recipient acknowledges that:

- a) this agreement is not a Government procurement contract
- b) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government
- c) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 CFR Part 25, Subpart 25.4 are inapplicable to this agreement.

In Article 18, the following definitions apply:

“Commercially Available Off-The-Shelf (COTS) Item” means

- a) any item of supply (including construction material) that is:
 - 1. a commercial item as defined by 48 CFR § 2.101
 - 2. sold in substantial quantities in the commercial marketplace

3. offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- b) 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

- b) 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
- c) 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

- a) for construction material that does not consist wholly or predominantly of iron or steel or a combination of both
 1. an unmanufactured construction material mined or produced in the United States; or
 2. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered in calendar year 2029 or later. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item manufactured in the United States
- b) for construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost

of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this term.

“Foreign Construction Material” means a construction material other than a domestic construction material.

“predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

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

18.3 Small and Disadvantaged Business Requirements.

- a) 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 CFR Part 26, including any amendments thereto.
- b) If any funds under this award are not administered by or through a State Department of Transportation, the Recipient shall expend those funds in compliance with the requirements at 2 CFR 200.321, including any amendments thereto.

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 2 CFR 200.320 or an equivalent qualifications-based requirement prescribed for or by the Recipient.

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, 2 CFR 200.216 and 2 CFR 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

18.7 Recipient Responsibilities for Subawards.

If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 CFR Parts 200 and 1201, including 2 CFR 200.331–200.333.

ARTICLE 19 COSTS, PAYMENTS, AND UNEXPENDED FUNDS

19.1 Limitation of Federal Award Amount.

Under this award, the USDOT shall not provide funding greater than the “Funds Obligated” amount, as specified on the SMART Assistance Agreement. 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.

19.2 Projects Costs

This award is subject to the cost principles at 2 CFR part 200 subpart E, including provisions on determining allocable costs and determining allowable costs.

19.3 Timing of Project Costs

- a) The Recipient shall not charge to this award costs that are incurred after the period of performance.
- b) The Recipient shall not charge to this award costs that were incurred before the effective date of award of this agreement.

19.4 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.

19.5 Unexpended Federal Funds

Any Federal funds that are awarded but not expended on allocable, allowable costs remain the property of the United States.

19.6 Timing of Payments to the Recipient

- a) When reimbursement is used, the Recipient shall not request reimbursement of a cost before the Recipient has entered an obligation for that cost.
- b) Pursuant to 2 CFR 200.305, advance payments to Recipient must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Recipient in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Recipient for direct program or project costs and the proportionate share of any allowable indirect costs. The Recipient must make timely payment to contractors in accordance with the contract provisions.

19.7 Payment Method

- a) the Recipient shall use the DELPHI e-Invoicing System to request reimbursement or advance payment under this award unless the USDOT agreement officer provides written approval for the Recipient to use a different request and payment method
- b) the USDOT may deny a payment request that is not submitted using the method identified in section 2 of Article 5 in the Specific Terms and Conditions Articles 1-6.

19.8 Information Supporting Expenditures

- a) the Recipient shall electronically submit the SF-270 (Outlay Report and Request for Advance or Reimbursement for Non-Construction Program) or the SF-271 (Outlay Report and Request for Advance or Reimbursement for Non-Construction Program) to 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, travel, etc.
- 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.

19.9 Reimbursement Frequency

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 120 days after the end of the Period of Performance.
- b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 CFR 200.344–200.346.

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 Unilateral Contact Modifications

The USDOT may update the contacts who are listed in section 4 of Article 4 in the Specific Terms and Conditions Articles 1-6 by written notice to all of the Recipient contacts.

21.3 USDOT Unilateral Modifications

- a) the USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute
- b) to unilaterally modify this agreement, the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

21.4 Other Modifications.

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

ARTICLE 22 Reserved

ARTICLE 23 Reserved

ARTICLE 24 ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

24.1 Uniform Administrative Requirements for Federal Awards.

The Recipient shall comply with the obligations on non-Federal entities under 2 CFR Parts 200 and 1201.

24.2 Federal Law and Public Policy Requirements.

The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; and

- a) the Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.
- b) Pursuant to Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
- c) Pursuant to Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.
- d) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

24.3 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.

24.4 History of Performance

Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient's performance under this agreement when evaluating the risks of making a future Federal financial assistance award to the Recipient.

24.5 Whistleblower Protection

- a) the Recipient acknowledges that it is a “grantee” within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related to this award.
- b) the Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

24.6 External Award Terms and Obligations

- a) In addition to this document and the contents described in Article 29, this agreement includes the following additional terms as integral parts:
 - 1. Appendix A to 2 CFR Part 25: System for Award Management and Universal Identifier Requirements
 - 2. Appendix A to 2 CFR Part 170: Reporting Subawards and Executive Compensation
 - 3. 2 C.F.R 175: Award Term for Trafficking in Persons; and
 - 4. Appendix XII to 2 CFR Part 200: Award Term and Condition for Recipient Integrity and Performance Matters.
- b) The purpose of this section is to ensure that the Recipient has a plan to comply with Title VI and 49 CFR Part 21, including any amendments thereto.

The Recipient shall comply with:

- 1. 49 CFR Part 20: New Restrictions on Lobbying
- 2. 49 CFR Part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, including any amendments thereto.
- 3. 49 CFR Part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- 4. Subpart B of 49 CFR Part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

24.7 Incorporated Certifications

The Recipient makes the statements in the following certifications, which are incorporated by reference:

- 1. Appendix A to 49 CFR Part 20 (Certification Regarding Lobbying).

ARTICLE 25 ASSIGNMENT

25.1 Assignment Prohibited

The Recipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.

ARTICLE 26 WAIVER

26.1 Waivers

- a) A waiver granted by USDOT under this agreement will not be effective unless it is in writing and signed by an authorized representative of USDOT
- b) A waiver granted by USDOT under this agreement on one occasion will not operate as a waiver on other occasions.
- c) If USDOT fails to require strict performance of a provision of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that provision or breach.

ARTICLE 27 ADDITIONAL TERMS AND CONDITIONS

27.1 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.
Environmental Review

- a) In this section, “Environmental Review Entity” means:
 - 1. if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and
 - 2. for all other cases, an operating agency within the Department of Transportation will be identified to conduct NEPA evaluations.
- b) Except as authorized under Article 27.3(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:

1. the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
 2. if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.
- c) If the Recipient is using procedures for early acquisition of real property under 23 CFR 710.501 or hardship and protective acquisitions of real property 23 CFR 710.503, the Recipient shall comply with 23 CFR 771.113(d)(1).
- d) The Recipient acknowledges that:
1. the Environmental Review Entity's actions under Article 27.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
 2. applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- e) Consistent with 23 CFR 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- f) The activities described in this agreement may inform environmental decision- making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align information in this agreement, then:
1. the parties may amend this agreement under Article 21.1 for consistency with the selected build alternative; or
 2. if the USDOT determines that the condition at Article 16.1(a)(5) is satisfied, the USDOT may terminate this agreement under Article 16.1(a)(5).
- g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.
- h) The Recipient may not expend any of the funds provided in this Agreement or incur expenses under this Agreement on final design, construction, or other activities that represent an irretrievable commitment of resources unless and until it complies with the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) ("NEPA"), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) ("NHPA"), and any other applicable environmental laws and regulations, and DOT has provided the Recipient with a written notice that the environmental review process is complete. At that time, DOT may authorize the distribution and expenditure of funds. The Recipient may not obligate or

expend any funds (federal, state or private) for final design, construction, or other activities that represent an irretrievable commitment of resources for the Project, or commence any part of final design, construction, or other activities that represent an irretrievable commitment of resources for the Project or any component of the Project, without receiving such written confirmation from DOT. The Recipient may participate in planning activities, as long as they do not constitute an irretrievable commitment to a specific course of action. Depending on the outcome of the environmental review process, DOT may rescind this Agreement or may pursue any other permissible remedy under 2 CFR § 200.338-200.342.

27.2 Railroad Coordination

If the agreement includes one or more milestones identified as a “Railroad Coordination Agreement,” then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 CFR 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad’s right-of- way.

27.3 Relocation and Real Property Acquisition

- a) the Recipient shall comply with the land acquisition policies in 49 CFR Part 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 CFR Part 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 CFR Part 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 CFR Part 24 subpart E.

27.4 Equipment Disposition

- a) In accordance with 2 CFR 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the awarding agency.
- b) In accordance with 2 CFR 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 CFR 200.313–200.316 and 2 CFR 1201.313.
- c) the Recipient shall ensure compliance with this Article for all tiers of subawards under this award.

ARTICLE 28 MANDATORY AWARD INFORMATION

28.1 Information Contained in a Federal Award

For 2 CFR 200.211

- a) the “Federal Award Date” is the date of this agreement, as defined under Article 30.2
- b) the Assistance Listings Number is 20.941 and the Assistance Listings Title is “Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program”
- c) this award is not for research and development.

ARTICLE 29 CONSTRUCTION AND DEFINITIONS

29.1 Attachments.

This agreement includes the following attachments as integral parts:

- Attachment A Performance Measurement Information (Article 6)
- Attachment B Changes from Application (Article 6)
- Attachment C Reserved
- Attachment D Reserved
- Attachment E Labor and Workforce
- Attachment F Reserved

29.2 Exhibits

The following exhibits, which are in the document titled “Exhibits to Grant Agreements Under the SMART Grant Program”, available at <https://www.transportation.gov/grants/SMART>, are part of this agreement:

- Exhibit A Applicable Federal Laws and Regulations
- Exhibit B Additional Standard Terms
- Exhibit C Quarterly Reports and Recertifications: Format and Content
- Exhibit D Certification for Contracts, Grants, Loans, And Cooperative Agreements
- Exhibit E FAA Regulations
- Exhibit F Communications Technology

- Exhibit G Equipping or Retrofitting Motor Vehicles
- Exhibit H Eligible Costs
- Exhibit I Data Collection Requirements

29.3 Construction

- a) If a provision in the exhibits or the attachments conflicts with a provision in articles 1–30, then the provision in articles 1–30 prevails. If a provision in the attachment(s) conflicts with a provision in the exhibits, then the provision in the attachments prevails.

29.4 Integration

This agreement constitutes the entire agreement of the parties relating to the SMART grant program and awards under that program and supersedes any previous agreements, oral or written, relating to the SMART grant program and awards under that program.

29.5 Definitions

In this agreement, the following definitions apply:

“Program Statute” means the Section 25005 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, November 15, 2021; and statutory text under the heading “Strengthening mobility and revolutionizing transportation grant program” in title I of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November 15, 2021) and all other provisions of that act that apply to amounts appropriated under that heading.

“Project” means the project proposed in the Grant Application, as modified by the negotiated provisions of this agreement, including “Specific Terms and Conditions Articles 1-6,” Article 3 and Attachments A-E.

“SMART Grant” means an award of funds that were made available under the NOFO.

“Grant Application” means the application identified in Article 2.1 of the Specific Terms and Conditions Articles 1-6, including Standard Form 424 and all information and attachments submitted with that form through ValidEval.

ARTICLE 30 AGREEMENT EXECUTION AND EFFECTIVE DATE

30.1 Counterparts.

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

30.2 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 SMART Grant when the USDOT's authorized representative signs it.

30.3 Termination

Should this Grant Agreement be terminated prior to the end date of the Period of Performance, USDOT reserves the right to require that the Recipient return to USDOT any of the funds reimbursed for expenses subsequently deemed ineligible.