# SUBRECIPIENT AGREEMENT BETWEEN BRIGHTLINE TRAINS FLORIDA LLC AND BROWARD METROPOLITAN PLANNING ORGANIZATION FOR THE RAILROAD CROSSING ELIMINATION PROGRAM GRANT – BROWARD COUNTY SEALED CORRIDOR PROJECT

This Subrecipient Agreement for the Broward County Sealed Corridor Project, ("Agreement") is made and entered into by and between Brightline Trains Florida LLC, a Delaware limited liability company (together with its successors and permitted assigns) ("**Brightline**"), and the Broward Metropolitan Planning Organization, created pursuant to Section 339.175, Florida Statues. (**"BMPO**"). Collectively, Brightline and the BMPO are hereinafter referred to as (the "**Parties**").

## RECITALS

A. BMPO is the recipient of a $15,440,000 grant (the "**Grant Funds**") from the Federal Railroad Administration ("**FRA**") under its Railroad Crossing Elimination Program (the "**Grant**") to fund the final design and construction of certain safety improvements along the rail corridor owned by Florida East Coast Railway, L.L.C. ("**FECR**") and Brightline, located within Broward County, Florida, all as more particularly described on Exhibit A attached hereto (the "**Project**"). The Parties to this Agreement desire to participate cooperatively to utilize the Grant and local funds to implement the Project. The Project will be constructed, owned, and operated by Brightline, and maintained pursuant to crossing agreements between FECR, Brightline and the Funding Partners (defined below).

B. Under the terms of the Grant, BMPO is responsible for coordinating the allocation of all Non-Federal Funds required for the Project from the Funding Partner as defined herein. The Non-Federal Funds are comprised of funding from Broward County ($2,365,000), and the City of Pompano Beach ($294,932), the City of Wilton Manors ($110,611), the City of Fort Lauderdale ($563,456), the City of Dania Beach ($76,838), the City of Hollywood ($275,676), and the City of Hallandale Beach ($173,487) (collectively, the "**Funding Partners**") contributing an additional total Non-Federal Amount of $3,860,000 (the "**Local Match**") to fund the costs of the Project. The Grant Funds and the Local Match are collectively referred to herein as the "**Project Funds**". The Funding Partners Agreement is attached hereto as Exhibit D.

C. Pursuant to the Notice of Funding Opportunity for Railroad Crossing Elimination Program for Fiscal Year 2022, Volume 87 No. 40335 (July 6, 2022), BMPO has authority to apply for and accept the Grant for this Project.

D. The Grant will be governed by the Grant Agreement to be executed between the BMPO and the FRA, substantially in the form attached hereto as Exhibit B (the **"Grant Agreement"**). (At such time as the final Grant Agreement is executed, the final agreement will replace the draft agreement attached hereto as Exhibit B, and all references herein to the Grant Agreement thereafter will be deemed to refer to the executed version of the document.)

E. The Parties wish to enter this Agreement to provide for a subaward of the Grant to Brightline, and to define and memorialize the roles and responsibilities of the Parties with respect to implementing the Project, including but not limited to, funding,

procurement activities, invoicing, review and approval of eligible costs, compliance with Grant provisions including conformance with scope, schedule, and budget and related timely reporting.

F. This Agreement is intended to define those roles and responsibilities of the Parties with respect to the development, engineering, construction and costs of the Project including, but not limited to, procurement activities, invoicing, review and approval of eligible costs, compliance with Grant provisions including conformance with scope, schedule, and budget and related timely reporting, as well as all FRA requirements.

G. The BMPO shall utilize the Grant Funds to fund the Project which will be administered by the BMPO and implemented by Brightline. The BMPO will utilize the Grant Funds as the mechanism to reimburse Brightline, as Brightline completes specified work documented in progress reports submitted with invoices for this Project. The BMPO is responsible for ensuring that the Grant Funds are properly utilized to implement the Project and that the Parties comply with the Grant requirements.

## AGREEMENT

Now, therefore, the parties agree as follows:

## SECTION 1. RECITALS

The recitals set forth above are hereby incorporated into the terms of this Agreement.

## SECTION 2. SCOPE OF PROJECT

Brightline will design and construct the Project in accordance with all applicable laws and the terms and conditions of the Grant Agreement, including, for reference, the scope of work set forth in Article 4 of Attachment 2 of the Grant Agreement. Brightline will notify BMPO in writing of all material changes in the Project scope or schedule and will cooperate with BMPO in seeking any required modifications to the Grant Agreement with FRA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES

3.1 BMPO Representations and Warranties. BMPO represent and warrants to Brightline that:

(a) The BMPO was created pursuant to Section 339.175, Florida Statues, and is validly existing and has the full power and authority to carry on its present activities and to execute, deliver, and perform its obligations under this Agreement and the Grant Agreement.

(b) The execution, delivery, and performance of this Agreement, the Funding Partners Agreement, and the Grant Agreement by BMPO, and the performance of its obligations contemplated by such agreements, have been (or, with respect to the Grant Agreement, as of the Effective Date will have been) duly authorized by all necessary action of BMPO.

(c) Each Person executing this Agreement, the Funding Partners Agreement and the Grant Agreement on behalf of BMPO has been (or, with respect to the Grant Agreement, as of the Effective Date will have been) duly authorized to execute and deliver each such documents on behalf of BMPO.

(d) This Agreement has been, and as of the Effective Date the Grant Agreement will have been, duly executed and delivered by BMPO.

(e) This Agreement, the Funding Partners Agreement, and the Grant Agreement are the legal, valid, and binding obligations of BMPO, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) The execution, delivery, and performance by BMPO of this Agreement, the Funding Partners Agreement and the Grant Agreement do not (and at the time of execution will not) conflict with or result in a default under or a material violation of any Applicable Law.

(g) Pass-Through Entity

(i) With respect to the Grant, BMPO is a “Pass-Through Entity” as defined in 2 C.F.R. § 200.1 (*Definitions*).

(ii) With respect to the Grant and Brightline, BMPO has satisfied each of the requirements set forth in 2 C.F.R. parts 200 and 1201, including 2 C.F.R. §§ 200.331–200.333.

3.2 Brightline Representations and Warranties. Brightline represents and warrants to BMPO that:

(a) Brightline is a limited liability company, validly existing in the State of Florida and has the full power and authority to carry on its present activities and to execute, deliver, and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of this Agreement by Brightline and the performance of its obligations contemplated by such agreement, have been duly authorized by all necessary action of Brightline.

(c) Each Person executing this Agreement on behalf of Brightline has been duly authorized to execute and deliver each such document on behalf of Brightline.

(d) This Agreement has been duly executed and delivered by Brightline.

(e) This Agreement and the Funding Partners Agreement collectively constitute legal, valid, and binding obligations of Brightline, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) The execution, delivery, and performance by Brightline of this Agreement does not (and at the time of execution will not) conflict with or result in a default under or a material violation of any Applicable Law.

## SECTION 4. PROJECT FUNDING

4.1 Estimated Project Cost. The estimated total cost of the Project is $19,299,998, as further described in Article 6 of Attachment 2 of the Grant Agreement (the **"Project Budget"**). The parties acknowledge that this is an estimate only and that actual Project costs may be higher or lower than the Project Budget.

4.2 BMPO Subaward. Under this Agreement, Brightline is the subrecipient of FRA grant funds awarded to BMPO under the Railroad Crossing Elimination Program. The Project Budget includes $600,000 of Grant Funds for BMPO's administration and oversight. Upon execution of the Grant Agreement, the terms and conditions of the Grant Agreement will be deemed incorporated into this Agreement by reference and will control over any inconsistent provisions in the body of this Agreement. Upon request by Brightline, BMPO will apply for pre-award authority from FRA.

4.3 Matching Funds; Cost Overruns. The required Matching Funds as described in the Grant Agreement in Exhibit B and further described in the Funding Partners Agreement in Exhibit D shall be used to reimburse Brightline's final design and construction of the Project improvements shown in Exhibit A.

In the event that the costs of completion of the Project exceed the available Project Funds, or in the event that the FRA, for any reason, reduces the amount of the Federal funds available for the Grant subaward, then BMPO will work with Brightline to reduce the scope of the Project, subject to FRA's approval, to fit within the budget for the available Project Funds and/or work with Brightline to obtain additional funding from the Funding Partners to make up any budget shortfall. Subject to providing the BMPO with (days?) written notice, Brightline reserves the right to stop work on the Project in the event that the

remaining available Project Funds are determined by Brightline, in its reasonable discretion, to be insufficient to complete the Project. If for any reason a cost overrun occurs, the BMPO shall not be obligated to provide any financial assistance in excess of the Grant Funds. Notwithstanding, Brightline shall have the right to receive any amounts then due and payable to Brightline pursuant to this Agreement for work performed prior to the date of notice of any particular cost overrun in any specific Project segment, and Brightline shall continue to work on the remainder of the Project until completion.

4.4 Repayment of Grant Funds; Equivalent Project Relief.

(a) Brightline's failure to reasonably perform its obligations related to the receipt of the Grant Funds shall constitute a material breach of this Agreement. Brightline, agrees to indemnify and hold the BMPO harmless from any liability, demand, claim, penalty or any other adverse action resulting from a breach by Brightline, or its contractor or subcontractor, of its obligations related to the receipt of the Grant Funds, including any demand for return of all or a portion of the Grant Funds (including interest and penalties).Upon receipt of any notice from FRA to BMPO with respect to the Grant Agreement, including without limitation, any notice of non-compliance thereunder, BMPO shall provide notice of the same to Brightline in accordance with the "Notice" section of this Agreement..

(b) BMPO shall enforce all rights, entitlements, remedies and/or defenses under the Grant Agreement (the "BMPO Rights") for the benefit of Brightline, and Brightline shall be entitled to receive the benefit of such BMPO Rights, including without limiting the generality of the foregoing, the right to any relief from the performance of its obligations, or from termination, or the right to seek any approval or consent required under the Grant Agreement ("Equivalent Project Relief"). The BMPO agrees to reasonably cooperate with Brightline to manage any such claim for Equivalent Project Relief that Brightline may reasonably claim.

(c) In the event that FRA issues a proposed finding that BMPO has made an unauthorized or undocumented use of grant funds, or that any Project costs are ineligible for federal reimbursement, BMPO will provide notice in accordance with the "Notice" section of this Agreement to Brightline and the Funding Partners of the proposed determination of noncompliance by FRA and cooperate with Brightline to allow Brightline to respond to FRA with respect to the notice of noncompliance and exercise all avenues to cure said noncompliance or object to such determination. BMPO will notify Brightline and the Funding Partners of any final determination of noncompliance by FRA and the imposition of any remedies by FRA pursuant to the Grant Agreement. If FRA determines that BMPO has failed to comply with applicable law or Grant Agreement requirements, and such noncompliance is attributable to the failure of Brightline to comply with the terms of this Agreement, Brightline will be responsible for such remedy as FRA imposes. If FRA determines that BMPO has failed to comply with applicable law or Grant Agreement

requirements, and such noncompliance is attributable to the failure of BMPO to comply with the terms of this Agreement, BMPO will be responsible for such remedy as FRA imposes. The terms of this paragraph will survive the expiration or earlier termination of this Agreement.

4.5 Federal Government Not a Party. The parties acknowledge that the United States government is not a party to this Agreement and no reference in this Agreement to the USDOT, FRA, or any representatives of the federal government makes the United States a party to this Agreement.

## SECTION 5. INVOICES AND PAYMENTS

5.1 Requests for Reimbursement. In order to obtain any of the funds available from BMPO under this Agreement, Brightline agrees to provide to BMPO within fifteen (15) calendar days of signing this Agreement an estimate of Project expenditures by quarter. Each quarter, Brightline will provide a graph showing the initial estimated expenditure per quarter, actual expenditures, and an explanation of the variance between the two values. This will assist BMPO in monitoring the status of Federal grant funds. Brightline shall submit to BMPO its request for reimbursement and any other information regarding to the Project required by FRA to justify and support the payment request.

Brightline will engage the services of a Design consultant and Construction Engineering and Inspection ("CEI") consultant that shall not be from the same consulting firm or sub-consultants to one another to review the progress of the Project and invoices submitted by Brightline for reimbursement by BMPO; the costs of the services of the CEI shall be reimbursable expenses under this Agreement.

Reimbursement requests must include a certification, signed by an official who is authorized to legally bind Brightline, which reads as follows:

> ''By signing this report, I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested."

Upon Project commencement, Brightline will submit invoices monthly to BMPO throughout design and construction of the Project.

5.2 Deliverables and Supporting Documentation. Brightline will submit invoices to BMPO for the actual costs incurred for the Project including design, contract labor, equipment, materials, and project management used in relation to the Project, containing

all items consistent with FRA requirements. Requests for reimbursement by Brightline will include supporting documentation for costs incurred in a format acceptable to and FRA.

5.3 Final Invoice. To allow for BMPO to close-out the Grant Agreement within the required one hundred and twenty (120) calendar days, Brightline must submit its final invoice and request for reimbursement for the Project to BMPO within sixty (60) calendar days after the Completion Date, or completion of the Project if earlier. As part of the closeout of this Agreement, Brightline will liquidate all obligations of federal funds in accordance with Article 23 of Attachment 1 of the Terms and Conditions of the Grant Agreement.

5.4 Payments. Subject to the other provisions of this Agreement, the Parties will follow the process described in this paragraph for the submission and payment of invoices. Upon receipt of Brightline's properly documented invoice, BMPO shall pay Brightline within thirty (30) calendar days. BMPO agrees to reimburse Brightline upon submission of satisfactory, substantiated monthly progress and financial reports for costs associated with the preceding month. Each invoice must list total expenses by FRA budget category and include supporting receipts, progress reports, and any reasonable and necessary documentation determined by FRA to comply with FRA requirements. Invoices will detail total Project expenditures requested to be reimbursed. If BMPO disputes an invoice or cost within a reimbursement application, BMPO will proceed with the reimbursement process described above for any undisputed amount and will, within ten (10) calendar days after receipt of the reimbursement application, notify Brightline of the disputed amount and request supporting documentation to verify the accuracy and sufficiency of the disputed invoice. Within twenty (20) calendar days after receipt of documentation to justify the disputed expenditure, BMPO will proceed with the reimbursement process described above for the resolved expenditure. For avoidance of doubt, and notwithstanding any other provision of this Agreement, BMPO may decline to make a payment if FRA declines to make a payment pursuant to the Grant Agreement following a determination of noncompliance after a reasonable opportunity to cure by Brightline.

5.5 All references to OMB regulations contained in the Subrecipient Agreement are updated to reflect the OMB Super Circular (2 CFR Part 200) and associated FRA Regulations and requirements.

## SECTION 6. RECORDS

6.1 Project Records. Brightline will maintain for a period not less than three (3) years from the date of payment of the final invoice all documents required under the Grant Agreement.

6.2 Record Management.

6.2.1 Brightline will keep accounts and records described in Section 6.1 in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301-200.303 and 2 C.F.R 200 subpart F and will facilitate an effective audit in accordance with 31 U.S.C. §§ 7501-7506. Brightline will make the records available to BMPO and the FRA upon reasonable notice during normal business hours.

6.2.2 Brightline will maintain the records described in Section 6.1 for a period of three (3) years after the date of payment of the final invoice under this Agreement. If any litigation involving this Agreement has been filed or any audit has been commenced prior to the expiration of the three-year retention period, Brightline will maintain the records required by Section 6.1: (i) in the case of litigation, until completion of the litigation or until the end of such three-year period, whichever is later; and, (ii) in the case of any audit, until completion of the audit or until the end of such three-year period, whichever is later. For avoidance of doubt, nothing in this Agreement is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise protected by law, including protection provided by attorney-client privilege and the attorney work-product doctrine.

6.3 Reports. Brightline will timely submit to BMPO such data, reports, records, contracts and other documents relating to the Project as BMPO or FRA require, including the quarterly progress reports, performance measures reports, and project outcomes reports as required in the Grant Agreement. All records and reports will be submitted to BMPO a reasonable time in advance of the date by which BMPO is required to submit such records and reports to FRA. Brightline must submit to BMPO, no later than ninety (90) calendar days after the end date of the period of performance specified in the Grant Agreement, all financial, performance, and other reports required by the terms and conditions of the Grant Agreement, including the information required for BMPO to timely submit the Final Performance Report (FRA Form 33).

## SECTION 7. AUDITS

7.1 Audits. The administration of resources awarded through BMPO to Brightline by this Agreement may be subject to audits and monitoring by BMPO or the FRA. Brightline will comply with all audit and audit reporting requirements as specified below:

7.1.1 In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include planned on-site visits by BMPO and FRA staff, limited scope audits and other procedures including

reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through BMPO by this Agreement.

7.1.2 Brightline is a for-profit subrecipient of Federal funds awarded to BMPO and is not a "Non-Federal entity" as defined in 2 CFR §200.1. Accordingly, and as set forth in Article 20 of Attachment 1 of the Grant Agreement, Brightline is not required to comply with the Federal single audit requirements.

7.1.3 As a condition of receiving the federal financial assistance provided under this Agreement, Brightline will permit BMPO, or its designee, and the FRA access to Brightline's records specifically pertaining to construction of the Project, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals or litigation will be retained until the action is complete or the dispute is resolved.

7.1.4 Brightline will retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of three (3) years from the date the audit report is issued and will allow BMPO, or its designee, and the FRA access to such records upon request. Brightline will ensure that the audit working papers are made available to BMPO, or its designee, or the FRA upon request for a period of five (5) years from the date the audit report is issued unless extended in writing by BMPO. Brightline will further permit access to all Project records by the Secretary and Inspector General of the United States Department of Transportation and the Comptroller General of the United States, or their designees.

## SECTION 8. COMPLIANCE

8.1 Compliance with Grant Conditions. Brightline will procure goods and services for the Project in a manner that complies with FRA's procurement requirements and procedures and in accordance with the terms of the Grant Agreement.

8.2 Compliance with Federal Requirements. Brightline will comply with and will require its consultants and contractors to comply with applicable Federal law and regulations pertaining to the use of federal-aid funds.

8.3 Changes in Law. Brightline acknowledges that: (i) Federal laws, regulations, policies, and related administrative practices in place on the date this Agreement was executed may be modified from time to time, and (ii) any such changed requirements will apply to the Project, to the extent required by applicable law.

8.4 Compliance with 49 U.S.C. § 22905. Brightline shall comply with the requirements of 49 U.S.C. § 22905(c)(1) requirements, as applicable:

(A) This Project does not involve the use of the rail rights-of-way by BMPO. Brightline has the right to use the rail right-of-way pursuant to an easement and a written agreement between Brightline and FECR regarding the use and ownership or the right-of-way, including any compensation for such use.

(B): Brightline represents that the infrastructure capacity of the right-of-way is adequate to accommodate both existing and future freight and passenger operations.

(C): Brightline has no collective bargaining agreements with its employees.

(D): Brightline represents that it complies with the liability requirements consistent with 49 U.S.C. § 28013.

## SECTION 9. SMALL AND DISADVANTAGED BUSINESSES

Brightline will expend Grant funds in compliance with the requirements at 2 C.F.R. § 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms"), and to the extent applicable, 49 C.F.R. Part 26 ("Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs").

## SECTION 10. DESIGN AND CONSTRUCTION

10.1 Permits. Brightline is responsible for obtaining all permits or other authorizations necessary for construction, installation, or maintenance of the Project. BMPO shall require each of the Funding Partners to cooperate with Brightline in connection with the necessary permits for the Project.

10.2 Crossing Agreements. Prior to the commencement of construction, BMPO will require that each of the Funding Partners (roadway owners) shall enter into crossing agreements or amendments to the existing crossing agreements with Florida East Coast Railway L.L.C. ("FECR") in substantially the form attached hereto as Exhibit D (the "Crossing Agreement Amendments"). The Crossing Agreement Amendments will require the respective Funding Partners (roadway owners) for each crossing improved as part of the Project to bear the cost of maintaining the improvements to be constructed as part of the Project and to add Brightline as an intended third-party beneficiary of the respective Crossing Agreements.

10.3 Design. Brightline is responsible for the preparation of all design plans for the Project. All design work on the Project will be performed in accordance with applicable industry standards and legal requirements. Design plans will be prepared in accordance with the requirements of the Grant Agreement, and, where required, will be submitted to BMPO, Funding Partners (roadway owners), in accordance with Task 2(e) and (f) of the Grant Agreement Attachment 2, and FRA for review and approval. BMPO agrees that, in the event that any of the Funding Partners requests changes to the design plans beyond the scope of the work included in the Project, Brightline shall not be required to perform such additional work. If Brightline agrees to perform such additional work, the Funding Partner shall be required to pay for the costs of such additional scope.

10.4 Final Plans. Brightline will provide copies of the approved final design plans and specifications and final bid documents to BMPO for its records prior to commencing construction of the Project.

10.5 Qualified Contractors. Brightline will hire qualified contractors in accordance with the terms of the Grant Agreement to perform the construction work for the Project.

## SECTION 11. RESTRICTIONS AND LABOR PROVISIONS

During the performance of this Agreement, Brightline agrees as follows, and will require the following provisions to be included in each contract and subcontract entered into pursuant to this Agreement:

11.1 Certification regarding Debarment, Suspension, and other Responsibility (Exhibit B.2 of the Grant Agreement). Brightline must comply with the provisions in 2 CFR Part 180 OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement) and 2 CFR Part 1200 DOT Non-procurement Suspension and Debarment. These provisions restrict federal awards, subaward and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal programs or activities. Brightline will not enter into any arrangement to participate in the development or implementation of the Project with any person or entity that is debarred or suspended except as authorized by applicable Federal law and regulations. If required by applicable federal law and regulations, Brightline will review the U.S. GSA System of Award Management at https://www.sam.gov. Brightline will include the requirements of this paragraph in each of its contracts related to the Project and will require its contractors and consultants to include similar requirements in each of their contracts related to the Project. Execution of this Agreement constitutes a certification that Brightline is in compliance with and will require its contractors and subcontractors to

comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 CFR Part 29, and 2 CFR Part 200 when applicable.

11.2 Human Trafficking. Brightline will not, during the term of this Agreement, engage in trafficking in persons, procure a commercial sex act, or use forced labor in the performance of work on the Project and will include a provision in each contract it enters into with a private entity in connection with the Project by which Brightline's contractor agrees that it and its employees that perform any work on the Project will abide by this same requirement.

11.3 Minimum Wage Rates**.** Brightline 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.

11.4 Contract Work Hours and Safety Standards**.** Where applicable, all contracts funded under this Agreement in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

11.5 E-Verify**.** Brightline will:

ii. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Brightline during the term of the Agreement; and

ii. Expressly require any contractors and subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor or subcontractor during the Agreement term.

## SECTION 12. INDEMNIFICATION

12.1 The BMPO is a state agency or political subdivision as defined in Chapter 768., Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the BMPO nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

12.2 Brightline will indemnify, defend (with counsel reasonably acceptable to BMPO), and hold harmless BMPO and its officers, directors, employees, agents, consultants, contractors, permittees, successors, and assigns (individually and collectively the **"Indemnified Parties"**) from any and all claims, actions, suits, demands, losses, liabilities, damages, costs, expenses (including reasonable attorneys' fees and expenses) (collectively **"Claims"**) asserted by a third party against an Indemnified Party to the extent the Claim was caused by Brightline's acts or omissions under this Agreement, including activities related to the design, construction, or operation of the Project. The provisions of this section will survive the termination or expiration of this Agreement.

## SECTION 13. INSURANCE

13.1 Workers' Compensation. Brightline shall provide Workers' Compensation Insurance in accordance with the applicable State law for all employees to be engaged at the site of the Project. If contracting for any of the work, Brightline shall ensure that its contractors have Workers' Compensation Insurance for their employees in accordance with the applicable State law for all employees to be engaged at the site of the Project. If using "leased employees" or employees obtained through professional employer organizations ("PEOs"), Brightline shall ensure that such employees are covered by Workers' Compensation insurance through the PEOs or other leasing entities. Brightline will ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under the applicable State law.

13.2 General Liability. If Brightline elects to self-perform the Project, Brightline may self-insure, and proof of self-insurance shall be provided to BMPO. If Brightline elects to hire a contractor or consultant to perform the Project, then Brightline shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing

continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State where the work will be performed. Brightline shall or cause its contractor to cause BMPO to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to BMPO as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than $1,000,000 for each occurrence and not less than a $5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement and may not be shared with or diminished by claims unrelated to the Agreement. The policies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, BMPO shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. BMPO shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. BMPO's approval or failure to disapprove any policies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses BMPO may have.

13.3 Railroad Protective Liability.

13.3.1 When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, Brightline shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than $2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than $6,000,000.

13.3.2 The railroad shall also be added along with BMPO as an Additional Insured on the policies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both BMPO and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall

be maintained through final acceptance of the work. Both BMPO and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. BMPO's approval or failure to disapprove any policies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights BMPO may have.

## SECTION 14. GENERAL FEDERAL REQUIREMENTS

During the performance of this Agreement, Brightline agrees as follows, and will require the following provisions to be included in each contract and subcontract entered into pursuant to this Agreement:

14.1 Equal Employment Opportunity.

14.1.1 No person will, on the grounds of race, color, religion, sex, handicap, or national origin, be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under this Agreement, or any project, program, or activity that receives or benefits from this Agreement. Brightline agrees to comply with Executive Order (E.O.) 11246, as amended by E.O. 11375, and as supplemented by 41 CFR, Part 60, herein incorporated by reference. The Equal Opportunity Clause contained in 41 CFR §60-1.4 is included in this Agreement by reference.

14.1.2 In connection with the carrying out of the Project, Brightline will not discriminate against any employee or applicant for employment because of race, age, creed, color, sex, or national origin and will comply with all Federal statutes and implementing regulations relating to nondiscrimination. Brightline will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action will include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Brightline will insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the Project, except contracts for standard commercial supplies or raw materials, and will require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, Brightline will post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by BMPO setting forth the provisions of the nondiscrimination clause.

14.2 Title VI - Civil Rights Act of 1964. Execution of this Agreement constitutes a certification that Brightline will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), and the regulations of the Federal Department of Transportation issued thereunder. Brightline also agrees to comply and requires all its consultants and contractors to comply with all applicable provisions of federal law and regulation governing FRA's access to records, accounts, documents, information, facilities, and staff. Brightline must comply with any program or compliance reviews, and/or complaint investigations conducted by FRA. Brightline must keep records, reports, and submit the material for review upon request to FRA, or its designee in a timely, complete, and accurate way. Brightline will include the Title VI Assurances attached hereto as Exhibit C, in all property documents and contracts with consultants and contractors performing work on the Project, to the extent required by Exhibit C.

14.3 Title VIII - Civil Rights Act of 1968. Execution of this Agreement constitutes a certification that Brightline will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.), which among other things, prohibits discrimination in employment on the basis of race, color, national origin, creed, sex, and age.

14.4 Americans with Disabilities Act of 1990 (ADA). Execution of this Agreement constitutes a certification that Brightline will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et seq.), the regulations of the federal government issued thereunder, including, but not limited to, the implementing regulations of the USDOT and the United States Department of Justice at 49 CFR §37.9 and 36 CFR §1191.1.

14.5 Federal Financial Assistance Policy to Ban Text Messaging While Driving. As used in this section:

"Driving" - Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" - means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed

holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

This section implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

Brightline should-

(i) Adopt and enforce policies that ban text messaging while driving (a) Recipient-owned or rented vehicles or government-owned vehicles; or (b) Privately-owned vehicles when on official government business or when performing any work for or on behalf of the government.

(ii) Conduct initiatives in a manner commensurate with Brightline's size, such as (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

Sub-agreements/sub-contracts. Brightline will insert the substance of this section and will require its contractors to include the substance of this section, in all sub-agreement/subcontracts funded with the subaward provided under this Agreement that exceed the applicable federal micro-purchase threshold of $10,000.

14.6 Integrity Certification. By signing this Agreement, Brightline certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. This certification is a material representation of fact upon which BMPO is relying in entering this Agreement. If it is later determined that Brightline knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, BMPO or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. Brightline will provide to BMPO immediate written notice if at any time Brightline learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

14.7 Certification of Restrictions on Lobbying Disclosure.

14.7.1 Brightline certifies to the best of its knowledge and belief that no federally-

appropriated funds have been paid, or will be paid by or on behalf of Brightline, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

14.7.2 If any funds other than federally-appropriated funds have been paid by Brightline to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

14.7.3 Brightline acknowledges that the certifications made in this section are material representations of fact upon which BMPO is relying in entering into this Agreement.

14.7.4 Brightline will require that the language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

14.8 Buy America. Brightline agrees to comply and require its contractors to comply with all applicable standards and preferences for steel, iron, manufactured goods, and construction materials identified in the Grant Agreement, including the requirements of 49 United States Code §22905(c), as implemented by the FRA and the domestic preference requirement at §70914 of the Build America, Buy America Act, Pub. L. No. 117-58, as implemented by the federal Office of Management and Budget, USDOT, and FRA. Under 2 CFR §200.322, as appropriate and to the extent consistent with law, Brightline should, to the greatest extent practicable under the subaward of the Grant, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Brightline will include the requirements of 2 CFR §200.322 in all subawards including all contracts and purchase orders for work or products under this Agreement.

14.9 Federal Certification and Assurances. Brightline agrees to comply with and to certify compliance with all current federally required certifications and assurances for the grant program under which the federally funded subaward provided by this Agreement is made. During the terms of this agreement, Brightline will certify compliance with the

applicable provisions through annual renewal of Unique Entity Identifier (UEI) in SAM.gov. Brightline's UEI number is GA8RE9XXWKJ6.

14.10 Environmental Regulations. Brightline must comply with the governing laws and regulations referenced in the Grant Agreement and may also be required to assist with FRA's compliance with applicable Federal laws, regulations, executive orders, and policies related to environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., and its implementing regulations (40 C.F.R. Part 1500 et seq.); FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545, and as updated in 78 FR 2713, January 14, 2013) or 23 C.F.R. Part 771, as applicable; Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations (36 C.F.R. Part 800); Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303(c)), and its implementing regulations (23 C.F.R. Part 774). In addition, if applicable, Brightline will ensure that all work conducted under this Agreement complies with all applicable laws, regulations, executive orders, and policies related to environmental protection and historic preservation, including, but not limited to: Section 114 of the Clean Air Act (42 U.S.C. § 7414); and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318).

14.11 Delinquent Tax Liabilities and Felony Convictions.

14.11.1 By entering into this Agreement, Brightline certifies that Brightline:

(i) Has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (a **"Tax Delinquency"**); and

(ii) Has not been convicted within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559 (a **"Felony Conviction"**).

14.11.2 Brightline will comply with the requirements of the Grant Agreement

by checking the System for Award Management (**"SAM"**) at http://www.sam.gov/ for an entry describing that entity before entering into an agreement or contract with such entity that will be funded with Grant funds (a **"Covered Transaction"**) and requiring the above certification by such entity. If (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction; (2) an entity's certification indicates that it has a Tax Delinquency or Felony Conviction; or (3) an entity's certification was inaccurate when made or became inaccurate after being made Brightline will not enter or continue a Covered Transaction with that entity unless the FRA has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government. Brightline will promptly notify BMPO, in writing, of the occurrence of any of the three events described in the immediately preceding sentence. Brightline will include the requirements of this paragraph, including the notice requirement of the preceding sentence, in each contract or agreement it enters into that will be funded with the subaward of federal funds provided under this Agreement and will require inclusion of this paragraph, including this sentence, in each lower tier agreement or contract entered into that will be funded with the subaward of federal funds.

14.12 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Brightline will not utilize any Grant funds provided under this Agreement to procure or obtain equipment, services, or systems prohibited under 2 CFR §200.216.

14.13 Whistleblower Protection.

14.13.1 Brightline acknowledges that it is a "subgrantee" within the scope of 41 U.S.C. 4712, which prohibits Brightline 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 the Grant.

14.13.2 Brightline will 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.

## SECTION 15. EFFECTIVE DATE AND TERM

15.1 This Agreement shall take effect on the date executed by the last of the Parties (the "Effective Date"). Agreements between the Funding Partners and BMPO shall be executed and attached hereto as Exhibit D before this Agreement is executed. The term of this Agreement and the period for design, installation, and construction of the Project under this Agreement extends from the Effective Date through the expiration of the Budget Period identified in the Grant Agreement (the **"Completion Date"**).

15.2 If Brightline does not complete design, installation, and construction of the Project on or before the Completion Date, this Agreement will expire, unless the Completion Date is extended by FRA. BMPO agrees to cooperate with Brightline in requesting any extension of the Completion Date from FRA.

15.3 The Parties may extend this Agreement by mutual consent in writing prior to the expiration of the "Term". This provision in no way limits either party's right to terminate the Agreement at any time during the Term.

## SECTION 16. TERMINATION

(a) 16.1 Termination by FRA. This Agreement may not be terminated by the Parties until all requirements of the FRA Gant have been met. The BMPO shall have no right to terminate this Agreement, provided, however, that in the event that FRA terminates the Grant Agreement, BMPO may, by written notice to Brightline, terminate this Agreement. Upon termination, Brightline shall have the right to receive any amounts then due and payable to Brightline pursuant to this Agreement for work performed prior to the date of termination, and Brightline shall have no further obligation to complete the Project.

16.2 Stop Work by Brightline. In the event that BMPO fails to make a payment to Brightline in accordance with the terms and provisions of this Agreement, or any Funding Partner fails to make a payment to Brightline pursuant to the Funding Partners Agreement, which failure is not cured within twenty (20) days after delivery of written notice of such notice by Brightline, then Brightline shall have the right to temporarily stop work on the portion of the Project for which payment has not been made. Brightline shall have the right to receive any amounts then due and payable to Brightline pursuant to this Agreement for work performed prior to the date of notice, and Brightline shall continue to work on the remainder of the Project until completion. Notice of failure to pay shall be provided in accordance with the "Notice" section of this Agreement.

16.3 Resolution of Disputes. In the event that either Party fails to perform their respective obligations in accordance with this Agreement, and such failure is not cured within thirty (30) days of receipt of a written notice of such failure, then such dispute will be resolved in the following manner:

a. First, the BMPO Executive Director and the Brightline Contract Administrator, or their respective designee shall meet and confer, in good faith, to seek to resolve the dispute; and

b. If such dispute is not then resolved within thirty (30) days after the initial meeting of the senior leaders described in paragraph 16.3 a above, then in recognition of the negative consequences associated with disputes, both in terms of lost time and expense to all parties, the BMPO and Brightline agree to resolve these issues by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

c. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Broward County, Florida, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Each Party shall bear its own attorney's fees and costs.

d.

## SECTION 17. GENERAL CONDITIONS

17.1. Governing Law. Except with respect to subjects preempted by federal law, this Agreement is governed by and will be construed in accordance with the laws of the State of Florida. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to Brightline because of its status as a common carrier regulated by the federal government.

17.2. Venue, Waiver of Jury Trial. Venue for legal proceedings under this Agreement shall be in Broward County, Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, THE BMPO AND BRIGHTLINE HEREBY EXPRESSLY WAIVE ANY RIGHTS ANY PARTY MAY HAVE TO A TRAIL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

17.3. Entire Agreement. This Agreement (including exhibits, attachments, and other documents, manuals, etc. incorporated herein) is the full and complete agreement

between the parties with respect to the transaction and matters set forth or contemplated herein and hereby.

17.4. Exhibits. All exhibits attached to this Agreement are made a part of this Agreement by this reference.

17.5. Reasonableness. Unless this Agreement specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals contemplated by this Agreement which may be given by a party under or pursuant to this Agreement will not be unreasonably withheld, delayed or conditioned by such party and will be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party will, with notice of such disapproval, submit to the requesting party a written statement setting forth with reasonable specificity its reasons for such disapproval.

17.6. Severability. If any provision of this Agreement, or the application of a provision to any person, entity, place, or circumstance, is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, such provision will nonetheless be enforced to the maximum extent possible so as to effect the intent of the parties; or, if incapable of such enforcement or unable to achieve the intent of the parties, will be deemed to be deleted, and the remainder of this Agreement and such provisions as applied to other persons, entities, places, and circumstances will remain in full force and effect. In such an event, the parties agree to reasonably and in good faith negotiate an amendment which, if agreed upon, will replace or modify any invalid or illegal or unenforceable provision and related provisions with valid, legal, and enforceable provisions that most closely and reasonably approximate the intent and economic effect of the invalid, illegal, or unenforceable provision.

17.7. Interpretation. The section headings in this Agreement are for convenience only and will not be used for any purpose in the interpretation of this Agreement. When the context requires, the plural includes the singular, and the singular includes the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation." Notwithstanding specific references to "good faith," the duty of good faith and fair dealing applies generally with respect to this Agreement. For the purposes of this Agreement, words of any gender are deemed to include correlative words of the other (whether masculine, feminine, or neuter) genders.

17.8 Joint Preparation. Each party and its counsel have participated fully in the review and revision of this agreement and acknowledge that the preparation of this agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. the language in this agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

17.9 Amendments. This Agreement may only be modified or changed by written amendment signed by authorized representatives of the parties.

17.10 Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein has the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither of the parties has any right or power to obligate or bind the other party in any manner whatsoever.

17.11 Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this Agreement must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by any party of any breach will be deemed to be a waiver of any other or subsequent breach.

17.12 Notices. Any communication, notice, or demand of any kind whatsoever that a party may be required or may desire to give to or serve upon the other party must be in writing and delivered by personal service (including express or courier service with receipt of acknowledgement of delivery) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

Brightline: Brightline Trains Florida LLC
Attn: Patrick Goddard, President
350 NW 1st Ave., Suite 200
Miami, Florida 33128

With a copy to:

Cynthia Bergmann
Chief Legal Officer
Brightline Trains Florida LLC
350 NW 1st Ave., Suite 200
Miami, Florida 33128

BMPO: Broward Metropolitan Planning Organization
Attn: Executive Director
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, Florida 33309

With a Copy to:

Alan L. Gabriel, Esq.
BMPO General Counsel
200 East Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

Without requiring an amendment to this Agreement, either party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service with a written receipt of acknowledgment of delivery; three (3) days after being placed in the U.S. Mail (certified), if mailed; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery with acknowledgement of delivery.

17.13 No Third-Party Beneficiaries. This Agreement is for the exclusive benefit of the parties to it and not for the benefit of any third party, except to the extent expressly contemplated in this Agreement.

17.14 Authority and Binding Effect. Each individual executing this Agreement affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this Agreement and, through his or her execution, bind the party on whose behalf he or she is executing the Agreement.

17.15 Counterparts. The parties may sign this Agreement in counterparts, each of which is deemed an original but all of which together constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have made and executed this Subrecipient Agreement.

**Brightline Trains Florida LLC**

By: _____
Patrick Goddard
President

____ day of _____, 2024

SUBRECIPIENT AGREEMENT BETWEEN BRIGHTLINE TRAINS FLORIDA, LLC, AND THE BROWARD METROPOLITAN PLANNING ORGANIZATION FOR THE BROWARD COUNTY SEALED CORRIDOR PROJECT.

**"BMPO"**

BROWARD METROPOLITAN PLANNING ORGANIZATION

By:_____
GREGORY STUART, Executive Director

____ day of _____, 2024

By_____
YVETTE COLBOURNE, Chair

____ day of _____, 2024

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF AND RELIANCE BY THE BMPO ONLY:

By: _____
Alan L. Gabriel, BMPO General Counsel
Weiss Serota Helfman Cole & Bierman PL

List of Exhibits:

Exhibit A: Project

| Crossing ID | RailRoad | Street | Milepost | City | Crossing Infrastructure Maintenance Agreement Holder | Centerline Raised Median | Exit Gate |
|---|---|---|---|---|---|---|---|
| 272519P | FEC | COPANS RD | 331.1 | POMPANO BEACH | BROWARD COUNTY | Existing (East Side) | Proposed RCEP (West Side) |
| 272528N | FEC | NE 6TH ST | 332.77 | POMPANO BEACH | CITY OF POMPANO BEACH | | Proposed RCEP (Both Sides) |
| 272531W | FEC | NE 3RD ST | 332.97 | POMPANO BEACH | CITY OF POMPANO BEACH | | Proposed RCEP (Both Sides) |
| 272534S | FEC | SW 2ND ST | 333.31 | POMPANO BEACH | CITY OF POMPANO BEACH | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272535Y | FEC | SW 6TH ST | 333.79 | POMPANO BEACH | BROWARD COUNTY | | Proposed RCEP (Both Sides) |
| 272870B | FEC | NE 56TH ST | 335.63 | OAKLAND PARK | BROWARD COUNTY | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272546L | FEC | NE 24TH ST | 338.3 | WILTON MANORS | CITY OF WILTON MANORS | | Proposed RCEP (Both Sides) |
| 272547T | FEC | NE 17TH CT | 338.8 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | Proposed RCEP (Both Sides) | |
| 272558F | FEC | SW 5TH ST | 341.45 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (Both Sides) |
| 272559M | FEC | SW 6TH ST | 341.56 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (Both Sides) |
| 272560G | FEC | SW 7TH ST | 341.67 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (Both Sides) |
| 272564J | FEC | SW 17TH ST | 342.55 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | Existing (Both Sides) | Proposed RCEP (East Side) |
| 272566X | FEC | SW 22ND ST | 342.96 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272572B | FEC | OLD GRIFFIN RD | 345.44 | DANIA BEACH | BROWARD COUNTY | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272573H | FEC | NW 1ST ST | 345.81 | DANIA BEACH | CITY OF DANIA BEACH | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272576D | FEC | DIXIE HWY | 347.08 | DANIA BEACH | BROWARD COUNTY | | Proposed RCEP (Both Sides) |
| 272582G | FEC | GARFIELD ST | 348.07 | HOLLYWOOD | CITY OF HOLLYWOOD | Proposed RCEP Crossing Closure | |
| 272584V | FEC | JOHNSON ST | 348.27 | HOLLYWOOD | CITY OF HOLLYWOOD | | Proposed RCEP (Both Sides) |
| 272589E | FEC | WASHINGTON ST | 349.29 | HOLLYWOOD | CITY OF HOLLYWOOD | | Proposed RCEP (Both Sides) |
| 272591F | FEC | NE 3RD ST | 350.3 | HALLANDALE BEACH | CITY OF HALLANDALE BEACH | | Proposed RCEP (Both Sides) |
| 272593U | FEC | SE 3RD ST | 350.81 | HALLANDALE BEACH | CITY OF HALLANDALE BEACH | | Proposed RCEP (Both Sides) |

Exhibit B: Grant Agreement

U.S Department of Transportation

Federal Railroad Administration

# Grant Agreement

| | | |
|---|---|---|
| 1. RECIPIENT NAME AND ADDRESS<br>Broward Metropolitan Planning Organization<br>100 West Cypress Creek Road,<br>Suite 650<br>Fort Lauderdale, FL 33309-2181 | 2. AGREEMENT NUMBER: | 3. AMENDMENT NO. |
| | 4. PROJECT PERFORMANCE PERIOD: FROM | TO |
| | 5. FEDERAL FUNDING PERIOD: FROM | TO |
| 1A. IRS/VENDOR NO.<br>1B. DUNS NO. | 6. ACTION New | |
| 7. CFDA#: 20.327 -- Railroad Crossing Elimination | | |
| 8. PROJECT TITLE<br>Florida – Broward County Sealed Corridor Project | | |

| TITLE | FEDERAL | NON-FEDERAL | TOTAL |
|---|---|---|---|
| 9. PREVIOUS AGREEMENTS | | | |
| 10. THIS AGREEMENT | $15,440,000.00 | $3,860,000.00 | $19,300,000.00 |
| 11. TOTAL AGREEMENT | $15,440,000.00 | $3,860,000.00 | $19,300,000.00 |

12. INCORPORATED ATTACHMENTS

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

Exhibits: Revision Date: December 11, 2023

13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT

Authorized in Section 22305 of the Bipartisan Infrastructure Law. 49 U.S.C. § 22[illegible]

DRAFT

14. REMARKS

| GRANTEE ACCEPTANCE | | AGENCY APPROVAL | |
|---|---|---|---|
| 15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL | | 17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL | |
| 16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL | 16A. DATE | 18. SIGNATURE OF AUTHORIZED FRA OFFICIAL | 18A. DATE |

**AGENCY USE ONLY**

| | |
|---|---|
| 19. OBJECT CLASS CODE: | 20. ORGANIZATION CODE: |

21. ACCOUNTING CLASSIFICATION CODES

| DOCUMENT NUMBER | FUND | BY | BPAC | AMOUNT |
|---|---|---|---|---|

Attachment 1

# GENERAL TERMS AND CONDITIONS

Revision Date: December 11, 2023

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# General Terms and Conditions
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# ATTACHMENT 1

This Grant Agreement (Agreement) is between the Federal Railroad Administration (FRA) and the Recipient identified in Attachment 2: Project-Specific Terms and Conditions. This Agreement, including the Agreement cover sheet, this Attachment 1, Attachment 2, and Exhibits A–C, constitutes the entire Agreement between FRA and the Recipient regarding the Project as defined in Attachment 2. All prior discussions and understandings concerning the scope and subject matter of this agreement are superseded by this Agreement.

This Agreement is governed by and subject to 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and the U.S. Department of Transportation (USDOT) implementing regulations at 2 C.F.R. part 1201.

## ARTICLE 1: TERMS AND CONDITIONS

### 1.1 General Terms and Conditions

This Attachment 1: General Terms and Conditions, is part of the Agreement between FRA and the Recipient. This Attachment 1 contains the standard terms and conditions governing the administration of this Agreement and the execution of the Project. The General Terms and Conditions incorporate by reference the information contained in Attachment 2 and the Exhibits to this Agreement.

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### 1.2 Project-Specific Terms and Conditions

Attachment 2: Project-Specific Terms and Conditions, is part of the Agreement between FRA and the Recipient. Attachment 2 contains Project-Specific Terms and Conditions, which may include special terms and conditions.

### 1.3 Program-Specific Clauses

Article 26 of this Attachment 1 contains the applicable program-specific clauses. The Recipient will comply with the program-specific clauses below that are associated with the grant program identified in Attachment 2 of this Agreement. In the event that the Recipient's grant is not authorized under a program listed below, Article 26 does not apply.

(a) For Projects funded under the Interstate Rail Compacts program (49 U.S.C. § 22910), the Recipient will comply with the program-specific clauses in Article 26.1.

(b) For Projects funded under the Railroad Crossing Elimination program (49 U.S.C. § 22909), the Recipient will comply with the program-specific clauses in Article 26.2.

(c) For Projects funded under the Consolidated Rail Infrastructure and Safety Improvements program (49 U.S.C. § 22907), the Recipient will comply with the program-specific clauses in Article 26.3.

(d) For Projects funded under the Restoration and Enhancement program (49 U.S.C. § 22908), the Recipient will comply with the program-specific clauses in Article 26.4.

(e) For Projects funded under the Federal-State Partnership for Intercity Passenger Rail program (49 U.S.C. § 24911) and Federal-State Partnership for State of Good Repair (as authorized in Sections 11103 and 11302 of the Passenger Rail Reform and Investment Act of 2015 (Title XI of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94 (2015))), the Recipient will comply with the program-specific clauses in Article 26.5.

### 1.4 Exhibits

Exhibits A–C are part of the Agreement between FRA and the Recipient. The Recipient will comply with Exhibits A–C.

## ARTICLE 2: FRA ROLE AND RESPONSIBILITIES

### 2.1 FRA Role

(a) FRA is responsible for funding disbursements to the Recipient under this Agreement. FRA will also conduct oversight and monitoring activities to assess Recipient progress against established performance goals and to assess compliance with terms and conditions, including the Statement of Work and other requirements of this Agreement.

(b) If this award is made as a Cooperative Agreement, FRA will have substantial progr[illegible]tic involv[illegible]. Substantial involvem[illegible]s that [illegible]ward, technical, admin[illegible]trative, [illegible] pr[illegible]gramma[illegible]t staff [illegible]ill assist, g[illegible]ide, coordinat[illegible] or otherwise partic[illegible]ate with [illegible]he [illegible]n Proj[illegible]ct ac[illegible]vities.

(c) If [illegible]is awar[illegible]is m[illegible]de as a [illegible]ant, FRA will [illegible]ot h[illegible]ve substantial programmatic involvement.

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### 2.2 FRA Professional Staff

FRA may provide professional staff to review work in progress, completed products, and to provide or facilitate access to technical assistance when it is available, feasible, and appropriate. FRA professional staff may include the following:

(a) Financial Analyst. The Financial Analyst will serve as the Recipient's point of contact for systems (e.g., GrantSolutions and the Delphi eInvoicing System) access and troubleshooting as well as for financial monitoring.

(b) Grant Manager. The Grant Manager will serve as the Recipient's point of contact for grant administration and will oversee compliance with the terms and conditions in this Agreement. The Grant Manager reviews financial reports, performance reports, and works with the Project Manager to facilitate effective Project delivery.

(c) Project Manager. The Project Manager will serve as the Recipient's point of contact for the technical aspects of Project delivery. The Project Manager coordinates Project deliverable review, provides technical assistance to the Recipient, and generally assesses Project progress and performance.

# ARTICLE 3: RECIPIENT ROLE

## 3.1 Representations and Acknowledgments on the Project

(a) The Recipient represents that:

(1) all material statements of fact in the Application were accurate when the Application was submitted and now; and

(2) the Recipient read and understands the terms and conditions in Attachment 1 and Attachment 2 of this Agreement, the applicable program-specific clauses in Article 26 of this Attachment 1, and the information and conditions in the Exhibits.

(b) The Recipient acknowledges that:

(1) the terms and conditions impose obligations on the Recipient and that the Recipient's non-compliance with the terms and conditions may result in remedial action, including terminating the Agreement, disallowing costs incurred for the Project, requiring the Recipient to refund Federal contributions to FRA, and reporting the non-compliance in the Federal-government-wide integrity and performance system. Recipient acknowledges that the terms and conditions impose such obligations on the Recipient whether the award is made as a Cooperative Agreement, Grant Agreement, or Phased Funding Agreement.

(2) The Recipient acknowledges that the requirements of this Agreement apply to the entire Project, including Project costs satisfied from sources other than Federal Funds.

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(c) By entering into this Agreement with FRA, the Recipient agrees to comply with the terms and conditions in Attachment 1 and Attachment 2, including applicable program-specific clauses in Article 26 of this Attachment 1, Exhibits A–C, and all applicable Federal laws and regulations, including those identified in this Agreement. The Recipient will ensure compliance with all terms of this Agreement and all of its parts for all tiers of subawards and contracts under this Agreement, as appropriate. The Recipient understands that the terms and conditions of this Agreement apply regardless of whether the award is made as a Cooperative Agreement, Grant Agreement, or Phased Funding Agreement.

## 3.2 Representations on Authority and Capacity

The Recipient represents that:

(a) it has the legal authority to receive Federal financial assistance under this Agreement;

(b) it has the legal authority to complete the Project;

(c) all representations and warranties made in the Federal System for Awards Management (SAM.gov) and in the Application are true and correct;

(d) it has the capacity, including legal, technical, institutional, managerial, and financial capacity, to comply with its obligations under this Agreement and complete the Project;

(e) the Non-Federal Funds listed in Article 6 of Attachment 2 of this Agreement are committed to fund the Project;

(f) it has sufficient funds available to ensure that equipment and infrastructure funded under this Agreement will be operated and maintained in compliance with this Agreement and applicable Federal law;

(g) it has sufficient funds available to ensure that operations funded under this agreement are conducted in compliance with this Agreement and applicable Federal law; and

(h) the individual executing this agreement on behalf of the Recipient has the legal authority to enter this Agreement and make the statements and certifications in this Agreement on behalf of the Recipient.

**3.3 FRA Reliance**

The Recipient acknowledges that:

(a) FRA relied on statements of fact in the Application and SAM.gov to select the Project to receive this award;

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(b) FRA relied on statements of fact in the Application, SAM.gov, and this Agreement to determine that the Recipient and the Project are eligible to receive financial assistance under this Agreement;

(c) FRA relied on statements of fact in the Application, SAM.gov, and this Agreement to determine that the Recipient has the legal authority to implement the Project; and

(d) FRA relied on statements of fact in both the Application and this Agreement to establish the terms of this Agreement; and

(e) FRA's selection of the Project to receive this award may have prevented awards to other eligible applicants.

**3.4 Project Delivery**

(a) The Recipient will implement and complete the Project to FRA's satisfaction under the terms of this Agreement.

(b) The Recipient will ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.

**3.5 Rights and Powers Affecting the Project**

(a) The Recipient will 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 FRA.

(b) The Recipient will act promptly, in a manner acceptable to FRA, 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.

**3.6 Notification of Changes to Key Personnel**

The Recipient will notify the FRA Grant Manager in writing within 30 days of any change in key personnel who are identified in the Application, which may require an amendment to this Agreement.

## ARTICLE 4: AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

**4.1 Federal Award Amount**

Under this Agreement, FRA awards a Grant to the Recipient in the amount that is the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement.

**4.2 Federal Obligations**

This Agreement obligates for the budget period the amount that is the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement.

**4.3 Maximum Funding Amount**

This Agreement funds the Project at the lesser amount of the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement, or the FRA maximum contribution percentage of the total Project cost identified in Article 5 of Attachment 2 of this Agreement.

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**4.4 Budget Period**

The budget period for this award begins on the date of this Agreement and ends on the end date that is listed in Section 5 on the Agreement cover sheet. In this Agreement, "budget period" is used as defined at 2 C.F.R. § 200.1.

**4.5 Period of Performance**

The Period of Performance for this award is listed in Section 4 on the Agreement cover sheet. In this Agreement, "Period of Performance" is used as defined at 2 C.F.R. § 200.1.

## ARTICLE 5: STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

**5.1 Notification Requirement**

The Recipient will notify the FRA Grant Manager and Project Manager by electronic correspondence within 30 days of any change in circumstances or commitments that adversely affect the Recipient's plan to complete the Project, including change in authority. In that notification, the Recipient will 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 5.1 is separate from any requirements under this Article 5 that the Recipient request an amendment to this Agreement.

**5.2 Scope and Statement of Work Changes**

If the Project's activities differ from the activities described in Article 4 of Attachment 2 of this Agreement, then the Recipient will notify FRA in writing of the change, which may require an amendment to this Agreement.

**5.3 Schedule Changes**

If one or more of the following conditions are satisfied, then the Recipient will request an amendment to this Agreement to update the Estimated Project Schedule in Section 5.2 of Attachment 2 of this Agreement:

(a) a completion date for the Project or a component of the Project is listed in the Estimated Project Schedule in Section 5.2 of Attachment 2 of this Agreement and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed;

(b) a schedule change would require the budget period to continue after the end of the budget period defined in Section 4.4; or

(c) a schedule change would require the Period of Performance to continue after the end of the Period of Performance defined in Section 4.5. The Recipient must submit requests to ext[illegible] Period of Performance no later tha[illegible] before the end of the Period of Performance.

For other schedule changes, the Recipient will notify the Grant Manager in writing.

**5.4 Budget Cha[illegible]**

(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) any additional funds the Recipient contributes to complete the Project are subject to the requirements of this Agreement in the same manner as the Non-Federal Funds identified in Article 6.5 of Attachment 2 of this Agreement; and

(3) FRA will not increase the amount of this award to address any funding shortfall.

(b) The Recipient will notify FRA in writing if the total Project cost, as described in Table 6-A of Attachment 2 of this Agreement, amount increases, which may result in an amendment to this Agreement.

(c) The Recipient will notify FRA in writing if the Non-Federal Funds amount decreases, which may result in an amendment to this Agreement.

(d) For all other budget changes, the Recipient will follow the applicable procedures and document the changes in writing.

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**5.5 Project Cost Savings**

(a) If there are Project Cost Savings, then the Recipient may notify FRA in writing of its intent to include in the Project and complete with the Project Cost Savings the additional activities within the scope of this award that are specified in the Additional Task(s) in Article 4 of Attachment 2 of this Agreement. The Recipient will complete the Additional Task(s) after FRA provides a written approval. An amendment to this Agreement is not required to proceed with the Additional Task(s).

(b) If there are Project Cost Savings, and there are not Additional Task(s) identified in Article 4 of Attachment 2 of this Agreement, then the Recipient may propose a new task that is within the scope of this award and request an amendment to add the new task to this Agreement and complete it with Project Cost Savings.

(c) In this Agreement, **"Project Cost Savings"** means the difference between the actual costs to complete the Project and the estimated total Project cost listed in Section 6.5 of Attachment 2 of this Agreement, if after the Recipient completes the tasks identified in Article 4 of Attachment 2 of this Agreement to FRA's satisfaction, the actual Project costs are less than the estimated total Project costs. There are no Project Cost Savings prior to completion of the Project or if the actual costs to complete the Project are equal to or greater than the total Project cost listed in Section 6.5 of Attachment 2 of this Agreement.

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(d) If there are Project Cost Savings and either the Recipient does not make a proposal or FRA does not accept the Recipient's proposal under (b) of this Section 5.5, then:

(1) The Recipient will provide written notice to FRA and reduce the Federal Share by the Project Cost Savings, which may result in an amendment to this Agreement; and

(2) If the reduced Federal Share reduces this award and the Recipient received reimbursed costs exceeding the appropriate amount under the reduced award, the Recipient will refund the difference between the reimbursed costs and the reduced award.

(e) In this Agreement, "Federal Share" means the sum of the Agreement Federal Funds and Other Federal Funds amounts that are identified in the Approved Project Budget in Section 6.5 of Attachment 2 of this Agreement.

(f) The Recipient acknowledges that amounts that are required to be refunded under this Section constitute a debt to the Federal Government that FRA may collect under 2 C.F.R. § 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**5.6 FRA Acceptance of Changes**

FRA may accept or reject changes requested under this Article 5, and in doing so may elect to consider only the interests of the grant program and FRA. The Recipient acknowledges that any request under this Article 5 does not amend, modify, or supplement this Agreement unless FRA

accepts the request and the parties amend this Agreement under Section 15.1 of this Attachment 1.

## ARTICLE 6: GENERAL REPORTING TERMS

### 6.1 Alternative Reporting Methods

FRA 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 will use the processes required by FRA.

### 6.2 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 (OMB). Notwithstanding any other term of this Agreement, the due date for any information collections required under this Agreement, including the reporting requirements in Articles 7 and 8, is the later of (1) the due date stated with the requirement and (2) the 30th day after OMB approves that information collection.

## ARTICLE 7: PROGRESS AND FINANCIAL REPORTING

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### 7.1 Quarterly Project Progress Reports and Recertification

(a) On or before the 30th day of the first month of each quarter and until the end of the Period of Performance, the Recipient will submit to FRA through GrantSolutions a complete FRA Form 34[1] Quarterly Project Progress Report and Recertification that contains, for the previous quarter:

(1) a certification that the Recipient is in compliance with 2 C.F.R. § 200.303 (Internal Controls) and 2 C.F.R. part 200, Subpart F (Audit Requirements);

(2) the certification required under 2 C.F.R. § 200.415(a); and

(3) a certification that the Recipient is complying with any environmental mitigation commitments and Section 106 compliance obligations.

If the date of this Agreement is in the final month of a quarter, then the Recipient will submit the first Quarterly Project Progress Report and Recertification in the quarter that begins after the date of this Agreement.

(b) On or before the 30th day of the first month of each quarter and until the end of the Period of Performance, the Recipient will submit to FRA through GrantSolutions a Federal Financial Report (SF-425) covering the previous quarter.

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

**7.2 Final Progress Reports and Financial Information**

No later than 120 days after the end of the Period of Performance, the Recipient will submit:

(a) a final Quarterly Project Progress Report and Recertification in the format and with the content described in Section 7.1(a) of this Attachment 1 for each Quarterly Project Progress Report and Recertification;

(b) a final SF-425 through GrantSolutions;

(c) a Final Performance Report FRA Form 33 as provided by FRA[2] ; and

(d) any other information required under FRA's award closeout procedures.

**7.3 Real Property Reporting**

The Recipient will comply with the reporting obligations in 2 C.F.R. § 200.300, as directed by FRA.

## ARTICLE 8: PERFORMANCE MEASUREMENT AND REPORTING

**8.1 Baseline Performance Measurement**

Within one [illegible] before the [illegible] work on the Project, the Recipient will collect baseline data for each performance measure that is identified in Article 7 of Attachment 2 of this Agreement. Within six months of the start of the Period of Performance, the Recipient will submit to FRA a Baseline Performance Measurement Report that describes the data collected, the dates when the data were collected, the data sources, assumptions, variability, and estimated levels of precision for each performance measure. The Recipient will also provide FRA access to the data collected in machine-readable format.

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**8.2 Post-Project Performance Measurement**

For each performance measure that is listed in Article 7 of Attachment 2 of this Agreement, the Recipient will collect data and submit to FRA a Post-Project Performance Measurement Report that describes the data collected, the dates when the data were collected, the data sources, assumptions, variability, and estimated levels of precision for each performance measure, at the frequency and for the duration identified in Article 7 of Attachment 2 of this Agreement. The Recipient will also provide FRA access to the data collected in machine-readable format. If an external factor affects a performance measure, the Recipient will identify that external factor in the Post-Project Performance Measurement Report and discuss the external factor's influence on the performance measure. In the Post-Project Performance Report, the Recipient will compare the actual project performance against the pre-project (baseline) performance and expected post-project performance as described in Table 7-A of Attachment 2 of this Agreement.

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

**8.3 Project Outcomes Report**

Where indicated in Article 7 of Attachment 2 of this Agreement, the Recipient will submit to FRA, not later than January 31st of the year that follows the final year during which data were collected, a Project Outcomes Report that contains:

(a) an analysis of the impacts of the Project, including a comparison of the baseline performance measurement data collected under Section 8.1 of this Attachment 1 with the post-project performance measurement data that the Recipient reported in the final Post-Project Performance Measurement Report required under Section 8.2 of this Attachment 1;

(b) for each performance measure that is identified in Article 7 of Attachment 2 of this Agreement, an analysis of the accuracy of the projected outcome; and

(c) all data collected under Sections 8.1 and 8.2 of this Attachment 1;

(d) additional information as directed.

**8.4 General Performance Measurement Requirements**

The Recipient will ensure that all data collection for each performance measure identified in Article 7 of Attachment 2 of this Agreement is completed in a manner consistent with the description, location, and other attributes associated with that performance measure.

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**8.5 Outcome Measurement and Reporting Survival**

The data collection and reporting requirements in Article 8 of this Attachment 1 survive the termination of this Agreement. FRA may consider the Recipient's compliance with this requirement after closeout of the grant in its evaluation of future applications for Federal financial assistance.

## ARTICLE 9: NONCOMPLIANCE AND REMEDIES

**9.1 Noncompliance Determinations**

(a) Notice of Proposed Determination. If FRA determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this Agreement, FRA will notify the Recipient of a proposed determination of noncompliance through a written notice that:

(1) explains the noncompliance;

(2) describes a proposed remedy that is consistent with Section 9.2 of this Attachment 1;

(3) describes the process and form in which the Recipient may respond to the notice that is consistent with Section 9.1(b) of this Attachment 1; and

(4) if applicable, provides the Recipient an opportunity to cure the noncompliance or take corrective action.

(b) Response to Notice of Proposed Determination. The Recipient may, not later than 7 days after receiving the notice of proposed determination of noncompliance, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:

(1) accept the proposed remedy;

(2) acknowledge the noncompliance, but propose an alternative remedy;

(3) acknowledge the noncompliance and agree to cure or take corrective action; or

(4) dispute the noncompliance.

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

(c) Notice of Final Determination. After considering the Recipient's response or failure to timely respond under Section 9.1(b) of this Attachment 1, FRA will make a final determination. To make a final determination, FRA must provide a written notice to the Recipient that:

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(1) states what the final determination is (e.g., noncompliance or compliance);

(2) states the basis for the final determination; and

(3) describes the remedy that FRA is imposing, if applicable, or if FRA is not imposing a remedy, describes the resolution to the proposed determination of noncompliance, including whether the Recipient has cured or corrected the noncompliance.

(d) If FRA determines the noncompliance is one that cannot be addressed while work on the Project is ongoing, in the notice of proposed determination or in the notice of final determination, FRA will direct the Recipient to stop work. The Recipient will stop work and will direct any Subrecipients or contractors to stop work immediately upon receipt of a notice to stop work from FRA.

(e) FRA may consider the public interest in making a determination of noncompliance and imposing a remedy.

**9.2 Remedies**

(a) If FRA makes a final determination of noncompliance under Section 9.1(c) of this Attachment 1, FRA may impose a remedy, including:

(1) additional conditions on the award;

(2) requiring the Recipient to prepare and implement a corrective action plan;

(3) directing the Recipient to stop work;

(4) any remedy permitted under 2 C.F.R. §§ 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to FRA; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or

(5) any other remedy legally available.

(b) The Recipient acknowledges that any amounts FRA requires the Recipient to refund to FRA under this Section 9.2 constitute a debt to the Federal Government that FRA may collect under 2 C.F.R. § 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

(c) Other Remedies. The termination authority under Article 10 of this Attachment 1 supplements and does not limit FRA's remedial authority under this Article 9 or 2 C.F.R. part 200, including 2 C.F.R. §§ 200.339-200.240. FRA reserves the right to seek any appropriate remedy or otherwise enforce the terms and conditions of this Agreement as authorized by law.

**9.3 Other Oversight Entities**

Nothing in A[illegible] of this [illegible]nt 1 limit[illegible]ny part[illegible]it[illegible]activity under this agreement [illegible] the Uni[illegible]d S[illegible]tes Dep[illegible]tment of [illegible]ransp[illegible]ation Inspecto[illegible] General or other appropriate [illegible]versight [illegible]nti[illegible]

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## ARTICLE 10: AGREEMENT SUSPENSION AND TERMINATION

**10.1 Suspension of Award Activities**

(a) If FRA determines that the remedy for noncompliance imposed under Article 9 of this Agreement does not achieve the desired result or is unlikely to improve compliance or performance, FRA may suspend activities under this Agreement pending corrective action by the Recipient or termination.

(b) If FRA suspends activities under this Agreement, FRA will notify the Recipient in writing of the following, which may be included in the determinations of non-compliance under Section 9.1 of this Attachment 1:

(1) what project activities, if any, will take place during the period of suspension;

(2) what costs FRA will reimburse if the suspension is lifted and the award resumed;

(3) what corrective actions must occur during the suspension; and

(4) FRA's intent to terminate the award under this Article 10 if the Recipient does not meet the conditions of the remedial action.

(c) The duration of the temporary suspension of activities under the Agreement should be commensurate with the corrective action needed, but should not exceed 120 days at the outset. If the Recipient is not making sufficient progress in correcting the noncompliance, FRA must consider both financial and programmatic requirements in determining the appropriate extension to avoid the need for termination.

**10.2 FRA Termination**

(a) FRA may terminate this Agreement and all its obligations under this Agreement if any of the following occurs:

(1) the Recipient fails to obtain or contribute the required Non-Federal Funds, or alternatives approved by FRA, as provided in this agreement and consistent with Article 6 of Attachment 2 of this Agreement;

(2) the Recipient fails to meet a milestone by six months after the completion date listed in Article 5 of Attachment 2 of this Agreement and the Recipient fails to request an amendment to this Agreement pursuant to Section 5.3 of this Attachment 1;

(3) the Recipient fails to comply with the terms and conditions of this Agreement;

(4) there are changes to the Project that FRA determines are inconsistent with FRA's basis for selecting the Project to receive the award; or

(5) FRA determines that termination of this Agreement is in the public interest.

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(b) The Recipient may request that FRA terminate the Agreement, which may result in FRA determining noncompliance and imposing remedies pursuant to Article 9 of this Attachment 1.

**10.3 Closeout Termination**

(a) This Agreement terminates on Project Closeout.

(b) In this Agreement, "Project Closeout" means the date that FRA 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.

**10.4 Post-Termination Adjustments**

The Recipient acknowledges that under 2 C.F.R. §§ 200.345–200.346, termination of this Agreement does not extinguish FRA's authority to disallow costs, including costs that FRA reimbursed before termination, and recover funds from the Recipient.

**10.5 Non-Terminating Events**

(a) The end of the budget period described under Section 4.4 of this Attachment 1 does not terminate this Agreement or the Recipient's obligations under this Agreement.

(b) The end of the Period of Performance described under Section 4.5 of this Attachment 1 does not terminate this Agreement or the Recipient's obligations under this Agreement.

## ARTICLE 11: MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

### 11.1 Recipient Monitoring and Record Retention

(a) The Recipient will 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 will monitor the activities of the Subrecipient in compliance with 2 C.F.R. §200.332(d).

(c) The Recipient will retain and provide access to records relevant to the award during the course of the Project and for three years after closeout or longer, as required under 2 C.F.R. § 200.334

(d) The Recipient will adhere to the recording and recordkeeping requirements set forth in 2 C.F.R. §§ 200.334–200.338. Project Closeout does not alter these requirements.

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### 11.2 Financial Records and Audits

(a) The Recipient will 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 will keep accounts and records described under Section 11.2(a) of this Attachment 1 in accordance with a financial management system that meets the requirements of 2 C.F.R. §§ 200.301–200.303 and 2 C.F.R. part 200, subpart F and will facilitate an effective audit in accordance with 31 U.S.C. §§ 7501–7506.

(c) The Recipient will separately identify expenditures under the award in financial records required for audits under 31 U.S.C. §§ 7501–7506. Specifically, the Recipient will:

(1) list expenditures separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including the fiscal year in the format "FY 202X" in the program name; and

(2) list expenditures on a separate row under Part II, Item 1 (Federal Awards Expended During Fiscal Period) of Form SF-SAC, including "FY 202X" in Column C (Additional Award Identification).

(d) If the Recipient expends $750,000 or more in Federal awards during the Recipient's fiscal year, a single or program audit will be conducted for that year, consistent with 2 C.F.R. §§ 200.501(a) and 200.512(c).

**11.3 Internal Controls**

The Recipient will establish and maintain internal controls as required under 2 C.F.R. § 200.303.

**11.4 FRA Record Access**

FRA may access Recipient records related to this award under 2 C.F.R. § 200.337.

**11.5 Site Visits**

FRA may conduct site visits to review Project activities, accomplishments, and management control systems and to provide technical assistance to the Recipient. The Recipient will provide or ensure reasonable, safe, and convenient access to FRA for any such site visit. FRA will conduct all site visits in such a manner as will not unduly delay work conducted by the Recipient, Subrecipient, or contractor.

## ARTICLE 12: CONTRACTING AND SUBAWARDING

**12.1 Buy America**

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(a) For infrastructure projects, steel, iron, manufactured goods, and construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act (Buy American Act), Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(b) For all other projects, the Recipient's acquisition of steel, iron, and manufactured goods with funding provided through this Agreement is subject to the requirements set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305. The Recipient also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.

(c) Under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(d) 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.

**12.2 Small and Disadvantaged Business Requirements**

The Recipient will expend all funds under this award in compliance with the requirements at 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), and to the extent applicable, 49 C.F.R. part 26 (Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs).

**12.3 Engineering and Design Services [Reserved]**

**12.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. § 200.216 prohibit the Recipient and all Subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

**12.5 Pass-Through Entity Responsibilities**

(a) If the Recipient makes a subaward under this award, the Recipient will comply with the requirements for pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. §§ 200.331–200.333, regardless of whether the Recipient is also a Pass-Through Entity as defined in 2 C.F.R. § 200.1.

(b) The Recipient will report any subaward obligation of $25,000 or more in Federal funds in USAspending.gov consistent with the Federal Funding Accountability and Transparency Act, Pub. L. 109-282.

(c) The Recipient is accountable for performance under this award, the appropriate expenditure of funds, and other requirements under this Agreement. The Recipient is responsible for any non-compliance under the award and for compliance with any remedies imposed.

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**12.6 Local Hiring Preference for Construction Jobs**

Under Section 25019 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. B, tit. V (2021), a Recipient or Subrecipient may implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by this grant if funded under title 49 or 23 United States Code, including prehire agreements, subject to any applicable State and local laws, policies, and procedures. The use of such a local or other geographical or economic hiring preference in any bid for a contract for the construction of a project funded by this grant shall not be considered to unduly limit competition. Project labor agreements should be consistent with the definition and standards outlined in Executive Order 13502. The Recipient will document its consideration of Local Hiring Preference for Construction Jobs related to the Project in Article 11 of Attachment 2 of this Agreement. For additional information, see https://www.transportation.gov/sites/dot.gov/files/2023-05/Creating-Local-Construction-Workforce.pdf.

### 12.7 Procurement

The Recipient may acquire property, goods, or services in connection with the Project. If the Recipient is a State, then it will use its own procurement procedures that reflect applicable State laws and regulations in compliance with 2 C.F.R. § 200.317. A Subrecipient of a State will follow the policies and procedures allowed by that State when procuring property and services under this award consistent with 2 C.F.R. § 1201.317, notwithstanding 2 C.F.R. § 200.317. An entity that is not a State or Subrecipient of a State will comply with 2 C.F.R. §§ 200.318–200.327, and applicable supplementary USDOT or FRA directives and regulations. The Recipient will provide technical specifications and requirements to FRA for review upon request.

## ARTICLE 13: COSTS, PAYMENTS, AND UNEXPENDED FUNDS

### 13.1 Limitation of Federal Award Amount

Under this award, FRA will not provide funding in an amount greater than the Agreement Federal Funds. The Recipient acknowledges that FRA is not liable for payments exceeding that amount, and the Recipient will not request reimbursement of costs exceeding that amount.

### 13.2 Project Costs

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

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### 13.3 Timing of Project Costs

(a) The Recipient will not charge to this award costs that are incurred after the budget period.

(b) The Recipient will not charge to this award costs that were incurred before the date of this Agreement unless those costs are identified as approved pre-award costs in Section 6.6 of Attachment 2 of this Agreement and would have been allowable if incurred during the budget period. This limitation applies to pre-award costs under 2 C.F.R. § 200.458. This agreement hereby terminates and supersedes any previous FRA approval for the Recipient to incur costs under this award for the Project. Section 6.6 of Attachment 2 of this Agreement is the exclusive FRA approval of costs incurred before the date of this Agreement.

(c) The Recipient may request approval of pre-award costs in a written request that demonstrates the purpose and amount of the costs, compliance with 2 C.F.R. § 200.458, and whether such costs would otherwise serve as Non-Federal Funds.

### 13.4 Recipient Recovery of Federal Funds

The Recipient will make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if FRA 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. The Recipient will 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 FRA.

**13.5 Unexpended Agreement Federal Funds**

Any Agreement Federal Funds that are obligated but not expended on allocable, allowable costs remain the property of the United States.

**13.6 Interest Earned**

Interest earned on advances of Agreement Federal Funds is not program income.

**13.7 Timing of Payments to the Recipient**

(a) Reimbursement is the payment method, unless otherwise approved by FRA.

(b) The Recipient will not request reimbursement of a cost before the Recipient has entered into an obligation for that cost.

**13.8 Payment Method**

(a) The Recipient will use the DELPHI e-Invoicing System (https://www.dot.gov/cfo/delphi-einvoicing-system.html) to request reimbursement under this award. FRA will provide access to that system upon request by the Recipient.

(b) FRA may deny a payment request that is not submitted using the method identified in this Section.

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**13.9 Information Supporting Expenditure**

(a) When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient will electronically submit the SF 270 (Request for Advance or Reimbursement) and will submit supporting cost detail to document clearly all costs incurred. As supporting cost detail, the Recipient will include a detailed breakout of all costs incurred and classify all costs by task and by Agreement Federal Funds and Agreement Non-Federal Funds.

(b) Unless FRA and the Recipient agree otherwise in writing, the Recipient will ensure that the proportion of expenditure of Agreement Federal Funds to Agreement Non-Federal Funds is not more than the maximum percent of total Project cost FRA will contribute identified in Section 6.5 of Attachment 2 of this Agreement. The Recipient will ensure the proportional expenditure of funds is reflected in the detailed breakout of costs supporting the SF 270.

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

**13.10 Reimbursement Request Timing Frequency**

The Recipient will request reimbursement as needed to maintain cash flow sufficient to timely complete the Project. The Recipient will not submit any single payment request exceeding $99,999,999.99. The Recipient will not submit a payment request exceeding $50,000,000.00 unless the Recipient notifies FRA six days before submitting the request.

### 13.11 Program Income

The Recipient is encouraged to earn income to defray Project costs, where appropriate, and will work with FRA to determine how income may be applied to the grant, in accordance with 2 C.F.R. § 200.307 and 2 C.F.R. § 1201.80. Program income not deducted from total allowable costs may be used only for the purposes and under the terms and conditions established in this Agreement. The Recipient will maintain records of all program income.

## ARTICLE 14: PROPERTY AND EQUIPMENT

### 14.1 General Requirements

The Recipient will comply with the property standards of 2 C.F.R. §§ 200.310–200.316 and will ensure compliance with these standards for all tiers of subawards and contracts under this award.

### 14.2 Relocation and Real Property Acquisition

The Recipient will comply with the land acquisition policies and relocation requirements in 42 U.S.C. § 4601 et seq. and 49 C.F.R. part 24, subparts A–F, as applicable. At a minimum, under this section, the Recipient will:

(a) comply with the land acquisition policies in 49 C.F.R. part 24, subpart B and will pay or reimburse property owners for necessary expenses as specified in that subpart;

(b) provide a relocation assistance program offering the services described in 49 C.F.R. part 24, subpart C and provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24, subparts D–E; and

(c) make available to displaced persons comparable replacement dwellings in accordance with 49 C.F.R. part 24, subpart E.

(d) provide to FRA a real estate acquisition and management plan prior to beginning real property acquisition if the Project is designated a Major Project in Article 1 of Attachment 2 of this Agreement, or if the total Project cost in Section 6.5 of Attachment 2 of this Agreement is greater than $300 million and the Project is also receiving financial assistance from the Federal Transit Administration (FTA).

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### 14.3 Use for Originally Authorized Purpose

The Recipient will ensure that property and equipment funded under this Agreement is used for the originally authorized purpose. If necessary to satisfy this obligation, the Recipient will enter into appropriate arrangements with the entity or entities using, or with the owner of right-of-way used by, the property and/or equipment funded under this Agreement.

### 14.4 Maintenance

The Recipient will ensure that any property, improvements to property, and any equipment funded under this Agreement are maintained in good working order and in accordance with FRA regulations, guidelines, and directives.

**14.5 Real Property Disposition**

In accordance with 2 C.F.R. § 200.311, when real property acquired or improved under this award is no longer used for its originally intended purpose, the Recipient will request disposition instructions from FRA.

**14.6 Equipment Disposition**

(a) In accordance with 2 C.F.R. §§ 200.313 and 1201.313, when equipment acquired under this award is no longer needed for the Project:

(1) if the entity that acquired the equipment is a State or a Subrecipient of a State, that entity will dispose of that equipment in accordance with State laws and procedures; and

(2) if the entity that acquired the equipment is neither a State nor a Subrecipient of a State, that entity will request disposition instructions from FRA.

(b) In accordance with 2 C.F.R. §200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. §§ 200.313–200.316 and 2 C.F.R. § 1201.313.

**14.7 Recordkeeping**

The Recipient will keep records regarding the operation and maintenance of property, improvements to property, equipment, and supplies funded under this Agreement and will provide them to FRA upon request.

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**14.8 Encumbrance**

The Recipient will not create an obligation, such as a transfer of title, lease, lien, mortgage, or encumbrance, that would dispose of or encumber the Recipient's title or other interest in property, improvements to property, equipment or supplies funded under this Agreement without prior written approval from FRA.

The Recipient will not take any action that would adversely affect FRA's interest or impair the Recipient's continuing control over the use of the property, improvements to property, equipment, or supplies funded under the Agreement without prior written approval from FRA.

## ARTICLE 15: AMENDMENTS

**15.1 Bilateral Amendments**

The parties may amend, modify, or supplement this Agreement by mutual agreement in writing signed by FRA and the Recipient. Either party may request to amend, modify, or supplement this Agreement by written notice to the other party.

**15.2 FRA Unilateral Amendments**

(a) FRA may unilaterally amend this Agreement for the following reasons:

(1) to comply with Federal law;

(2) at closeout or in anticipation of closeout; and

(3) other non-substantive changes, such as to correct typographical errors, as deemed appropriate by FRA.

(b) To unilaterally amend this Agreement under Section 15.3 of this Attachment 1, FRA will provide a written notice to the Recipient that includes the amendment and the date that the amendment is effective.

(c) Except at closeout or in anticipation of closeout, FRA may not unilaterally amend the Statement of Work, this Agreement's monetary amount, the delivery schedule, the Period of Performance, or other terms or conditions of this Agreement.

**15.3 Other Amendments**

The parties will not amend, modify, or supplement this Agreement except as permitted under Sections 15.1, 15.2, or 15.3 of this Attachment 1. If an amendment, modification, or supplement is not permitted under Section 15.1, 15.2, or 15.3 of this Attachment 1, it is void.

## ARTICLE 16: CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

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**16.1 Climate Change and Environmental Justice**

Consistent with Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad" (Jan. 27, 2021), the Recipient will document its consideration of climate change and environmental justice impacts of the Project in Article 9 of Attachment 2 of this Agreement.

## ARTICLE 17: RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

**17.1 Racial Equity and Barriers to Opportunity**

Consistent with Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (Jan. 20, 2021), the Recipient will document its activities related to the Project to improve racial equity and reduce barriers to opportunity in Article 10 of Attachment 2 of this Agreement.

## ARTICLE 18: LABOR AND WORK

**18.1 Labor and Work**

Consistent with Executive Order 14025, "Worker Organizing and Empowerment" (Apr. 26, 2021), and Executive Order 14052, "Implementation of the Infrastructure Investment and Jobs Act" (Nov. 15, 2021) (IIJA), the Recipient will document its consideration of job quality and labor rights, standards, and protections related to the Project in Article 11 of Attachment 2 of this Agreement.

**18.2 OFCCP Mega Construction Project Program**

If the total eligible Project costs listed in Attachment 2 of this Agreement are greater than $35,000,000 and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) selects this award for participation in the Mega Construction Project Program, then the Recipient shall partner with OFCCP, as requested by OFCCP.

## ARTICLE 19: CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

**19.1 Critical Infrastructure Security and Resilience**

(a) Consistent with Presidential Policy Directive 21, "Critical Infrastructure Security and Resilience" (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient will consider physical and cyber security and resilience in planning, design, and oversight of the Project.

(b) If the Security Risk Designation in Section 1.3 of Attachment 2 of this Agreement is "Elevated," then not later that than two years after the date of this Agreement the Recipient will submit to FRA a report that:

(1) identifies a cybersecurity point of contact for the transportation infrastructure being improved in the Project;

(2) summarizes or contains a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project;

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(3) summarizes or contains a cybersecurity incident response plan for the transportation infrastructure being improved in the Project;

(4) documents the results of a self-assessment of the Recipient's cybersecurity posture and capabilities; and

(5) describes any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

## ARTICLE 20: FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

**20.1 Uniform Administrative Requirements for Federal Awards**

The Recipient will comply, and will ensure that other entities receiving funding under this agreement will comply, with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201, regardless of whether the Recipient or other entity receiving funding under this agreement is a Non-Federal entity as defined in 2 C.F.R. § 200.1, except that subpart F of part 200 does not apply if the Recipient or Subrecipient is a for-profit entity.

**20.2 Federal Law and Public Policy Requirements**

(a) The Recipient will 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.

(b) 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.

**20.3 Federal Freedom of Information Act**

(a) FRA is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

(b) The Recipient acknowledges that the Application and materials submitted to FRA by the Recipient related to this Agreement will become FRA records that may be subject to public release under 5 U.S.C. § 552. If the Recipient submits any materials to FRA related to this Agreement that the Recipient considers to include trade secret or confidential commercial or financial information, the Recipient should note that the submission contains confidential business information, mark each affected page, and highlight or otherwise denote the portions of the submission that contain confidential business information.

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**20.4 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.

**20.5 Whistleblower Protection**

(a) The Recipient acknowledges that it is a "Recipient" 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 this this award.

(b) The Recipient will 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.

**20.6 External Award Terms and Obligations**

(a) In addition to this document and the contents described in Article 25 of this Attachment 1, this Agreement includes the following additional terms as integral parts:

(1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;

(2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;

(3) 2 C.F.R. § 175.15(b): Trafficking in Persons; and

(4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient will comply with:

(1) 49 C.F.R. part 20: New Restrictions on Lobbying;

(2) 49 C.F.R. part 21: Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;

(3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and

(4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

**20.7 Incorporated Certifications**

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

(a) Appendix A to 49 C.F.R. part 20 (Certification Regarding Lobbying).

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## ARTICLE 21: ASSIGNMENT

**21.1 Assignment Prohibited**

The Recipient will 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 22: WAIVER

**22.1 Waivers**

(a) A waiver of a term of this Agreement authorized by law and granted by FRA will not be effective unless it is in writing and signed by an authorized representative of FRA.

(b) A waiver of a term of this Agreement granted by FRA on one occasion will not operate as a waiver on other occasions.

(c) If FRA fails to require strict performance of a term 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 term or breach.

# ARTICLE 23: ADDITIONAL TERMS AND CONDITIONS

**23.1 Disclaimer of Federal Liability**

FRA will 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.

**23.2 Environmental Review**

(a) Except as authorized by law or under 23 C.F.R. § 771.113(d)(4), the Recipient will not begin final design activities; acquire real property, construction materials, or equipment, including rolling stock; begin construction; or take other actions that would have an adverse environmental impact or limit the choice of reasonable alternatives for the Project unless and until FRA complies with the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA), and any other applicable environmental laws and regulations. In addition, the Recipient will not begin project development that involves ground disturbing activity prior to FRA compliance with NEPA and any other applicable environmental laws and regulations.

(b) The Recipient acknowledges that:

(1) FRA's actions under Section 23.2(a) of this Attachment 1 may depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to FRA; and

(2) applicable environmental statutes and regulations may require the Recipient to prepare and submit documents to other Federal, State and local agencies.

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(c) Consistent with 23 C.F.R. § 771.105(a), to the maximum extent practicable and consistent with Federal law, the Recipient will coordinate all environmental investigations, reviews, and consultations as a single process.

(f) The activities described in Article 4 of Attachment 2 of this Agreement and other information 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 with Article 4 of Attachment 2 of this Agreement or other information in this Agreement, then FRA will either:

(1) amend this Agreement under Section 15.1 of this Attachment 1 for consistency with the selected build alternative; or

(2) if FRA determines that the condition at Section 10.1(a)(5) of this Attachment 1 is satisfied, terminate this Agreement under Section 10.1(a)(5) of this Attachment 1; or

(3) take other action as deemed appropriate by FRA.

(g) The Recipient will 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. Article 4 of Attachment 2 of this Agreement identifies documents describing mitigation activities, but the absence of a document from that section does not relieve the Recipient of any compliance obligations.

**23.3 Project Maintenance Requirement**

The Recipient will ensure that any property and equipment funded within this Agreement is operated and maintained in good operating order and in accordance with 2 C.F.R. §§ 200.310–200.316, 1201.313 and any guidelines, directives, or regulations that FRA may issue.

**23.4 Appropriations Act Requirements**

The Recipient will comply with applicable requirements of the appropriations act identified in Section 6.3 of Attachment 2 of this Agreement.

**23.5 Standards of Conduct**

The Recipient will comply with the following standards of conduct:

(a) Standards of Conduct. The Recipient will maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by the Federal contribution provided through this Agreement. The code or standards will provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential Subrecipients or contractors. The Recipient may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. As permitted by state or local law or regulations, such code or standards will provide for penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by Subrecipients or their agents.

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(b) Personal Conflict of Interest. The Recipient's code or standards must provide that no employee, officer, board member, or agent of the Recipient may participate in the selection, award, or administration of a contract supported by the Federal contribution if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

(c) Organizational Conflicts of Interest. The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

(d) Existing Codes or Standards. This Section does not require the Recipient to implement a new code or standards of conduct where a state statute, or written code or standards of conduct, already effectively covers all of the required elements.

(e) Disclosure of Conflicts. The Recipient will disclose in writing any potential conflict of interest to FRA or pass-through entity.

**23.6 Changed Conditions of Performance**

The Recipient will notify FRA of any event that may affect its ability to perform the Project in accordance with the terms of this Agreement.

**23.7 Litigation**

The Recipient will notify FRA in writing of any decision pertaining to the Recipient's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable Federal laws or regulations. The Recipient will inform FRA in writing before naming FRA as a party to any type of litigation for any reason in any forum.

**23.8 Bipartisan Infrastructure Law Signage Guidelines**

For projects funded by the Bipartisan Infrastructure Law, also known as the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), the Recipient will ensure:

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(a) signage is designed consistent with the guidelines and design specifications available at https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf. Signs should include the official Building A Better America emblem and corresponding logomark and identify the project as "Funded by President Biden's Bipartisan Infrastructure Law."

(b) signage displays the FRA logo and the Recipient logo, if any, along with the official Building A Better America emblem. The FRA logo should not be displayed in a manner that implies FRA itself is conducting the project.

(c) where applicable, the signage includes the project name (e.g., [Name of] Project funded by President Biden's Bipartisan Infrastructure Law.)

(d) the sign is placed at construction sites where it is clearly visible near the location of work and that the sign is maintained in good condition throughout the construction period.

(e) signs on equipment are placed in an easily visible location and maintained in good condition

**23.9 Equipment and Supplies**

The Recipient will maintain written policies and procedures that address acquisition, classification, and management of all equipment and supplies acquired or used under this award.

**23.10 Safety and Technology Data**

The Recipient will ensure that FRA has access to safety and technology relevant data generated by the Recipient under the award, in a machine-readable format, where specified in Article 4 of Attachment 2 of this Agreement.

**23.11 Intellectual Property**

The Recipient agrees to the standard patent rights clauses issued by the Department of Commerce at 37 C.F.R. § 404.14, as applicable.

**23.12 Liquidation of Recipient Obligations**

(a) The Recipient will 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 C.F.R. §§ 200.344–200.346.

## ARTICLE 24: CONSTRUCTION AND DEFINITIONS

**24.1 Agreement**

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This Agreement consists of the following:

(a) Agreement Cover Sheet

(b) Attachment 1: General Terms and Conditions

(c) Attachment 2: Project-Specific Terms and Conditions

(d) Exhibit A: Applicable Federal Laws and Regulations

(e) Exhibit B: Additional Standard Terms

(f) Exhibit C: Quarterly Project Progress Reports and Recertifications

**24.2 Construction**

(a) In these General Terms and Conditions, there are no references to articles or sections in project-specific portions of this Agreement that are not contained in Attachments or Exhibits listed in Section 24.1.

(b) If a provision in these General Terms and Conditions or the Exhibits conflicts with a provision in the Project-Specific Terms and Conditions in Attachment 2 of this Agreement, then the relevant portion in Attachment 2 prevails. If a provision in the Exhibits conflicts with a provision in these General Terms and Conditions, then the provision in these General Terms and Conditions prevails.

**24.3 Integration**

This Agreement constitutes the entire agreement of the parties relating to the Project and supersedes any previous agreements, oral or written, relating to the Project.

**24.4 Definitions**

This Section defines terms used in this Agreement. Additional definitions found in 2 C.F.R. § 200.1 are incorporated by referenced into this Agreement.

"Agreement Federal Funds" means the total amount of Federal funds obligated under this Agreement. This is the amount shown in Section 6.1 of Attachment 2 of this Agreement.

"Application" means the application identified in Article 3 of Attachment 2 of this Agreement, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

"Construction Substantial Completion" means the stage of the Project when all construction tasks are complete such that the Recipient can use the Project for its intended use and only closeout activities remain. Activity to address or complete closeout activities will not prevent or disrupt use of the Project.

"Contingent Commitment" means the unobligated amounts of future available budget authority specified in law that FRA commits to obligate under the terms of this Agreement.

"Federal Share" means the Agreement Federal Funds and Other Federal Funds. If there are no Other Federal Funds, the Federal Share is the same as the Agreement Federal Funds.

"General Terms and Conditions" means this Attachment 1.

"Other Federal Funds" means Federal funds that are part of the Approved Project Budget in Section 6.5 of Attachment 2 of this Agreement for the Project but are not obligated under this Agreement.

"Project" means the project proposed in the Application, as modified by the negotiated provisions of this Agreement, including Attachment 2 of this Agreement.

"Project Closeout" means the date that FRA 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.

"Project Cost Savings" means the difference between the actual costs to complete the Project and the estimated total Project cost listed in Section 6.5 of Attachment 2 of this Agreement, if after the Recipient completes the tasks identified in Article 4 of Attachment 2 of this Agreement to FRA's satisfaction, the actual Project costs are less than the estimated total Project costs.

"Rural Area" means any area that is not within an area designated as an urbanized area by the Bureau of the Census.

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**24.5 Calendar Dates**

Unless otherwise specified, all dates and durations are in calendar days, calendar quarters, or calendar years, as appropriate.

**24.6 Communication in Writing**

Unless otherwise specified, all written communication may be provided by electronic mail.

## ARTICLE 25: AGREEMENT EXECUTION AND EFFECTIVE DATE

**25.1 Counterparts**

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

**25.2 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.

## ARTICLE 26: PROGRAM-SPECIFIC CLAUSES

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**26.1 Interstate Rail Compacts Grant Program**

The Recipient agrees to comply with the clauses in Section 26.1 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) through (g) of Section 26.1 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Non-Federal Match. The Recipient will provide a Non-Federal match of not less than 50 percent of the eligible expenses under the grant.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1, the Recipient will comply with the following clauses, as applicable:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, 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, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under Section 26.1 of this Attachment 1, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, as appropriate and to the extent consistent with law, the Recipient should under 2 C.F.R. § 200.322, 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.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.), the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreement (if any) with any entity operating rail services over such rail infrastructure.

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(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.1(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to

those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C.§ 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Operator Limitation. Recipient's eligible expenses must be related to intercity passenger rail service to be operated by Amtrak.

(i) Reporting. As requested by FRA, the Recipient shall report on:

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(1) the status of the planning efforts and coordination funded by the grant award;

(2) plans for continued implementation of the interstate rail compact;

(3) the status of, and data regarding, any new, restored, or enhanced rail services initiated under the interstate rail compact; and

(4) other data and information as requested by FRA.

**26.2 Railroad Crossing Elimination Program Clauses**

The Recipient agrees to comply with the clauses in Section 26.2 of this Attachment 1.

Consistent with 49 U.S.C. §§ 22905(e) & 22909(j), clauses (b), (c), (d), and (g) of Section 26.2 of this Agreement 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law. In addition, clause (f) does not apply to: 1) the Alaska Railroad or its contractors; or 2) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Agreement 1:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, 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, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, as appropriate and to the extent consistent with law, the Recipient should under 2 C.F.R. § 200.322, 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.

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(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.2(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.

(e) Impacted Rail Carrier or Real Property Owner Approvals. In accordance with 49 U.S.C. § 22909(e)(2)(A), prior to proceeding with the construction of the Project funded by this Agreement, if applicable, Recipient will obtain necessary approvals to commence construction from any impacted rail carriers or real property owners. If the Project is a planning project, as described in 49 U.S.C. § 22909(d)(6), the Recipient agrees to work collaboratively with rail carriers and right-of-way owners.

(f) Labor Protective Arrangements

(1) Notwithstanding 49 U.S.C. § 22905(e)(1), and in accordance with 49 U.S.C. § 22909(j)(3), any employee covered by the Railway Labor Act (45 U.S.C. § 151 et seq.) and the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.) who is adversely affected by actions taken in connection with the project financed in whole or in part by such grant shall be covered by employee protective arrangements required to be established under 49 U.S.C. § 22905(c)(2)(B). In accordance with 49 U.S.C. § 22905(c)(2)(B), the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404, as such protective arrangements are described in the final FRA guidance titled Equivalent Protections for Railroad Employees and effective December 28, 2022, included herein in Exhibit B.

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(2) In accordance with 49 U.S.C. § 22909(j)(3), Recipient, and any successors, assigns, and contractors of Recipient:

i. shall be bound by the employee protective arrangements required under subparagraph (1); and

ii. shall be responsible for the implementation of such arrangements and for the obligations under such arrangements, but may arrange for another entity to take initial responsibility for compliance with the conditions of such arrangement.

(3) Labor protections required pursuant to Subsection (f) of Section 26.2 of this Attachment 1 shall be documented consistent with Article 18 of this Attachment 1.

(g) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with

those standards for construction work financed under an agreement made under 49 U.S.C.§ 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(h) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

**26.3 Consolidated Rail Infrastructure and Safety Improvements Grants Clauses**

The Recipient agrees to comply with the clauses in Section 26.3 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) and (c) through (g) of Section 26.3 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12 of this Attachment 1:

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(1) for infrastructure projects, iron and manufactured products used in the Project are subject to 49 U.S.C. §22905(a) as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, 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, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, as appropriate and to the extent consistent with law, the Recipient should under 2 C.F.R. § 200.322, 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.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regarding the scope of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the railroad complies with liability requirements consistent with 49 U.S.C. § 28103.

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By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.3(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C.§ 24308(a). For these purposes, wages in collective bargaining agreements

negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

**26.4 Restoration and Enhancement Grants Clauses**

The Recipient agrees to comply with the clauses in Section 26.4 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) and (c) through (g) of Section 26.4 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right-of -way and facilities under current law.

(a) Maximum Funding Limitation. A grant authorized by 49 U.S.C. § 22908 may not exceed:

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(1) [illegible] percent of the projected net operating costs for the [illegible] year of service;

(2) 80 percent of the projected net operating costs for the second year of service;

(3) 70 percent of the projected net operating costs for the third year of service;

(4) 60 percent of the projected net operating costs for the fourth year of service;

(5) 50 percent of the projected net operating costs for the fifth year of service; and

(6) 30 percent of the projected net operating costs for the sixth year of service.

(b) Buy America. In lieu of Section 12.1 of this Agreement 1:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, 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, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The

Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under Section 26.4 of this Attachment 1, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, as appropriate and to the extent consistent with law, the Recipient should under 2 C.F.R. § 200.322, 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.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

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(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(2), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.4(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform

Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C.§ 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Route Reporting. The Recipient will provide similar information regarding the route performance, financial, and ridership projections, and capital and business plans that Amtrak is required to provide, and such other data and information as is required by Article 4 of Attachment 2 of this Agreement.

(i) Termination. In addition to the terms of this Attachment 1, FRA may terminate this Agreement upon the cessation of service, or the violation of any other term of this Agreement.

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**26.5 Federal-State Partnership for Intercity Passenger Rail and Federal-State Partnership for State of Good Repair Clauses**

The Recipient agrees to comply with the clauses in Section 26.5 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) through (g) of Section 26.5 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, 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, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, as appropriate and to the extent consistent with law, the Recipient should under 2 C.F.R. § 200.322, 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.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition (or in which the definition applies), including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

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(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.5(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C.§ 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

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(h) Northeast Corridor Cost Allocation. For projects located on the Northeast Corridor, as that term is defined in 49 U.S.C. § 24904(a)(4), Amtrak and the public authorities providing commuter rail passenger transportation at the Project location on the Northeast Corridor must remain in compliance with 49 U.S.C. § 24905(c)(2).

(i) Interest and Financing Costs. Pursuant to 49 U.S.C. § 24911(g)(2), interest and other financing costs of efficiently carrying out a part of the Project within a reasonable time are a cost of carrying out the Project under a Phased Funding Agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing. The Recipient will certify to FRA's satisfaction that the Recipient has shown reasonable diligence in seeking the most favorable financing terms.

###

Attachment 2

# PROJECT-SPECIFIC TERMS AND CONDITIONS

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# Project-Specific Terms and Conditions
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## ARTICLE 1: PROJECT-SPECIFIC DESIGNATIONS

### 1.1 Recipient

This Agreement (Agreement) is between the Federal Railroad Administration (FRA) and the Broward Metropolitan Planning Organization (the Recipient).

### 1.2 Project and Purpose

The purpose of this award is to fund a Rail Crossing Elimination Program (RCEP) grant for the Broward County Sealed Corridor Project (the Project), as described in Article 4 of this Attachment 2, to help achieve the goals identified in the Notice of Funding Opportunity for Railroad Crossing Elimination Program for Fiscal Year 2022, Volume 87 No. 40335 (July 6, 2022) that solicited applications for Federal financial assistance. FRA and the Recipient will accomplish that purpose by timely completing the Project and ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Application.

### 1.3 Program Designations

(a) Research and Development. This award is not for research and development.

(b) Project [illegible] award[illegible] for [illegible]on-Majo[illegible]roject a[illegible]m[illegible]n FRA Guidance on Develop[illegible]ent and [illegible]mple[illegible]mentatio[illegible] of Rai[illegible]oa[illegible] Capita[illegible] Projects, Janua[illegible]y 11, 2023 (Railroad Capital Proj[illegible]ts Guida[illegible]ce).

(c) Phased [illegible]nding. [illegible]his a[illegible]ard is no[illegible] a p[illegible]ased fun[illegible]ing [illegible]greement as fu[illegible]ther discussed in Section 6.7 of this Attachment 2.

(d) Grant or Cooperative Agreement. This award is made as a Grant Agreement.

(e) Security Risk. This award is for a Project that has a low security risk.

(f) Rural Area. The information the Recipient provided to FRA, including in the Application, demonstrates this award is not for a Project in a Rural Area.

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## ARTICLE 2: SPECIAL TERMS AND CONDITIONS

There are no special terms for this award.

## ARTICLE 3: ADMINISTRATIVE INFORMATION

### 3.1 Application

Application Title: Broward County Sealed Corridor Project

Application Date: October 10, 2022

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### 3.2 FRA Awarding Official

FRA Office of Railroad Development
Federal Railroad Administration
1200 New Jersey Ave, SE
Washington, DC 20590
FRA-Grants@dot.gov

### 3.3 Federal Award Date

The "Federal Award Date" is the effective date of this Agreement, as defined under Section 24.4 of Attachment 1 of this Agreement.

### 3.4 Program Name and Assistance Listings Number

For the FY22 Railroad Crossing Elimination Grant Program, the Assistance Listings Number is 20.327 and the Assistance Listings Title is Railroad Crossing Elimination.

### 3.5 Recipient's Unique Entity Identifier

The Recipient's Unique Entity Identifier, as defined at 2 C.F.R. § 25.415, is listed in Section 1B on the Agreement cover sheet.

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### 3.6 Federal Award Identification Number

The Federal Award Identification Number is listed in Section 2 of the Agreement cover sheet as the "Agreement Number."

## ARTICLE 4: STATEMENT OF WORK

### 4.1 General Project Description

The Project will benefit Broward County and the entire east coast of Florida by constructing supplemental safety measures at 21 highway-rail grade crossings on the Florida East Coast Railway (FECR)/Brightline Florida. LLC (Brightline) shared-use corridor. The Project will include the design and construction activities that will enhance safety by reducing one of the primary types of accidents experienced along the railway: vehicles driving around the railroad entrance gates. To this end, the Project will install a proposed 32 exit gates, 1 crossing gate and 7 centerline raised medians to deter drivers from performing this illegal behavior. Of the 66 crossings on the corridor in Broward County, all crossings have entrance gates, and 39 have an exit gate or other element that helps to prevent drivers from going around the gates. This Project would improve 21 of the remaining 27 crossings working towards a 'sealed corridor' through Broward County.

### 4.2 Project Location

The Project is located along the 20-mile Brightline and FECR Shared Corridor within Broward County, specifically between milepost (MP) 331.1 to MP 350.81. The Project will improve safety at 21 at-grade crossings along and within the FECR-owned railroad right-of-way.

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**Figure 1 – Project Location Map**

### 4.3 Project Scope

The Project includes the design and construction of improvements at 21 grade crossings along the shared corridor with a combination of exit gates and centerline raised medians. The scope of the Project includes the design and construction of the improvements described below and as listed in Table 1 (Crossing Locations and Improvements) by milepost (MP) and U.S. Department of Transportation (USDOT) Crossing Inventory Number).

- Install centerline raise medians at six crossings.
- Install exit gate improvements at nineteen crossings. [1]
- Closure at one crossing.

**Table 1:** Crossing Locations and Improvements

[1] The Recipient will install only centerline raised medians at one crossing, only exit gate improvements at fourteen crossings, both raised medians and exit gate improvements at 5 crossings and crossing closure at one crossing.

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| Crossing ID | RailRoad | Street | Milepost | City | Crossing Infrastructure Maintenance Agreement Holder | Centerline Raised Median | Exit Gate |
|---|---|---|---|---|---|---|---|
| 272519P | FEC | COPANS RD | 331.1 | POMPANO BEACH | BROWARD COUNTY | | Proposed RCEP (West Side) |
| 272528N | FEC | NE 6TH ST | 332.77 | POMPANO BEACH | CITY OF POMPANO BEACH | | Proposed RCEP (Both Sides) |
| 272531W | FEC | NE 3RD ST | 332.97 | POMPANO BEACH | CITY OF POMPANO BEACH | | Proposed RCEP (Both Sides) |
| 272534S | FEC | SW 2ND ST | 333.31 | POMPANO BEACH | CITY OF POMPANO BEACH | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272535Y | FEC | SW 6TH ST | 333.79 | POMPANO BEACH | BROWARD COUNTY | | Proposed RCEP (Both Sides) |
| 272870B | FEC | NE 56TH ST | 335.63 | OAKLAND PARK | BROWARD COUNTY | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272546L | FEC | NE 24TH ST | 338.3 | WILTON MANOR | CITY OF WILTON MANOR | | Proposed RCEP (Both Sides) |
| 272547T | FEC | NE 17TH CT | 338.8 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | Proposed RCEP (Both Sides) | |
| 272558F | FEC | SW 5TH ST | 341.45 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (Both Sides) |
| 272559M | FEC | SW 6TH ST | 341.56 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (Both Sides) |
| 272560G | FEC | SW 7TH ST | 341.67 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (Both Sides) |
| 272564J | FEC | SW 17TH ST | 342.55 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | | Proposed RCEP (East Side) |
| 272566X | FEC | SW 22ND ST | 342.96 | FORT LAUDERDALE | CITY OF FT. LAUDERDALE | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272572B | FEC | OLD GRIFFIN RD | 345.44 | DANIA BEACH | BROWARD COUNTY | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272573H | FEC | NW 1ST ST | 345.81 | DANIA BEACH | CITY OF DANIA BEACH | Proposed RCEP (East Side) | Proposed RCEP (West Side) |
| 272576D | FEC | DIXIE HWY | 347.08 | DANIA BEACH | BROWARD COUNTY | | Proposed RCEP (Both Sides) |
| 272582G | FEC | GARFIELD ST | 348.07 | HOLLYWOOD | CITY OF HOLLYWOOD | Proposed Crossing Closure | |
| 272584V | FEC | JOHNSON ST | 348.27 | HOLLYWOOD | CITY OF HOLLYWOOD | | Proposed RCEP (Both Sides) |
| 272589E | FEC | WASHINGTON ST | 349.29 | HOLLYWOOD | CITY OF HOLLYWOOD | | Proposed RCEP (Both Sides) |
| 272591F | FEC | NE 3RD ST | 350.3 | HALLANDALE BEACH | CITY OF HALLANDALE BEACH | | Proposed RCEP (Both Sides) |
| 272593U | FEC | SE 3RD ST | 350.81 | HALLANDALE BEACH | CITY OF HALLANDALE BEACH | | Proposed RCEP (Both Sides) |

The Recipient will notify FRA in writing of any requested changes in Project Scope and will not proceed with the changed scope unless approved by FRA in writing. If approved, changes to Project Scope may require additional environmental review or an amendment to this Agreement.

**Task 1: Project Administration and Management**

Subtask 1.1: Project Administration

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

- Brightline Florida – subrecipient and partner for Project implementation
- Florida East Coast Railway (FECR) – Freight railroad along corridor and lead on maintaining signal improvements installed though this Project. Corridor Owner.
- Broward County – funding partner and roadway owner.
- Local Municipal - Pompano Beach, Fort Lauderdale, Wilton Manors, Dania Beach, Hollywood, and Hallandale Beach – funding partners and roadway owners.
- FRA – Grantor.

The Recipient will facilitate the coordination of all activities necessary for implementation of the Project. The Recipient will:

- Complete necessary steps to hire a qualified consultant/contractor to perform required Project work, as necessary;
- Hold regularly scheduled Project meetings with FRA;
- Inspect and approve work as it is completed; and
- Participate in other coordination, as needed.

The Recipient will require that each of the Funding Partners (roadway owners) shall enter into crossing agreements or amendments to the existing crossing agreements with Florida East Coast Railway L.L.C. ("FECR"). The Crossing Agreement Amendments will require the respective Funding Partners (roadway owners) for each crossing improved as part of the Project to bear the cost of maintaining the improvements to be constructed as part of the Project and to add Brightline as an intended third-party

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beneficiary of the respective Crossing Agreements. The Subrecipient may not begin work on subsequent tasks until the Recipient has provided all executed Crossing Agreements Amendments.

Subtask 1.2: Project Management Plan

The Recipient will prepare a Project Management Plan (PMP), that describes how the Project will be implemented and monitored to ensure effective, efficient, and safe delivery of the Project on time and within budget. The PMP will describe, in detail, the activities and steps necessary to complete the tasks outlined in this Statement of Work.

The PMP will include a Project Schedule and Project Budget for the work to be performed under this Agreement. The Project Schedule will be consistent with the Estimated Project Schedule in Section 5.2 of this Attachment 2 but provide a greater level of detail. Similarly, the Project Budget should be consistent with the Approved Project Budget in Section 6.5 of this Attachment 2 but provide a greater level of detail.

The Recipient will submit the PMP to FRA for review and approval. The Recipient will implement the Project as described in the approved PMP. The Recipient will not begin work on subsequent tasks until FRA has provided written approval of the PMP, unless FRA has provided pre-award authority for such work under Section 6.6 of this Attachment 2. FRA will not reimburse the Recipient for costs incurred in contravention of this requirement.

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FRA may require the Recipient to update the PMP. The Recipient will submit any such updates to FRA for review and approval and FRA will determine if updates to the PMP require an amendment to this Agreement. The Project Budget and Project Schedule may be revised consistent with Article 5 of Attachment 1 of this Agreement without amending this Agreement.

The Recipient will identify agreements governing the construction, operation, and maintenance of the Project in the PMP. If requested by FRA, the Recipient will provide FRA the final, executed copies of any agreements within ten business days of the request.

The PMP will be consistent with the FRA Guidance on Development and Implementation of Railroad Capital Projects (Railroad Capital Projects Guidance) and 49 U.S.C. § 22903, as applicable.

*Note: As identified in the Railroad Capital Projects Guidance, the Project Budget for a capital project should be based on a Capital Cost Estimate for the Project. The level of effort required to prepare a Capital Cost Estimate varies based on Project cost, scope, and complexity.*

*For Major Projects and for Non-Major Projects where FRA determines it is appropriate based on Project cost, scope, and complexity, FRA will work with the Recipient prior to obligation to develop and document expectations and requirements for preparing a Capital Cost Estimate and Financial Plan. These may be included under Task 1 of Section 4.3 of this Attachment 2 as separate subtasks and/or deliverables.*

Subtask 1.3: Project Closeout

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The Recipient will submit a Final Performance Report as required by Section 7.2 of Attachment 1 of this Agreement, which should describe the cumulative activities of the Project, including a complete description of the Recipient's achievements with respect to the Project objectives and milestones.

**Task 1 Deliverables:**

| Deliverable ID | Subtask | Deliverable Name |
|---|---|---|
| 1.1 | 1.1 | Crossing Agreements Amendments |
| 1.2 | 1.2 | Project Management Plan |
| 1.3 | 1.3 | Final Performance Report |

**Task 2: Final Design**

The Recipient shall prepare Final Design (the "Final Design"), including all design elements required to be sufficient to commence with procurement documentation to solicit a construction contract for the Project. The Final Design will advance the FRA-accepted PE design and may include the following documents: roadway plan and profile plans, signing and pavement marking plans, crossing layouts, traffic management plans, finalized quantities and detailed cost estimate. The Recipient may prepare the Final Design as one comprehensive package or multiple packages, as defined in the Detailed PMP prepared in Task 1.

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The Recipient will submit the Final Design for review and concurrence by the railroads (Brightline and FECR) as well as any applicable roadway authorities or municipalities. Upon completion of stakeholder review and concurrence, the recipient will submit the Final Design to FRA for review and acceptance to confirm that the design supports a Project that can be constructed within the scope, schedule, and budget of this Agreement. The Recipient shall not proceed with construction of a specific Project Component until FRA has accepted the Final Design and given the Recipient notice to proceed with construction for the accepted Project Component.

The Final Design will include revisions to, or new plan inserts for each individual crossing, as applicable.

a. Roadway Plan and Profile: Prepare either revisions to the existing roadway plan and profile or a new insert for inclusion in the Baseline Design package showing the location of all new or modified physical elements associated with the installation of the improvements. The final design for the roadway plan and profile shall also include the identification of existing and proposed (if relocated) public and private utilities and any utility easements required to support the installation of the improvements.

b. Signing and Pavement Marking Plans: Prepare either revisions to the existing signing and pavement marking plans or a new insert for inclusion in the Baseline Design package showing

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the location of all new or modified physical elements and surface modifications associated with the installation of the improvements.

c. Crossing Layout: As necessary, prepare either revisions to the existing crossing layout or a new insert for inclusion in the Baseline Design package showing the location of all new or modified physical elements associated with the installation of the improvements. The final design for the crossing layout shall also include the identification of existing and proposed (if relocated) public and private utilities and any utility easements required to support the installation of the improvements.

d. Maintenance of Traffic Plan: Prepare Maintenance of Traffic (MOT) Plan to provide Temporary Traffic Control (TTC) during the construction of the improvements.

e. Need copy of correspondence with the roadway owners. (Upon Request)

f. Stakeholders' approval for the plans. (Upon Request)

Subtask 2.1: Centerline Raised Medians

The Recipient shall prepare final design for the improvements proposed at the six crossings that will receive centerline raised medians, as listed in Table 1.

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Subtask 2.2: Exit Gates

The Recipient shall prepare final design for the improvements proposed at the nineteen crossings that will receive exit gates, as listed in Table 1.

Subtask 2.3: Crossing Closure

The recipient shall prepare final design for the proposed crossing closure at one crossing, as listed in Table 1.

Subtask 2.4: Detailed Cost Estimate

The Final Design shall include a detailed engineering cost estimate for the materials and labor required to construct the Project, presented in the Standard Cost Category (SCC) format as defined in FRA's Capital Cost Estimating Guidance, August 30, 2016 (https://www.fra.dot.gov/eLib/Details/L17452); and Monitoring Procedure 33, SCC Worksheets reference (https://www.fra.dot.gov/eLib/details/L16055). The detailed engineering cost estimate shall also include any costs required for utility relocation or connection, ROW acquisition or easement, traffic control, railroad flagging, construction management, project management or other associated costs that Recipient may require to construct the Project.

The Recipient will be responsible for ensuring the Project is constructed in accordance with the FRA approved environmental documents and the FRA accepted Final Design Package. The Recipient is responsible for ensuring that commitments identified in the approved environmental document are accounted for in the Final Design process.

Upon acceptance of the Final Design, FRA will authorize the Recipient to proceed with construction activities in Task 3 of this SOW. FRA authorization to proceed with construction, ROW acquisition or

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utility relocation will be subject to confirmation from the Recipient that the Project can be completed within the scope, schedule, budget, and terms and conditions of the Agreement and as described in the PMP prepared in Task 1.

**Task 2 Deliverables:**

| Deliverable ID | [Subtask] | Deliverable Name |
|---|---|---|
| 2.1 | 2.1 | Final Design Package - Centerline Raised Median (6 crossings) |
| 2.1 | 2.2 | Final Design Package - Exit Gates (20 crossings) |
| 2.1 | 2.3 | Final Design Package - Crossing Closure (1 crossing) |
| 2.2 | 2.4 | Detailed and Itemized Cost Estimate |

**Task 3: Construction**

Upon receipt of FRA acceptance of the Final Design prepared in Task 2, the Recipient shall construct the rail-highway safety improvements in the Project as described in this SOW. The Recipient shall complete the Project in accordance with the environmental review as defined in the CE approved for this Project. The Recipient shall deliver the Project using the method defined in the most current approved PMP prepared in Task 1 and as presented in the Final Design prepared in Task 2.

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USDOT Crossing Inventory

Once all the signage, pavement markings and railroad signaling equipment have been updated, it is the responsibility of the Recipient to contact FEC and Florida DOT Rail Division within 30 days to update the U.S. DOT Inventory Form, per 49 CFR Part 234(e). Forwarding a copy of the updated Inventory Forms to FRA is considered a deliverable.

**Task 3 Deliverables:**

| Deliverable ID | Deliverable Name |
|---|---|
| 3.1 | Procurement Materials (Upon Request) |
| 3.2 | Project Delivery Materials (Upon Request) |
| 3.3 | Update USDOT Crossing Inventory |

**Task 4: Unallocated Contingency**

Project partners established an appropriate level of contingency based on the current level of design, which will be managed through the final design and construction phases of the Project through this task.**4.4 Implement Required Environmental Commitments**

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The Recipient will implement the Project consistent with the documents and environmental commitments identified below.

*Instructions: To be completed in coordination with an FRA environmental protection specialist. If there are environmental commitments in the National Environmental Policy Act (NEPA) decision document, Section 106 Programmatic Agreement (PA), or Memorandum of Agreement (MOA), or in other documents or correspondence associated with the environmental review for the Project, include and complete Table 4-A.*

**Table 4-A: Environmental Commitments**

| Document Type | Commitment Reference | Document Date |
|---|---|---|
| [Categorical Exclusion, Finding of No Significant Impact, Record of Decision] | [insert reference to section(s) of decision where commitment(s) are identified] | [insert date of decision] |
| [insert title of MOA, PA, or other document or correspondence that contains environmental co t(s)] | [insert reference to section(s) of document where commitment(s) are identified] | [insert date of MOA/correspondence] |

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*Instructions: If there are no environmental commitments for the Project, include the following:*

None.

*Instructions: If the award is for both Project development and Project implementation lifecycle stages, include the following:*

The Recipient will implement any environmental commitments identified through the NEPA process conducted under Task [insert task number and title].

## ARTICLE 5: AWARD DATES AND ESTIMATED PROJECT SCHEDULE

### 5.1 Award Dates

Budget Period End Date: December 2026

Period of Performance End Date: December 2026

### 5.2 Estimated Project Schedule

Milestones associated with this Agreement are identified in Table 5-A: Estimated Project Schedule. The Recipient will complete these milestones to FRA's satisfaction by the Schedule Date, subject to Article 5 of Attachment 1 of this Agreement. The Recipient will notify FRA in writing when it believes it has achieved the milestone.

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**Table 5-A: Estimated Project Schedule**

| Milestone | Schedule Date |
|---|---|
| Final Design Completion | August 31, 2025 |
| Construction Substantial Completion | August 31, 2026 |

## ARTICLE 6: AWARD AND PROJECT FINANCIAL INFORMATION

### 6.1 Award Amount

Agreement Federal Funds: $15,440,000.00

### 6.2 Federal Obligation Information

Federal Obligation Type: Single

### 6.3 Federal Authorization and Funding Source.

Authorizing Statute: Section 22305 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, November 15, 2021) codified at 49 U.S.C. 22909, authorizes the Railroad Crossing Elimination Program (RCE Program)

Appropriation: Advanced Appropriation in Division J of IIJA

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### 6.4 Funding Availability

Program funding that is obligated under this Agreement remains available until expended.

### 6.5 Approved Project Budget

The estimated total Project cost under this Agreement is $19,300,000.

FRA will contribute a maximum of 80% percent of the total Project cost, not to exceed the Agreement Federal Funds in Section 6.1 of this Attachment 2. FRA will fund the Project at the lesser amount of the Agreement Federal Funds or the FRA maximum contribution percentage of total Project costs.

The Recipient will contribute $3,860,000 in Agreement Non-Federal Funds. Recipient's Agreement Non-Federal Funds are comprised of funding from Broward County Government ($2,365,000) and local municipalities ($1,495,000).

The Recipient will complete the Project to FRA's satisfaction within the Approved Project Budget, subject to Article 5 of Attachment 1 of this Agreement.

**Table 6-A: Approved Project Budget by Task**

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| Task # | Task Title | Agreement Federal Funds | Agreement Non-Federal Funds | Total |
|---|---|---|---|---|
| 1 | Project Administration and Management | $2,560,000 | $640,000 | $3,200,000 |
| 2 | Final Design | $720,000 | $180,000 | $900,000 |
| 3 | Construction | $9,680,000 | $2,420,000 | $12,100,000 |
| 4 | Contingency | $2,480,000 | $620,000 | $3,100,000 |
| | **Total** | **$15,440,000** | **$3,860,000** | **Total Project Cost: $19,300,000** |

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**Table [illegible] Approved Project Budget by Source**

| Funding Source | Total Amount | Percentage of Total Project Cost |
|---|---|---|
| **Federal Share** | $15,440,000 | 80% |
| RCEP Agreement Federal Funds | $15,440,000 | 80% |
| **Agreement Non-Federal Funds** | $3,860,000 | 20% |
| Broward County | $2,365,000 | 12% |
| Local Municipalities* | $1,495,000 | 8% |

*Pompano Beach, Fort Lauderdale, Wilton Manors, Dania Beach, Hollywood, and Hallandale Beach

### 6.6 Pre-Award Costs

*Instructions: If the Recipient has not incurred advance or pre-award costs, include the following:*

None. Consistent with 2 C.F.R. part 200, costs incurred before the date of this Agreement are not allowable costs under this award. FRA will neither reimburse those costs under this award nor consider them as a non-Federal cost-sharing contribution to this award.

*Instructions: If the Recipient has incurred advance or pre-award costs for the Project consistent with 2 C.F.R. part 200, include and complete the following:*

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On [insert date], FRA provided pre-award authority for cost incurrence for the following costs for the Project in response to Recipient's request:

| Task # | Task Name | Agreement Federal Funds | Agreement Non-Federal Funds | Total Cost |
|---|---|---|---|---|
| 1 | | $ | $ | $ |
| | **Total** | **$** | **$** | **$** |

The above pre-award costs were necessary for efficient and timely performance of the scope of work and were incurred directly pursuant to the negotiation and in anticipation of this Agreement.

### 6.7 Phased Funding Agreement

Not applicable.

## ARTICLE 7: PERFORMANCE MEASUREMENT INFORMATION

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Table 7-A: Performance Measurement Table identifies the performance measures that this Project is expected to achieve. These performance measures will enable FRA to assess the Recipient's progress in achieving grant program goals and objectives. The Recipient will report on these performance measures in accordance with the frequency and duration specified in Table 7-A.

Upon Project completion, the Recipient will submit reports comparing the actual Project performance of the new and or improved asset(s) against the pre-Project (baseline) performance and expected post-Project performance as described in Table 7-A. The Recipient will submit the performance measures report to the Project Manager in accordance with Table 7-A.

**Table 7-A: Performance Measurement Table**

| Goal | Objective | Performance Measure | Description of Measure | Measurement | Reporting |
|---|---|---|---|---|---|
| ***Goal 1*** | ***Reduce Incidents in Broward County along the Rail Corridor*** | ***Reported Accidents/ Incidents (All Crossings)*** | *Total number of highway-rail grade crossing accidents/incidents reported to FRA in the calendar year for all Broward County grade crossings on the Brightline-FECR Shared Corridor.* | **Pre-Project (Baseline) Performance as of December 31, 2022:** Total annual highway-rail grade crossing accidents/incidents reported to FRA in the Calendar Year 2022. | **Frequency:** Submitted annually on January 31st of 2027 and 2028. |
| | | | | **Expected Post-Project Performance:** Total annual highway-rail grade crossing | **Duration:** For two years after the end of the calendar |

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| | | | | | |
|---|---|---|---|---|---|
| | | | *As submitted to FRA on the Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57, Rev. 08/10 or newer).* | accidents/incidents reported to FRA in Calendar Years 2027 and 2028. | year of the Project Performance Period end date. |
| ***Goal 2*** | ***Reduce Incidents in Broward County along the Rail Corridor*** | **Reported Accidents/ Incidents (Pro ngs)** | Total number of highway-rail grade crossing accidents/incidents reported to FRA in the calendar year for the crossings improved under this Project on the Brightline-FECR Shared Corridor that are within Browar unty.<br><br>As su mitte to FRA n the ighway-Rail G ade Crossing Accident/Incident Report (Form FRA F 6180.57, Rev. 08/10 or newer). | **Pre-Project (Baseline) Performance as of December 31, 2022:** Total annual highway-rail grade crossing accidents/incidents reported to FRA in the Calendar Year 2022. | **Frequency:** Submitted annually on January 31st of 2027 and 2028. |
| | | | | **Expected Post-Project Performance:** otal annual highwa rail grade crossing accidents/inci nts reported to FR in Calendar Years 2027 and 2028. | **Duration:** For two years after the end of the calendar year of the Project Performance Period end date. |

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The Recipient will prepare a Project Outcomes Report pursuant to Section 8.3 of Attachment 1 of this Agreement.

## ARTICLE 8: ENVIRONMENTAL COMPLIANCE

*Instructions: To be completed by an FRA environmental protection specialist to document compliance with NEPA prior to obligation.*

*If there is no ground disturbance and the award is for (1) the project development stages of a project (e.g., planning, preliminary engineering, and/or NEPA); (2) research; or (3) a "full lifecycle" grant, provided the award requires notice to proceed to project implementation (e.g., final design or construction) after the completion of project development, and FRA has determined a categorical exclusion applies, include the language below to identify the applicable categorical exclusion(s). Do not*

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*use this language for project implementation stages or for ground disturbing activity, including geotechnical studies.*

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.), other environmental statutes, related regulatory requirements, and FRA's NEPA-implementing regulations (23 C.F.R. part 771), FRA has determined that the actions funded under this Agreement as described in this Attachment 2, Section 4.5, Tasks [XX], are categorically excluded from detailed environmental review pursuant to 23 C.F.R. § 771.116 (c) [(1), (3), or (8)]. In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108; 36 C.F.R. part 800), FRA has also determined that the actions funded under this Agreement have no potential to cause effects to historic properties. The actions do not require the use of property protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303; 23 C.F.R. part 774).

Categorical exclusions (CEs) are actions identified in an agency's NEPA-implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 C.F.R. § 1508.1(d). In analyzing the applicability of a CE, FRA also considered whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. In accordance with 23 C.F.R. § 771.116 (a) and (b), FRA has further concluded that no unusual circumstances exist with respect to development of the activities funded under this grant that might trigger the need for more detailed environmental review.

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Should conditions or the scope of the action change, the Recipient must notify FRA and receive written response and notice to proceed before proceeding. FRA will evaluate whether this determination remains applicable or if additional environmental review is necessary.

*Instructions: If the award is for (1) project development that involves ground-disturbing activity; or (2) for project implementation (e.g., final design, construction, or acquisition), including project implementation as part of a full lifecycle grant without a notice to proceed to project implementation, FRA must complete the environmental review for the ground-disturbing activity or the final design and construction project prior to obligation, and document environmental review completion in the grant agreement using the following language:*

FRA signed a [type of environmental document] for this Project on [date] [and a [type of Section 106 agreement document] on [date]]. The Recipient [is/is not] responsible for complying with environmental commitments, such as mitigation measures and/or design features, described in the [type of environmental document], as identified in Section 4.4 of this Attachment 2.

Should conditions or the scope of the action change, the Recipient must notify FRA and receive written response and notice to proceed before proceeding. FRA will evaluate whether this determination remains applicable or if additional environmental review is necessary.

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# ARTICLE 9: CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

## 9.1 Consideration of Climate Change and Environmental Justice Impacts

This Section identifies how the Project addresses climate change and environmental justice priorities. The Recipient certifies that rows marked with "X" in the following table are accurate:

| | |
|---|---|
| | The Project directly supports a Local/Regional/State Climate Action Plan that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)* |
| | The Project directly supports a Local/Regional/State Equitable Development Plan that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)* |
| | The Project directly supports a Local/Regional/State Energy Baseline Study that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)* |
| | The Recipient or a Project partner used environmental justice tools, such as the EJSCREEN, to minimize adverse impacts of the Project on environmental justice communities. *(Identify the tool(s) in the supporting narrative below.)* |
| X | The Project supports a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand. *(Describe that shift in the supporting narrative below.)* |
| | The Project utilizes demand management strategies to reduce congestion, induced travel demand, and greenhouse gas emissions. *(Describe those strategies in the supporting narrative below.)* |
| | The Project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both. *(Describe the incorporated infrastructure in the supporting narrative below.)* |
| | The Project supports the installation of electric vehicle charging stations. *(Describe that support in the supporting narrative below.)* |
| | The Project promotes energy efficiency. *(Describe how in the supporting narrative below.)* |
| | The Project serves the renewable energy supply chain. *(Describe how in the supporting narrative below.)* |
| | The Project improves disaster preparedness and resiliency. *(Describe how in the supporting narrative below.)* |
| | The Project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity. *(Describe how in the supporting narrative below.)* |

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| | |
|---|---|
| | The Project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm. *(Describe that infrastructure in the supporting narrative below.)* |
| | The Project supports or incorporates the construction of energy- and location-efficient buildings. *(Describe how in the supporting narrative below.)* |
| | The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. *(Describe the materials in the supporting narrative below.)* |
| X | The Project includes other actions or attributes that address climate change and environmental justice. *(Describe those actions in the supporting narrative below.)* |
| | The Project does not include actions or attributes that address climate change and environmental justice but, before beginning construction of the Project, the Recipient will take relevant actions described below to address climate change and environmental justice impacts of the Project. *(Identify the relevant actions in the supporting narrative below.)* |

### 9.2 Supporting Narrative

This Project will help reduce incidents along the Corridor, minimizing the carbon monoxide emissions from vehicles queuing at grade crossings. A secondary impact of the Project is that freight and passenger rail service are more reliable from the reduced delays caused by each incident, resulting in an increased interest in using low carbon transportation alternatives. This will help reduce the use of single-occupancy vehicles and increase truck to rail transfers, lowering the emission of air pollutants and building environmental resiliency.

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The corridor and planned mitigations fall within multiple areas of persistent poverty and historically disadvantaged communities. Data have shown that low-income and minority communities are disproportionally impacted by compromised air quality. This Project will help reduce the exposure of harmful transportation-related emissions to underserved and overburdened communities aligning with the Administration's Justice 40 goals.

## ARTICLE 10: RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

### 10.1 Efforts to Improve Racial Equity and Reduce Barriers to Opportunity

This Section identifies how the Project addresses efforts to improve racial equity and reduce barriers to opportunity. The Recipient certifies that rows marked with "X" in the following table are accurate:

| | |
|---|---|
| | A racial equity impact analysis has been completed for the Project. *(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)* |

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| | |
|---|---|
| | The Recipient or a Project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. *(Identify the relevant programs, plans, or policies in the supporting narrative below.)* |
| X | The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. *(Identify the relevant investments in the supporting narrative below.)* |
| | The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. *(Identify the new or improved access in the supporting narrative below.)* |
| | The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. *(Identify the new or improved access in the supporting narrative below.)* |
| X | The Recipient has taken actions related to the Project to improve racial equity and reduce barriers to opportunity. *(Describe those actions in the supporting narrative below.)* |
| | The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but, before beginning construction of the Project, the Recipient will take relevant actions described below to improve racial equity and reduce barriers to opportunity. *(Identify the relevant actions in the supporting narrative below.)* |

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### 10.2 Supporting Narrative

The Project has several positive impacts related to addressing equity and barriers to opportunity in Broward County. Directly adjacent to the Project Corridor are more than 10 Historically Disadvantaged Communities (6 are also Areas of Persistent Poverty) that will benefit from the improved safety.

- Reducing the number of incidents in the area will increase public safety and improve access to employment and economic development opportunities for surrounding communities.
- The mitigation of safety risks will improve overall quality of life and a secondary benefit is the supplemental safety measures will support the viability of a Quiet Zone through the County, which will reduce noise along the Corridor.
- This Project will support the long-term implementation of a commuter rail service which will bring a much-needed public transportation option along the eastern portion of the County, enhancing mobility in the Region and improving connectivity to daily needs and employment opportunities.

In addition, steps have been taken to consider the impacts on overburdened communities. The Florida DOT has woven equitable transportation planning into the 2045 Transportation Plan and public

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involvement. This has included specific steps during the outreach phase to provide equitable access to transportation, provide information clearly and early, and utilize multiple techniques to engage the public. The Broward MPO has also identified racial and ethnic minorities, transportation disadvantages, economic challenges, language proficiencies, elderly, and other populations that could be affected by disproportionate impacts that could result from public projects. The MPO created an Equity Assessment Tool that helps ensure that the benefits and impacts of plans, programs, and projects do not disproportionately impact certain communities during the planning process.

## ARTICLE 11: LABOR AND WORK

### 11.1 Efforts to Support Good-Paying Jobs and Strong Labor Standards

This Section identifies the Recipient's efforts to support good-paying jobs and strong labor standards related to the Project. The Recipient certifies that rows marked with "X" in the following table are accurate:

| | |
|---|---|
| | The Recipient or a Project partner has adopted the use of project labor agreements in the overall delivery and implementation of the Project. *(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)* |
| | The Recipient or a Project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project, subject to all applicable State and local laws, policies, and procedures. *(Describe the relevant provisions in the supporting narrative below.)* |
| | The Recipient or a Project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. *(Describe the use of registered apprenticeships in the supporting narrative below.)* |
| | The Recipient or a Project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. *(Describe the training programs in the supporting narrative below.)* |
| | The Recipient or a Project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. *(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)* |

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| | |
|---|---|
| | The Recipient or a Project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. *(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)* |
| | The Recipient or a Project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. *(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)* |
| | The Recipient or a Project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hiring and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including:<br>a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law;<br>b. proactive partnerships with the U.S. Department of Labor's Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements;<br>c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements;<br>d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin;<br>e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and<br>f. maintaining robust anti-retaliation measures covering employees and contractors.<br>*(Describe the equal opportunity plan in the supporting narrative below.)* |
| X | The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. *(Describe those actions in the supporting narrative below.)* |
| | The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the Project, will take the relevant actions described below. *(Identify the relevant actions in the supporting narrative below.)* |

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### 11.2 Supporting Narrative

The Project will bring construction opportunities to the area. Brightline will manage a competitive process for selecting contractors that will perform the crossing work and aim to achieve a DBE goal aligning with standard practices. Skillset gained through the railroad work have the potential to lead to other employment opportunities for residents.

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# Exhibits

Revision Date: December 11, 2023

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# Exhibits
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# EXHIBIT A: APPLICABLE FEDERAL LAWS AND REGULATIONS

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

**GENERAL FEDERAL LEGISLATION**

a. Davis-Bacon Act - 40 U.S.C. § 3141 et seq.
b. Federal Fair Labor Standards Act - 29 U.S.C. § 201 et seq.
c. Hatch Act - 5 U.S.C. § 1501 et seq.
d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. § 4601 et seq.
e. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108
f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501–312508
g. Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001 et seq.
h. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401 et seq.
i. Section 404 of the Clean Water Act, as amended - 33 U.S.C. § 1344
j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. § 1536
k. Coastal Zon[illegible]
l. Flood Disast[illegible]
m. Age Discrim[illegible]
n. American In[illegible]
o. Sections 52[illegible] of th[illegible] Public [illegible] Service [illegible] 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
p. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151 et seq.
q. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
r. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701 et seq.
s. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
t. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321 et seq.
u. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271 et seq.
v. Federal Water Pollution Control Act, as amended - 33 U.S.C. §§1251–1376
w. Single Audit Act of 1984 - 31 U.S.C. § 7501 et seq.
x. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101 et seq.
y. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
z. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
aa. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. § 2000d et seq.
bb. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
cc. Freedom of Information Act - 5 U.S.C. § 552, as amended
dd. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
ee. Farmland Protection Policy Act of 1981 – 7 U.S.C. § 4201 et seq.
ff. Noise Control Act of 1972 – 42 U.S.C. § 4901 et seq.
gg. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661 et seq.

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hh. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
ii. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
jj. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. §§ 9601–9657
kk. Safe Drinking Water Act – 42 U.S.C. §§ 300f to 300j-26
ll. The Wilderness Act – 16 U.S.C. §§ 1131–1136
mm. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901 et seq.
nn. Migratory Bird Treaty Act 16 U.S.C. § 703 et seq.
oo. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
pp. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
qq. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232
rr. Efficient Environmental Reviews - 23 U.S.C. § 139
ss. Grant Conditions – 49 U.S.C. § 22905
tt. Build America, Buy America Act – Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298

**EXECUTIVE ORDERS**

a. Executive Order 11246 – Equal Employment Opportunity
b. Executive Order 11990 – Protection of Wetlands
c. Executive Order 11988 – Floodplain Management
d. Executive Order 12372 – Intergovernmental Review of Federal Programs
e. Executive Order 12549 – Debarment and Suspension
f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
h. Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
i. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America's Workers
j. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

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**GENERAL FEDERAL REGULATIONS**

a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department

of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60 et seq.

h. New Restrictions on Lobbying – 49 C.F.R. Part 20
i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
r. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
s. Procedures implementing Section 4(f) of the Department of Transportation Act – 23 C.F.R. Part 774

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Specific assurances required to be included in the Agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this Agreement.

# EXHIBIT B: ADDITIONAL STANDARD TERMS

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**EXHIBIT B.1: TITLE VI ASSURANCES**

**TITLE VI ASSURANCE**
**Implementing Title VI of the Civil Rights Act of 1964, as amended**

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

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

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

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

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

**DOT Order No. 1050.2A**

By signing and submitting the Application and by entering into this Agreement, the Recipient **HEREBY AGREES THAT**, as a condition to receiving Federal financial assistance from the Federal Railroad Administration (FRA), it is subject to and will comply with the following:

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**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

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

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

**Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

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3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Re[illegible] and [illegible]ance.

10. The Recipie[illegible] agrees t[illegible]at t[illegible]e Unit[illegible] State[illegible]has a[illegible]right [illegible]udicial e[illegible]forcement with regard to any matt[illegible] arising [illegible]nde[illegible]the Ac[illegible] the R[illegible]s, a[illegible]d this Assuranc[illegible]

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

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the FRA under this Agreement. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the program or project funded under this Agreement.

**APPENDIX A**

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

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4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the

contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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**APPENDIX B**

**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

**NOW, THEREFORE,** the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), 23 U.S.C. § 117 and the policies and procedures prescribed by the Federal Railroad Administration (FRA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

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

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

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

**APPENDIX C**

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

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

A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

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B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

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

**APPENDIX D**

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

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

A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

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

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**APPENDIX E**

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

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq*.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

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**EXHIBIT B.2: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**

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

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

By signing and submitting the Application and by entering into this Agreement, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants, as set out below.

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

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

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

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

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

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust

statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT B.3: REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW**

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

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

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

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

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

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

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the "**SAM**") at http://www.sam.gov/ for an entry describing that entity.

3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

(1) Certify whether the entity has a Tax Delinquency; and

(2) Certify whether the entity has a Felony Conviction.

4 **Prohibition.** If

(1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;

(2) an entity provides an affirmative response to either certification in section 3; or

(3) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. **Mandatory Notice to the USDOT.**

(a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.

(b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.

(c) If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

(1) require the SAM check in section 2;

(2) require the certifications in section 3;

(3) include the prohibition in section 4; and

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

**EXHIBIT B.4: RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

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

For the purpose of this Term B.4, "**Motor Vehicles**" means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, "**Driving**" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, "**Text messaging**" means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the "**Government**" includes the United States Government and State, local, and tribal governments at all levels.

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

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

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

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

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

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

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

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

**EXHIBIT B.5: EQUIVALENT LABOR PROTECTIONS UNDER 49 U.S.C. 22905(c)(2)(B)**

This Exhibit provides guidance on the protective arrangements equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization Reform Act of 1976, with respect to employees affected by actions taken in connection with a Project financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B). Fluctuations and changes in volume or character of employment brought about solely by other causes are not within the scope of this Exhibit.

**1. Definitions.** Whenever used in this Exhibit, capitalized terms shall have the meanings below:

(a) "Average Monthly Compensation" means the total compensation received by a Displaced Employee or a Dismissed Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement or dismissal, divided by twelve (12). The Average Monthly Compensation shall be adjusted to reflect subsequent general wage increases.

(b) "Average Monthly Time" means the total number of hours worked by a Displaced Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement, divided by twelve (12).

(c) "Day" means one 24-hour calendar day (including holidays and weekends) for purposes of calculating deadlines and other timeframes in this Exhibit.

(d) "Displaced Employee" means a Protected Employee who remains employed by a Railroad but, as a result of a Project, is placed in a worse position with respect to compensation and rules governing working conditions. A Protected Employee's status as a Displaced Employee begins on the date said employee is harmed.

(e) "Dismissed Employee" means a Protected Employee who: (1) as a result of a Project, is deprived of employment with the Railroad because (i) the Railroad eliminates the Protected Employee's position, or (ii) the Railroad eliminates another employee's position (and that employee's exercise of seniority rights results in the Protected Employee's inability to secure another position by the exercise of the Protected Employee's seniority rights); and (2) is unable to secure another position by exercise of their seniority rights A Protected Employee's status as a Dismissed Employee begins on the date said employee is deprived of employment.

(f) "Project" means any action financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B).

(g) "Protected Employee" means an employee of a Railroad who is affected by actions taken pursuant to a Project, whether the Project is initiated by a Railroad or a Recipient. If a Railroad rearranges or adjusts its forces in anticipation of a Project with the purpose or effect of depriving an employee of benefits to which they otherwise would have become entitled under this Exhibit, then that employee is a Protected Employee under this Exhibit. An employee's status as a Protected Employee shall continue for the duration of the applicable Protective Period. An employee who solely benefitted as a result of a Project shall not be a Protected Employee under this Exhibit.

(h) "Protective Period" means that period during which a Displaced Employee or a Dismissed Employee is provided the protections described in this Exhibit. The Protective Period begins

on the date an employee of a Railroad is displaced or dismissed and ends after six (6) years. However, the Protective Period for any particular employee shall not continue longer than the period of time the Railroad employed the employee prior to the date of their displacement or dismissal. For purposes of this Exhibit, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936, as amended.

(i) "Recipient" means any person or entity receiving financial assistance subject to the requirements of 49 U.S.C. § 22905(c), including grantees, subrecipients, contractors, and subcontractors.

(j) "Railroad" means (1) a railroad carrier as defined in 49 U.S.C. § 20102(3), or (2) any person deemed a rail carrier pursuant to 49 U.S.C. § 22905(b).

**2. Flow Down.**

(a) In accepting financial assistance for a Project, the Recipient is responsible for ensuring the compliance with the protections provided in this Exhibit. The Recipient shall make the acceptance of this Exhibit a condition of any new contract (or incorporate its terms into any existing contract by amendment) that uses funds subject to the requirements of 49 U.S.C. § 22905(c). These conditions shall apply to a Recipient, any Railroad and any contractor of any tier with which the Recipient contracts using funds subject to the requirements of 49 U.S.C. § 22905(c).

(b) The Recipient shall require in an agreement (either in a new agreement or as an amendment to an existing agreement) with a Railroad owning the right-of-way to be improved by a Project that the Railroad notify its employees (or their representatives) of the Project being funded with financial assistance subject to 49 U.S.C. § 22905(c) and the applicability of these protections.

(c) Any Railroad employee (or their representatives) may notify a Recipient of a dispute or controversy relating to the requirements of this Exhibit to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

**3. Collective Bargaining Agreements.**

(a) **Existing Agreements**. The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a Railroad's employees under applicable laws, regulations, and/or existing collective bargaining agreements shall be preserved and remain applicable unless changed by future collective bargaining agreements or applicable statutes or regulations. As applied to the regulation of subcontracting by the Railroads of a Project, the provisions of this section shall mean that a determination of whether or not such work validly may be subcontracted by a Railroad shall not be affected by the fact that the work is being financed by funds subject to the requirements of 49 U.S.C. § 22905(c)(2)(B). Nothing in this Exhibit shall be construed as depriving any Railroad employee of any rights or benefits or eliminating any obligations that such employee may have under any existing contractual or statutory arrangement, including job security agreements, protective conditions, or arrangements.

(b) **Election by Protected Employee**. Where a Protected Employee is eligible for protections under both this Exhibit and another contractual or statutory arrangement, the Protected Employee shall elect between the protection under this Exhibit and protection under such other arrangement. After

such an election, the Protected Employee shall be protected only by the arrangement that they elect. The Protected Employee shall not be entitled to any protection or benefit (regardless of whether such benefit is duplicative) under the arrangement that they do not elect. However, if the elected protection expires pursuant to the terms of the arrangement that governs the elected protection, the Protected Employee is entitled to protection under the arrangement not originally elected for the remainder, if any, of the Protective Period.

**4. Change in Operations, Services, Facilities, or Equipment.**

(a) **Notice**. When a Railroad contemplates a change or changes in its operations, services, facilities, or equipment as a result of a Project, which may cause the dismissal or displacement of Protected Employees or rearrangement of forces involving such employees, it shall give at least sixty (60) days' written notice of such intended changes to both Protected Employees and their duly authorized representatives (if applicable). Such notice shall contain a full and adequate description of the proposed changes, including an estimate of the number of Protected Employees of each class affected by the intended changes.

(b) **Negotiations**.

(i) Initiation of Negotiation. Within sixty (60) days after the Railroad issues a notice under Section 4(a) of this Exhibit, the Railroad or the Protected Employees (or their representatives) may, by written notice to the other party, request a meeting and opportunity to negotiate an agreement with respect to the application of the terms and conditions of this Exhibit. These negotiations shall commence within fourteen (14) days from the receipt of such request.

(ii) Subject of Negotiations. Each change to rail operations, services, facilities, infrastructure, or equipment (including rights-of-way, track, and signal and crossing systems) that may result in dismissal or displacement of Protected Employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties, but only to the extent necessary to ensure compliance with this Exhibit. For any contemplated rearrangement of rail forces, the Railroad and the representative(s) of the Protected Employees shall agree on the method of selection of employees to be moved, and the assignment of those employees to new roles.

(c) **Arbitration**. If the Railroad and the representative(s) of the Protected Employees fail to agree within forty-five (45) days from the initial meeting and opportunity to negotiate, either party may submit the dispute for arbitration in accordance with the following procedures:

(i) Notice & Selection of Arbitrator. Within ten (10) days after either party has notified the other in writing of their desire to submit the dispute for arbitration, the parties shall select a neutral arbitrator. If the parties cannot agree upon the selection of said arbitrator, then the parties shall submit a request to the National Mediation Board to appoint an arbitrator. In either case, a hearing shall be scheduled no later than thirty (30) days after an arbitrator has been appointed.

(ii) Binding Decision. The decision of the arbitrator shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) Expenses. The salary and expenses of the arbitrator shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(d) **Implementation**. If a notice is issued under Section 4(a), the Railroad shall not implement such a change or changes until: (i) sixty (60) days after the notice in accordance with Section 4(a), if no party requests a meeting and opportunity to negotiate; (ii) the parties reach agreement pursuant to Section 4(b), if a party requests a meeting and opportunity to negotiate; or (iii) a referee has rendered a decision pursuant to Section 4(c).

**5. Protections for Displaced Employees**

(a) **Displacement Allowances**.

(i) In General. If a Displaced Employee is unable, in the normal exercise of such employee's seniority rights under existing agreements, rules and practices, to obtain a position that is compensated equal to or exceeding the compensation the Displaced Employee received in the position from which such employee was displaced, then the Displaced Employee shall, during the Protective Period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by the Displaced Employee in the position in which such employee is retained and the Average Monthly Compensation received by the Displaced Employee in the position from which such employee was displaced (the "Displacement Allowance").

(ii) Application of Displacement Allowance. If a Displaced Employee's compensation in that employee's retained position is less in any month in which such employee performs work than the Average Monthly Compensation, then the Displaced Employee shall be paid the difference between the current compensation and the Average Monthly Compensation. However, the Displacement Allowance shall be reduced by the Displaced Employee's time lost as a result of voluntary absences, to the extent that the Displaced Employee is not available for service equivalent to the Displaced Employee's Average Monthly Time. If, on the other hand, the Displaced Employee, in such employee's retained position, works in excess of the Average Monthly Time in any given month, then the Displaced Employee shall be additionally compensated for such excess time at the rate of pay of the employee's retained position. If a Displaced Employee fails to exercise their seniority rights to secure another position available to the employee which does not require a change in such employee's place of residence, to which the employee is entitled under the working agreement, and which carries a rate of pay and compensation exceeding those of the position that the employee elects to retain, then the Displaced Employee shall thereafter be treated for the purposes of this section as occupying the position such employee elects to decline.

(iii) Early Expiration. The Displacement Allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement, or dismissal for justifiable cause.

(b) **Moving Expenses**. Any Protected Employee retained in the service of a Railroad, or who is later restored to service after being entitled to receive a Dismissal Allowance, and is required to change the point of such employee's employment as a result of the Project, and within the employee's Protective Period is required to move the employee's place of residence, shall be reimbursed for all expenses of moving the employee's household and other personal effects, including travel expenses, temporary living expenses, and any actual wage loss during the time necessary to make the move, and for a reasonable time thereafter, not to exceed five (5) days.

(i) Prior Agreement. The exact extent of the responsibility of a Railroad under this Section and the ways and means of transportation shall be agreed upon in advance by the Railroad and the Protected Employee or their representatives.

(ii) Exception. Changes in residence that are not a result of a Project, which are made after the initial change and that grow out of the normal exercise of seniority rights, are not within the purview of this Section.

(iii) Furloughed Employees. The Railroad shall, to the same extent provided above, assume the moving expenses outlined in Section 5(b) for an employee furloughed within three (3) years after changing such employee's point of employment as a result of a Project, who elects to move their place of residence back to their original point of employment.

(iv) Reimbursement. A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted, unless disputed by the Railroad, but no claim shall be paid if presented to the Railroad more than ninety (90) days after the date on which the expenses were incurred.

(c) **Losses from Home Sale or Contract Termination**. Any Displaced Employee who is retained in the service of a Railroad (or who is later restored to service after being entitled to receive a dismissal allowance), and who is required to change the point of such employee's employment during the Protective Period as a result of a Project, is entitled to the following:

(i) Home Sale for Less Than Fair Market Value. If the Displaced Employee owns their place of residence in the locality from which such employee is required to move, then at the Displaced Employee's option, the Railroad shall reimburse the Displaced Employee for the difference between the actual sale price and the fair market value of the employee's place of residence. The Railroad shall pay such difference within sixty (60) days after the Displaced Employee has filed a claim for such loss in accordance with Section 5(c)(vi), unless a controversy arises as to which Section 5(c)(vii) applies. In each case, the fair market value of the home in question shall be determined without consideration of the Project. The Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the Displaced Employee to any other person.

(ii) Election to Receive Closing Costs. The Displaced Employee may elect to waive the provisions of Section 5(c)(i) and to receive, in lieu thereof, an amount equal to the closing costs that are customarily paid for and assumed by a seller of real estate in the jurisdiction in which the employee's residence is located. Such costs shall include customary fees paid to a licensed realtor (not to exceed six percent (6%) of the final sale price) and any prepayment penalty required by any mortgagor or beneficiary of a deed of trust. Such costs shall not include

the payment of any mortgage discount points or similar interest discount fees by the Displaced Employee.

(iii) Pending Contract to Purchase. If a Displaced Employee has entered into a contract to purchase a place of residence, but due to a Project must cancel that contract, the Railroad shall indemnify the Displaced Employee against any losses due to such cancellation, and shall relieve the Displaced Employee from any further obligation under the contract.

(iv) Unexpired Lease. If the Displaced Employee holds an unexpired lease of a dwelling as the employee's primary place of residence, and the Displaced Employee must cancel the lease due to a Project, the Railroad shall indemnify the Displaced Employee from all costs and liability arising from said cancellation.

(v) Exclusions. Any change in residence that is not due to or caused by a Project, or that resulted from the normal exercise of a Protected Employee's seniority rights, shall not be within the purview of this Section.

(vi) Notification of Claims. A Displaced Employee shall notify, in writing, the Railroad of such employee's claim arising from this Section 5(c) within one (1) year of the date the Displaced Employee's claim accrues.

(vii) Home Value Disagreements. In the event of disagreement between a Railroad and a Displaced Employee as to the value of a Displaced Employee's claim, either party (or their representatives) may request, in writing, a joint conference to resolve the disagreement.

A. Real Estate Appraisers. If the parties are unable to resolve the disagreement, either party may refer the disagreement to two licensed real estate appraisers, one of whom shall be selected by the Displaced Employee (or such employee's representatives), and one of whom shall be selected by the Railroad. If the two selected real estate appraisers are unable to agree on a valuation within thirty (30) days, the selected real estate appraisers shall designate (or agree to a method by which to select) a third licensed real estate appraiser within ten (10) days. If unable to agree on a selection, either party may request the National Mediation Board to designate within twenty (20) days a third licensed real estate appraiser. A decision by two of the three licensed real estate appraisers shall be required to determine the value in dispute. Said decision shall be final and conclusive.

B. Payment of Expenses. The salary and expenses of the third or neutral appraiser shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) **Failure to Exercise Seniority Rights**. If a Displaced Employee is able but does not exercise such employee's seniority rights to secure another position that does not require a change in the employee's primary place of residence, the Displaced Employee shall not be entitled to moving expenses or protections due to the sale of a home outlined in Sections 5(b)&(c).

**6. Protections for Dismissed Employees.**

(a) **Dismissal Allowance**. A Dismissed Employee shall be paid a monthly dismissal allowance from the date they are deprived of employment through the Protective Period.

(i) Monthly Dismissal Allowance Calculation. The monthly dismissal allowance shall be equivalent to the Average Monthly Compensation received by the Dismissed Employee in the last twelve (12) months of employment prior to the employee's dismissal.

(ii) Submission of Claim. A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty (60) days after the claim is filed by the Dismissed Employee, unless the claim is disputed by the Railroad pursuant to Section 8 of this Exhibit.

(iii) Reduction or Suspension of Dismissal Allowance. If a Dismissed Employee accepts new employment (or reemployment by the dismissing Railroad) during the Protective Period, the dismissal allowance shall be reduced such that the accepted monthly compensation at the then-current position (including any unemployment insurance compensation received) plus the dismissal allowance is equivalent to the Dismissed Employee's Average Monthly Compensation. If the compensation of the Dismissed Employee's then-current employment is greater than the dismissal allowance, the dismissal allowance shall be suspended. Such reduction or suspension shall continue for the duration of the Protective Period, unless and until the Dismissed Employee's then-current compensation is reduced or eliminated. Prior to dismissal, such Dismissed Employee (or their representative) and the dismissing Railroad shall agree upon a procedure by which such Railroad shall be informed of the earnings and benefits of such Dismissed Employee in their new position of employment.

(iv) Early Termination. The dismissal allowance shall cease prior to the expiration of the Protective Period in the event of the Dismissed Employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with an applicable working agreement, or failure without good cause to accept a comparable position that does not require a change of residence, for which the Dismissed Employee is qualified and eligible with the Railroad from which such employee was dismissed after being notified, if the employee's return does not infringe upon employment rights of other employees under a working agreement.

(b) **Separation Allowance**. A Dismissed Employee may, at such employee's option, within seven (7) days of dismissal or an arbitration award establishing the employee's status as a Dismissed Employee, resign and (in lieu of all other benefits and protections provided in this Exhibit) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, as amended.

(c) **Priority of Employment or Re-Employment**. Any Protected Employee whose employment is terminated or who is furloughed as a result of a Project shall, if they so request, be granted priority of employment or re-employment to fill a position comparable to that which they held on the Railroad (even if in a different craft or class), so long as they are qualified, or by training or retraining can become physically and mentally qualified, for the position. However, such priority of

employment or re-employment must not be in contravention of any relevant collective bargaining agreements.

(i) **Training or Re-Training**. In the event such training or retraining is requested by a Protected Employee pursuant to Section 6(c), the Railroad shall provide such training or retraining at no cost to the Protected Employee.

(ii) **Waiver of Protections**. If a Protected Employee who has made a request under Section 6(c) fails without good cause within ten (10) days to accept an offer of a comparable position for which such employee has satisfactorily completed such training, the Protected Employee shall, upon the expiration of such ten (10) day period, forfeit all rights and benefits under this Exhibit.

**7. Fringe Benefits.** No Protected Employee shall be deprived during the Protective Period of any (non-salary) rights, privileges, or benefits attached to such employee's previous employment under the terms and conditions of an existing employment agreement (including, but not limited to, free transportation, hospitalization, pensions, insurance, or vacation benefits), so long as such rights, privileges, or benefits continue to be accorded to other employees of the Railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges, or benefits can be so maintained under present authority of law, corporate action, or through future authorization.

**8. Arbitration of Disputes.**

(a) **Scope**. Any dispute under these conditions not settled by the relevant parties will be resolved in arbitration as provided herein. In the event a Railroad and the Protected Employee(s) (or their representatives) cannot settle a dispute or controversy with respect to the interpretation, application, or enforcement of any provision of this Exhibit (other than those Sections of this Exhibit that provide for another means of dispute resolution) within thirty (30) days after the dispute arises, either party may refer the dispute to an arbitration committee. The affected Protected Employee(s) (or their representatives) may notify a Recipient of a dispute or controversy under this Section 8 to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

(b) **Notice**. The party referring the dispute to an arbitration committee shall notify the other party in writing of its intent to refer a dispute or controversy to an arbitration committee.

(c) **Selection of Members**. Within ten (10) days of receipt of the written notice, each party to the arbitration shall select one (1) member of the committee, and the members thus chosen shall select an additional, neutral member to serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or a senior officer designated by the Railroad or the Recipient, as the case may be, shall be deemed the selected member. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days agree to a method by which a neutral member shall be appointed; failing such agreement, either party may request the National Mediation Board to designate within twenty (20) days the neutral member whose designation will be binding upon the parties.

(d) **Multiple Representatives**. In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the Railroad or Recipient may appoint additional representatives equivalent to the number of labor

organization representatives; provided, however, that the decision in such case shall be made by the neutral member.

(e) **Decisions Binding**. The decision, by majority vote except as provided otherwise in paragraph (d) of this Section, of the arbitration committee shall be final, binding, conclusive, and rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(f) **Expenses**. The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding, and all other expenses shall be paid by the party incurring them.

**9. Classification of a Protected Employee.** In the event an employee (or their representatives) cannot settle a dispute or controversy with the Railroad or the Recipient as to whether or not a particular employee would be affected by a Project, either party may refer the dispute to an arbitration committee within thirty (30) days after the dispute arises pursuant to the arbitration procedures in Section 8. For any such dispute, the employee of a Railroad shall have the burden to identify, with reasonable specificity, the Project that allegedly affected them, and to specify the pertinent facts of that Project, including the change or changes resulting from the Project that allegedly affected them. The burden shall then shift to the Railroad or Recipient to show that factors other than a change resulting from the Project affected the employee. The employee shall prevail on this issue if it is established that the Project had an effect upon the employee, even if other factors also may have affected the employee.

**10. Resolution of Disputes for Non-Bargaining Unit Protected Employees.** Any Protected Employee who is not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under this Exhibit. In the event any dispute arises between a Railroad and an employee not represented by a labor organization with respect to the interpretation, application, or enforcement of any provision of this Exhibit that cannot be settled by the parties within thirty (30) days after the dispute arises, either party may, as an alternative to the dispute resolution procedures outlined in this Exhibit, refer the dispute within ninety (90) days after the dispute arises to the Secretary of Labor for determination. The determination of the Secretary of Labor, or their designated representative, shall be final and binding on the parties.

**11. Severability.** In the event any provision of this Exhibit is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Exhibit shall not be affected.

# EXHIBIT C: QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS

Paperwork Reduction Act Burden Statement A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2130-0615. Public reporting for this collection of information is estimated to be approximately 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer (RAD-20), Federal Railroad Administration, 1200 New Jersey Avenue, Washington, DC. 20590.



# FRA GRANT/COOPERATIVE AGREEMENT
# Quarterly Progress Report

## A. Submission Information

1. Report Submission Date (mm/dd/yy): 2. Report Quarter: 3. FFY:

| 4. Agreement Number | 5. Project Title | | 6. Project Type |
|---|---|---|---|
| | | | |
| 7. Completed By (Name) | 8. Title | 9. Email | 10. Phone |
| | | | |

☐ 11. *Certification*: By checking this box, I certify that I have reviewed this report and that, to the best of my knowledge, the report is complete, accurate, and meets the terms and conditions of the award.

| | a. Status | b. Explanation |
|---|---|---|
| 12. Scope | Off-Track | |
| 13. Schedule | Off-Track | |
| 14. Budget | Off-Track | |

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| 15. Significant Activities this Quarter | 16. Significant Activities Planned for Next Quarter |
|---|---|
| | |

| 17. Amendment Request? | 17 a. Status | 17 b. Explanation |
|---|---|---|
| Yes | N/A | |

## C. Financial Status

### Budget Status

| 18. Budget Changes? | 18 a. Status | 18 b. Explanation |
|---|---|---|
| Yes | N/A | |

### Expenditures and Reimbursement Status

| Funding Source | Actual Expenditures this Quarter |
|---|---|
| 19. FRA Grant: | |
| 20. Grantee Match: | |
| 21. Other Federal Funds: | |
| 22. Total: | |

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| 23. Accomplishments Related to Expenditures in this Quarter | 24. Accomplishments Related to Expenditures in other Quarters (if applicable) |
|---|---|
| | |

### Reimbursement Forecast

| 25. Planned Reimbursement Requests to FRA | | 26. Unliquidated Obligations | |
|---|---|---|---|
| 25 a. Next Quarter | 25 b. Next Four Quarters (Cumulative) | 26 a. Any reported on this quarter's SF-425? | 26 b. Explanation |
| | | | |

| | | | | | |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | Off-Track | | | N/A | |
| 27 b. Project Work Begun | Off-Track | | | N/A | |
| 27 c. Project Substantially Complete | Off-Track | | | N/A | |
| **Projects with a Construction Component** | | | | | |
| 27 d. Construction Notice to Proceed Issued | Off-Track | | | N/A | |
| 27 e. ROW Acquisition Complete | Off-Track | | | N/A | |
| 27 f. Construction Ground-Breaking | Off-Track | | | N/A | |
| 27 g. Construction Substantially Complete | Off-Track | | | N/A | |
| 27 h. Environmental Mitigation Substantially Complete | Off-Track | | | N/A | |
| 27 i. Ribbon-Cutting Ceremony | Off-Track | | | N/A | |
| 27 j. Commencement of Service | Off-Track | | | N/A | |
| **Projects with a Rolling Stock Component** | | | | | |
| 27 k. Test Vehicle Complete | Off-Track | | | N/A | |
| 27 l. First Rolling Stock Delivery | Off-Track | | | N/A | |

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## E. Statement of Work Task Status

| 33. Task # | 34. Task Name | 35. Status | 36. Task Started? | Completion Date (mm/dd/yy) 37. Planned | 38. Actual | 39. Percent Complete (%) | 40. Change to Status? |
|---|---|---|---|---|---|---|---|
| 1 | Pre-populated | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | | Off-Track | N/A | | | | N/A |
| | Contingency (optional) | | | | | | |

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## E. Statement of Work Task Status (Continued)

| 41. Status Notes |
| --- |
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Exhibit C: Title VI Assurances

**EXHIBIT B.1: TITLE VI ASSURANCES**

**TITLE VI ASSURANCE**
**Implementing Title VI of the Civil Rights Act of 1964, as amended**

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

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

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

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

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

**DOT Order No. 1050.2A**

By signing and submitting the Application and by entering into this Agreement, the Recipient **HEREBY AGREES THAT**, as a condition to receiving Federal financial assistance from the Federal Railroad Administration (FRA), it is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

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

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

**Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

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

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the FRA under this Agreement. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the program or project funded under this Agreement.

**APPENDIX A**

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the

contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**APPENDIX B**

**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

**NOW, THEREFORE,** the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), 23 U.S.C. § 117 and the policies and procedures prescribed by the Federal Railroad Administration (FRA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

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

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

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

**APPENDIX C**

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

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

A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

    1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

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

**APPENDIX D**

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

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

A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

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

**APPENDIX E**

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

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq*.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

Exhibit D: Funding Partners Agreement (To be attached)