



**REQUEST FOR PROPOSALS
RFP 2023-003**

FOR

**PLANNING, DESIGN, SOFTWARE PROTOTYPING AND EVALUATION
for
ADVANCED TRAFFIC MANAGEMENT SYSTEM (ATMS) DATA AGGREGATION PLAN
LAKE TAHOE BASIN ROADWAYS
SMART GRANT PROGRAM – STAGE 1**

September 15, 2023

Tahoe Transportation District

P.O. Box 499

Zephyr Cove, NV 89448

Table of Contents

Introduction.....	3
Scope of Services	3
Funding	6
Proposal Requirements	6
Attachment A – Sample Agreement.....	15
Attachment B – SMART Grant Terms and Conditions	19
Attachment C – Lobbying Certification	20
Attachment D – Disbarment/Suspension Certification	22

INTRODUCTION

The Tahoe Transportation District (TTD) is seeking the services of a qualified firm to provide planning and design for temporary infrastructure, software, and system related services. This Consultant will provide Advanced Traffic Management System (ATMS) sensor architecture and design, software development, and evaluation for the Tahoe Basin ATMS Data Aggregation Plan (Project). TTD is using this Request for Proposals (RFP) as the mechanism for soliciting proposals.

TTD is a bi-state, special purpose transportation district with jurisdiction to implement safe, environmentally positive, multi-modal transportation plans, programs, and projects for the Lake Tahoe Basin, including transit operations in and around the Lake Tahoe basin. Examples of TTD projects include road realignments, bridges, roundabouts, complete streets, parking, shared use paths, and transit facilities. These projects are located in both California and Nevada and require cooperation and involvement from the Tahoe Regional Planning Agency (TRPA), federal agencies, state agencies, counties, cities, and other local jurisdictions. TTD is governed by a fourteen-member Board of Directors made up of local jurisdictions, private transportation management associations, California and Nevada governors' and the Tahoe Regional Planning Agency's (TRPA) appointees, an at-large member, and two state Department of Transportation agencies.

All of TTD's projects serve transportation purposes and help to accomplish regional transportation goals. At the same time, some of TTD's projects also create development opportunities that further other public purposes and goals.

Supporting project information may be found at <http://tahoetransportation.org>.

This RFP describes the general Scope of Services, necessary proposal components, selection process, and required format of the proposals, as well as a sample of TTD's Standard Professional Services Agreement (PSA).

The prime firm in response to this RFP shall be a firm, organization or vendor licensed to conduct business in their respective disciplines in the State of California and Nevada.

TTD reserves the right to award any number of contracts it deems necessary. This RFP does not commit TTD to award a contract. TTD reserves the right to accept or reject any or all proposals. No proposal shall be binding upon TTD until after a contract is executed by duly authorized representatives of TTD and the selected firm. No minimum amount of work is implied or guaranteed under the contract.

SCOPE OF SERVICES

Project Overview

This project is a Regional Partnership, which spans two states and five counties within the Tahoe Basin. The project will focus efforts on the roadways entering/leaving the Tahoe Basin and the interior corridors. The Lake Tahoe region is comprised of a year-round population of about 55,000 people. This number swells in the summer and winter months, as millions travel to take part in outdoor recreational activities the area provides. The roadway network entering, traveling within, and leaving the Tahoe Basin lacks the infrastructure required to acquire real time traffic and congestion data.

Improved roadway user data accuracy, consistency, and ease of analysis is needed to provide a shared understanding of the extensive visitation and address peak demand, including road user travel volumes and patterns; to evaluate road user safety, particularly for vulnerable road users, such as bicyclists and pedestrians; to support Vehicle Miles Traveled (VMT) and Greenhouse Gas (GHG) goals; to optimize available parking and transit use; to aid in communication with the traveling public; which ultimately aims to protect Lake Tahoe's famed clarity.

This Stage 1 project is intended to build multi-jurisdictional buy-in on technology investments to support development of mode shift behavioral change and create a positive user experience through informed decision making of regional partners and stakeholders. Prototyping and testing SaaS and data collection sensor infrastructure will build a plan to facilitate decisions on regional planning, implementation, and operational improvements.

Objective

This project intends to provide the planning, design, prototyping, and evaluation of a single cloud-based open source or interface for pertinent transportation and traveler related information. This information will be used by TTD and TRPA, partners, commuters, and travelers within the Tahoe Basin and adjoining areas to provide integrated infrastructure to collect vehicle data and incorporate into a database for a variety of stakeholders. The system will provide a platform for future expansion, command, control, and configuration.

The proof-of-concept plan will be built around four (4) core approaches:

- 1) Data Aggregation,
- 2) Internal User Review, Analyze, Classify, and Storage of Data
- 3) Pushing Data to External Users (General Public)
- 4) Constructability and Cost

The Data Collection system will provide for development of sensor-based infrastructure and a single integrated data model and associated data warehousing for storing the required stakeholder data and accessing the transportation information for displaying current information, reporting, accessibility to GIS Maps and Apps, etc. The Data Collector will receive, organize, and store data sources of information relating to the transportation mobility network including vehicle movements and then make the data within the database available for other authorized applications and/or operators to view the data for review, classification, analysis, display, and use.

Additionally, the data collector will push proper data to external users and will include items such as, but not limited to traffic signal status, traffic delays, local weather information, road closures due to snow/avalanche/landslide/flooding, road construction events, street events, vehicular or pedestrian accidents, transit movement and delays, ride sharing locations and availability, micro-transit locations and availability, parking locations and availability. The project outcome desired of this stage 1 scope is a complete, concept proven plan, that can be implemented in Stage 2.

Stage 1 planning, design, and evaluation proof of concept includes, but shall not be limited to the following generalized scope:

- Project management, agency and stakeholder engagement, outreach and coordination, project reporting, existing conditions analysis and reports, trip generation analysis and reports, land use analysis, ATMS/ICT mapping and figures, right-of-way permitting assessment, Cyber resiliency planning, governance charter, and Lake Tahoe Corridor Connection Plan (LTCCP) update (draft and final).
- Collection of origin and destination and traveler profile data to inform sensor build out and baseline monitoring metrics to support regional transportation planning and adaptive management of the multimodal improvements.
- Short term, temporary (one-year) physical sensor placement for data collection at each of the seven entry/exit points of the Tahoe Basin and along the Truckee/US80/SR267/SR89 roadways. Count data will be used to 1) ground truth origin and destination data, and 2) ground truth and expand the understanding of these important linkages to Lake Tahoe's resiliency to manage peak travel volumes. This information will support the assessment of the platform performance and development of monitoring metrics that can be achieved with a Stage 2 build out. **Note: License Plate Recognition (LPR) shall not be used for data collection.**
- Development and/or evaluation of cloud-based AI platforms to assess data sharing capabilities, implementation and operating costs, cybersecurity, adaptability, and functionality for analysis of possible metrics, such as VMT, GHG, transit use, traffic, crashes, near-miss incidents (including bicycle and pedestrians), etc. within the region and as accepted by the project development team.
- Mapping and planning of technology infrastructure improvements for a planned strategic build out of sensors within the six internal corridors and resort triangle, electronic wayfinding and parking spot availability, wi-fi, fiber optics and cellular needs to support these improvements to be implemented under a Stage 2 build out or incorporated in other infrastructure improvements.
- An evaluation of transit in-vehicle sensors and data feeds for origin, destination, and ridership information for the transit and micro transit services in the Basin.

The desired outcomes of a future Stage 2 implementation grant include, but are not limited to, the following:

- A real-time, multi-jurisdictional shared information software system with transit data feeds and physical sensors installed to collect an accurate number of vehicles entering and exiting the seven entry points of the Lake Tahoe Basin and travel patterns within each interior corridor (**Attachment D**). The data should be able to distinguish day users, short-term, and long-term visitors/workforce and resident populations of the Basin.
- A phasing plan and strategy for sensor and/or data expansion that can allow the software system to provide more real-time understanding of where vehicles are coming from (outside the Basin), their length of stay, type of vehicle (EV/Hybrid), number of passengers per car, where illegal turn movements are occurring, etc. to effectively design improvements, educate and shift modes of transportation to transit, carpooling, biking, and walking through informed decisions that allow for a better user experience and equitable access.

- A fiber and cellular build strategy that supports the sensor build out and a variety of technology improvements and wi-fi hotspots at parking lots to assure a positive user experience and to mitigate revenue impacts to the demand based paid parking program, Park Tahoe.
- Automated parking count signs on the highways for major recreation and tourism destination points around the Basin and sensors for existing lot counts to assure more informed decision making that provides safe off-highway parking across land ownerships.

The scope and desired outcomes listed above are meant to broadly describe processes that may be necessary to develop a functioning ATMS data aggregation system within the Tahoe Basin across multiple jurisdictions in California and Nevada that is scalable for future needs. The Stage 1 objective is to plan, design, and evaluate potential infrastructure, hardware, software, and communications in which a final concept proven plan will be created and utilized for the basis of a future Stage 2 Implementation.

FUNDING

This Project is funded by the Strengthening Mobility and Revolutionizing Transportation grants program (SMART). The SMART program Grant is federally programmed through the U.S. Department of Transportation (USDOT).

All work for this project scope will be subject to federal laws and regulations pertinent to this program, particularly Title VI (49 C.F.R. Parts 21, 25, 27, 37 and 38). This project has been deemed a “project for Infrastructure” by the USDOT and, therefore, is subject to the Build America, Buy America regulations.

General Terms and Conditions of SMART Program Funding

Attachment B of this document provides certain terms and conditions related to the SMART program grant for this project. Proposer shall become familiar with the following terms and conditions related to this grant, that may be contemplated within the proposal submittal scope of work understanding; *Article 7 - Purpose, Article 13 - Progress and Financial Reporting, Article 14 - Performance Reporting, Article 17 - Monitoring, Financial Management, Controls, and Records, Article 18 - Contracting and Subawards, Article 22 - Climate Change, and Environmental Justice, and Article 23 - Racial Equity and Barriers to Opportunity.*

PROPOSAL REQUIREMENTS

A. Form of Proposals

Proposals shall include, at a minimum, the following information presented in a clear and concise format. Firms are solely responsible for the accuracy and completeness of ATMS proposal. Incomplete proposals may be rejected.

1. **Cover Letter** – to include a summary of the proposal and a contact name and information for the proposal. The letter must be signed by the chief executive officer, owner, or chair of the firm.

2. Qualifications and Experience of the Firm

- a) Include the firm's name, business address, and telephone number, as well as a brief description of the firm's size (nationally and locally), date of establishment, type of organization, and local organizational structure. Provide a summary of the experience of the Firms' Project Team. A Key Personnel Participation matrix should be included that ties personnel experience to relevant projects. Provide resumes for each staff member who will be assigned to the project. Provide company overview and staff resumes for all sub-consultants assigned to the project.
- b) Provide a list of three (3) to five (5) similar type projects the Firms' Project Team has worked on together or singularly. A similar project would include all or most facets of an ATMS data aggregation plan such as described herein. Include the name, description and location of each project, dates and times work was performed, cost value of each project, and name, address, and phone number of owner and/or contact person for each project.

3. Technical Approach

- a) The proposer shall provide in detail, the overall approach that will be used by its Project Team to perform the scope of work described herein, including work not specifically mentioned herein that may be necessary in the proposer's opinion to satisfy the goals and objectives of the project. Provide details regarding project understanding, ability to work with multiple stakeholders, innovative concepts or alternatives, roadway sensor/camera planning and design, SaaS development/implementation, potential for project scalability, data warehousing, quality control procedures, and coordination with State DOT's and Local Agencies.

Specifically indicate any requirements in this RFP which are not acceptable or cannot be performed. Specifically indicate any contract provisions attached as **Attachment A** which are not acceptable and propose any alternative language or terms.

Provide a statement which discloses any past on-going or potential conflicts of interest that the firm may have as a result of performing the work/services.

4. Schedule

- a) The proposer shall provide in detail, the overall approach towards completing the project within the milestone timelines specified below:
 - I. Evaluation and Data Management Plan – 90 days after contract assignment
 - II. Draft Data Aggregation Implementation Plan/Report – 7/15/2024
 - III. Final Data Aggregation Implementation Plan/Report – 1/15/25
- b) The proposer shall provide a schedule in GANTT form showing all major milestones and proposed minor tasks, including reporting requirements set forth in the general terms and conditions.

5. Fee Proposal

- a) The proposer shall provide a Fee Proposal in a **separated sealed envelope marked as "CONFIDENTIAL"**. The elements of the fee proposal shall be as follows:

- I. A not-to-exceed lump sum for the project.
- II. A breakdown matrix of tasks/categories which contain the sub-costs that comprise the project lump sum. The task/category description shall same as proposed in the submitted technical approach.
- III. An itemization of the expected level of services to be provided by each sub-consultant, including hours of work and corresponding fees, including mark up, if any.
- IV. An estimated fee for customary reimbursable expenses to be invoiced separately and considered as professional services.
- V. An hourly rate schedule, valid for a period of twelve (12) months following the contract execution date, for each member of the firm who will be working on the project.

6. Forms

- a) Provide a signed copy of the Lobbying Certification (Attachment C)
- b) Provide a signed copy of the Certification Regarding Debarment, Suspension and other Responsibility Matters (Attachment D)
- c) Provide a statement which discloses any past on-going or potential conflicts of interest that the firm may have as a result of performing the work/services.

Proposals should not exceed **25** pages (with the exception of attached materials, which shall not be counted for purposes of the page limit). Attachments should be labeled as attachments and included separately with the proposal.

B. Costs of Proposals

Issuance of this RFP does not commit TTD, in any way, to pay any costs incurred in preparing and submitting a proposal. TTD will not reimburse responding firms, including the selected firm, for any expenses incurred in preparing or submitting proposals. All costs related to preparing and submitting a proposal shall be paid by the respondent.

C. Licenses, Permits, Taxes

The price or prices for the work shall include full compensation for all taxes, permits, etc. that the respondent is or may be required to pay.

D. Disadvantaged Business Enterprise (DBE) Requirements

TTD hereby notifies firms that 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.

A DBE is defined as a small business concern which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

E. Equal Employment Opportunity

Each firm must agree that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violate Title VII of the 1964 Civil Rights Act and amendments, except as permitted by said laws.

F. Public Record/Confidential Information

All responses become property of TTD. All responses, including the accepted proposal and any subsequent contract, become public records per the requirements of state public records laws. Proprietary material must be clearly marked as such. Pricing and service elements of the successful proposal are not considered proprietary information.

TTD will treat all information submitted in a proposal as available for public inspection once TTD has selected a contractor. If you believe that you have a legally justifiable basis for protecting the confidentiality of any information contained within your proposal, you must identify any such information, together with the legal basis of your claim in your proposal and present such information separately as part of your response package. This portion of the submittal must be clearly marked "Confidential."

The final determination as to whether TTD will assert your claim of confidentiality on your behalf shall be at the sole discretion of TTD. If TTD makes a determination that your information does not meet the criteria for confidentiality, you will be notified. Any information deemed to be non-confidential shall be considered a public record.

PROCUREMENT PROCESS

A. RFP Schedule

Release date of RFP	Friday, September 15, 2023
Deadline for Questions/Written Comments	3:00 p.m. PST Monday, October 2, 2023
Response to Questions	5:00 p.m. PST Monday, October 9, 2023
Deadline for Submittals	3:00 p.m. PST Friday, October 13, 2023
Interviews, if necessary	October 16 – 20, 2023
Notification to award contract	October 20, 2023
TTD Board Approval	December 6, 2023

B. Addenda and Clarifications

Any changes, additions, or clarifications to this RFP will be made by amendments (addenda). Any additional supporting materials and addenda will be posted on the TTD website, <https://www.tahoetransportation.org/procurements/>. Requests for clarifications about this RFP may be submitted at any time prior to 3:00 p.m. on Monday October 2, 2023. Requests should be submitted in writing via e-mail to: Judi Allen, Executive Assistant, jallen@tahoetransportation.org.

Responses will be posted on the TTD website, <https://www.tahoetransportation.org/procurements/>, no later than 5:00 p.m. on Monday, October 9, 2023.

C. Delivery of Proposals

Proposers must deliver one (1) electronic version of its proposal to the Tahoe Transportation District, Attn: Judi Allen, via e-mail to jallen@tahoetransportation.org. The proposal may also be delivered on a USB flash drive in person or via courier service to 128 Market Street, Suite 3F, Stateline, NV 89449, or regular postal mail to PO Box 499, Zephyr Cove, Nevada 89448. Please mark the e-mail/envelope

Please mark the e-mail/envelope as "RFP for SMART Program Data Aggregation Plan RFP #2023-003." Proposals must be received no later than 3:00 p.m. on Friday, October 13, 2023, to be considered responsive.

Proposals shall be submitted no later than the deadline time and date specified above. Firms shall respond to the written RFP and any exhibits, attachments, or amendments. A responding firm's failure to submit proposals as required before the deadline shall cause the submittal to be disqualified.

Responding firms assume the risk of the method of dispatch chosen. TTD assumes no responsibility for delays caused by any delivery service. Late submittals shall not be accepted, nor shall additional time be granted to any responding firm.

D. Evaluation Process

The submitted proposals will be reviewed and evaluated for responsiveness to the RFP in order to determine whether proposers possess the qualifications necessary to provide the services.

The selection will be based on the proposal offering the best approach and qualifications to TTD. In negotiating a contract with the qualified successful firm, refinements to fee, scope and schedule will be jointly determined through negotiations with the most qualified firm after conclusion of the evaluation process.

TTD may request clarifications of proposals directly from the proposers. TTD reserves the right to waive any minor irregularities, informalities, or oversights in the RFP documents, or any corresponding proposals at ATMS sole discretion. TTD reserves the right to reject all proposals.

E. Selection Criteria

TTD staff will select the firm that staff believes will provide the best approach and qualifications. In reviewing the proposals, and negotiating with selected firms, TTD will consider the following evaluation criteria:

CATEGORY	MAX POINTS
Cover Letter	5
Qualifications and Experience of Firm/Proposed Staff	30
Technical Approach	45
Scheduling Project	20

If TTD elects to conduct interviews, the submitting firms shall be notified of the interview schedule. The same attached evaluation criteria form will be used for all reviews. Failure of a firm to appear at the interview will be considered non-responsive and that firm will be eliminated from any further consideration.

All evaluators may use the information submitted in the firm's proposal and presented at the interview, if applicable, to arrive at the final ranking. The firms will be ranked, and an agreement shall be negotiated following the selection of a firm. If an acceptable agreement cannot be reached with the initial firm selected, the TTD shall proceed to negotiate with the next most qualified firm or consider reposting the RFP, if necessary and an acceptable agreement cannot be negotiated.

F. Negotiation and Award

TTD will work with the selected firm to negotiate a contract between TTD and the selected firm. All costs incurred by the firm in connection with this work and negotiations shall be borne by the firm and the firm shall have no right to reimbursement from TTD. The contract will then be brought to TTD's Board of Directors with a staff recommendation for contract award.

In the event that TTD and the selected firm fail to finalize the specifications and components for the system, or fail to negotiate a contract, TTD will reject the selected firm's proposal. In the event of rejection, the firm shall have no right to reimbursement for costs incurred by the firm in connection with any work and negotiations. TTD will then select another firm that staff believes will provide the best value and work and negotiate with that firm.

If TTD decides to award and receives approval from TTD's Board of Directors, the agreement will be sent to the firm for signature. No proposal shall be binding upon TTD until after the agreement is executed by duly authorized representatives of the firm and TTD.

G. Contract Term

TTD is seeking an agreement for a two-year period. In the event of unanticipated delays, the project timeframe may be extended at TTD's sole discretion, for a duration adequate to accommodate such delays.

TERMS, CONDITIONS, AND EXCEPTIONS

A. Required Review and Waiver of Objections by Responding Firms

Responding firms should carefully review this RFP and all attachments, including but not limited to the form agreement (Attachment A), for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by TTD no later than the date specified above.

It is the policy of TTD to consider fully and promptly adjudicate protests filed by bidders or prospective bidders relating to TTD's bidding procedure, contract specifications or award of contract. Bid protest procedures can be viewed at <https://www.tahoetransportation.org/procurements/>.

B. Submittal Preparation, Interview and Negotiation Costs

TTD shall not be responsible for and/or shall not pay any costs associated with the preparation, submittal, or presentation of any proposals, and costs incurred by the responding firms during the interview and negotiations phase of the solicitation process.

TTD will not be liable for Federal, State, or local excise taxes.

TTD reserves the right to negotiate final contract terms with any firm selected. The contract between the parties will consist of the final executed contract, the RFP together with any modifications thereto, and the awarded firm's proposal, together with any modifications and clarifications thereto that are incorporated at the request of TTD during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, addenda to the RFP, the RFP, any modifications and clarifications to the awarded Proposer's proposal, and the awarded Proposer's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of TTD.

C. Statement of Qualifications Withdrawal

To withdraw a proposal, the responding firm must submit a written request, signed by an authorized representative, to jallen@tahoetransportation.org. After withdrawing a previously submitted proposal, the Responding Firm may submit another proposal at any time up to the deadline for submitting proposals.

D. Statement of Qualifications Amendment

TTD shall not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless such is formally requested, in writing, by TTD.

E. Statement of Qualifications Errors

Responding firms are liable for all errors or omissions contained in their proposals. Responding firms shall not be allowed to alter proposal documents after the deadline for submitting a proposal.

F. Incorrect Statement of Qualifications Information

If TTD determines that a responding firm has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the responding firm knew or should have known was materially incorrect, that submittal shall be determined non-responsive, and the proposal shall be rejected.

Any irregularities or lack of clarity in the RFP must be brought to TTD's attention as soon as possible so that corrective addenda may be furnished to all Proposers.

Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by an addendum or an amendment to the RFP.

Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

Proposer understands and acknowledges that the representations above are material and important and will be relied on by TTD in ATMS evaluation of a proposal. Any misrepresentation by a proposer shall be treated as fraudulent concealment from TTD of the true facts relating to the proposal.

G. Assignment and Subcontracting

The Proposer and proposed Subcontractor(s) may not subcontract, transfer, or assign any portion of the contract without prior, written approval from TTD. Each subcontractor/subconsultant must be approved in writing by TTD. The substitution of one subcontractor/subconsultant for another may be made only at the discretion of TTD and with prior written approval from TTD.

Notwithstanding the use of approved subcontractor/subconsultant, the selected firm(s), if awarded a contract under this RFP, shall be the prime contractor and shall be responsible for all work performed.

A proposal submitted in response to this RFP must identify any subconsultants and outline the contractual relationship between the awarded Proposer and each such subconsultant.

The awarded Proposer will be the sole point of contract responsibility. TTD will look solely to the awarded Proposer for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Proposer shall not be relieved for the non-performance of any or all of ATMS subconsultants.

H. Proposal of Additional Services

If a responding firm indicates the capability and offers services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of TTD. The cost for any such additional services shall be mutually agreed upon by the selected firm(s) and TTD and incorporated into the contract before contract signing.

I. Licensure

Before a contract pursuant to this RFP is signed, the selected firm(s) must hold all necessary, applicable business and professional licenses. TTD may require any or all responding firms to submit evidence of proper licensure.

J. Disclosure of Submittal Contents

All proposals and other materials submitted in response to this RFP procurement process become the property of TTD and will not be returned. Selection or rejection of a submittal does not affect this right. All proposal information, including any detailed price and cost information, shall be held in confidence during the evaluation and selection process. Upon the completion of the evaluation and selection process, indicated by approval of a contract for services emanating from this RFP by the TTD Board, the proposals and associated materials shall be open for review by the public to the extent allowed by the

California Public Records Act. By submitting a proposal, the responding firm acknowledges and accepts that the contents of the submittal and associated documents shall become open to public inspection.

K. Proprietary Information

The master copy of each proposal shall be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each responding firm will clearly label part of a submittal as "CONFIDENTIAL" if the responding firm thereby agrees to indemnify and defend TTD for honoring such a designation. The failure to so label any information that is released by TTD shall constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by TTD, TTD will notify the responding firm of the request and delay access to the material until seven (7) working days after notification to the responding firm. Within that time delay, it will be the duty of the responding firm to act in protection of ATMS labeled information. Failure to so act shall constitute a complete waiver.

ATTACHMENT A

SAMPLE PROFESSIONAL SERVICES AGREEMENT

**AGREEMENT FOR SERVICES
BETWEEN
TAHOE TRANSPORTATION DISTRICT
AND**

This Agreement for Services ("Agreement") is entered into as of this ____ day of _____, 20____ by and between Tahoe Transportation District, a bi-state special purpose district created by the Tahoe Regional Planning Compact, ("District") and _____, a _____ ("Contractor"). District and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

- A. District has sought, by Request for Qualifications, the performance of the services defined and described particularly in Section 2 of this Agreement.
- B. Contractor, following submission of a proposal for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the District to perform those services.
- C. District has authority to enter into this Agreement and the District's District Manager has authority to execute this Agreement.
- D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

TERM OF AGREEMENT.

Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the Term of this Agreement is for two (2) years.

SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

Scope of Services. Contractor agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Contractor shall be deemed to be in Default of this Agreement. The District, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Contractor to continue performing the Services.

ADDITIONAL SERVICES.

Contractor shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 26 "Administration and Implementation" or Section 27 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

COMPENSATION AND METHOD OF PAYMENT.

Subject to any limitations set forth in this Agreement, District agrees to pay Contractor the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed [REDACTED] dollars (\$[REDACTED]), unless additional compensation is approved in writing in accordance with Section 26 "Administration and Implementation" or Section 27 "Amendment" of this Agreement.

Each month Contractor shall furnish to District an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. District shall independently review each invoice submitted by the Contractor to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by District, the original invoice shall be returned by District to Contractor for correction and resubmission.

Except as to any charges for work performed or expenses incurred by Contractor which are disputed by District, District will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

PROGRESS REPORTS.

Consultant shall submit progress reports to District at intervals identified in **Exhibit A**. At a minimum, Consultant shall submit progress reports to District with every invoice.

Progress reports shall be sufficiently detailed for District to determine if Consultant is performing to expectations and is on schedule. Progress reports will communicate interim findings and afford occasions for airing difficulties or special circumstances encountered so that solutions can be developed. Progress reports shall include the total number of hours worked by Consultant and any subconsultants and shall include descriptions of the Services performed, including a description of any deliverables submitted during the reporting period and the anticipated tasks, work and deliverables proposed for the subsequent reporting period.

Separate progress reports shall be provided for each invoice. District's review of progress reports will ensure that Consultant's work meets a level of acceptability.

INSPECTION AND FINAL ACCEPTANCE.

District may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. District shall reject or finally accept Contractor's work within sixty (60) days after submitted to District. District shall reject work by a timely written explanation, otherwise Contractor's work shall be deemed to have been accepted. District's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Contractor's work by District shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 16 "Indemnification" and Section 17 "Insurance."

OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement shall become the sole property of District and may be used, reused or otherwise disposed of by District without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to District all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that District utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or

discovered by Contractor in the course of providing the Services pursuant to this Agreement, Contractor's guarantees and warranties in Section 9 "Standard of Performance" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

CONTRACTOR'S BOOKS AND RECORDS.

Contractor shall maintain any and all documents and records demonstrating or relating to Contractor's performance of the Services. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to District pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by District or its designated representative. Copies of such documents or records shall be provided directly to the District for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement.

Where District has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Contractor's business, District may, by written request, require that custody of such documents or records be given to the District. Access to such documents and records shall be granted to District, as well as to its successors-in-interest and authorized representatives.

INDEPENDENT CONTRACTOR.

Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of District. Contractor shall have no authority to bind District in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against District, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by District.

The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither District, nor any elected or appointed boards, officers, officials, employees or agents of

District, shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of District.

Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to District's employees. Contractor expressly waives any claim Contractor may have to any such rights.

STANDARD OF PERFORMANCE.

Contractor represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Contractor under this Agreement. In addition to the general standards of performance set forth this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Contractor's work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Contractor shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Contractor shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither District, nor any elected or appointed boards, officers, officials, employees or agents of District, shall be liable, at law or in equity, as a result of any failure of Contractor to comply with this section.

PREVAILING WAGE LAWS.

Contractor understands, acknowledges and agrees to comply with any and all applicable state and federal laws requiring payment of prevailing wages for work performed in connection with publicly funded projects. Contractor and any subcontractors shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect if required by state or federal laws or regulations. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate will apply.

NONDISCRIMINATION.

Contractor shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, gender identity, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

UNAUTHORIZED ALIENS.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of the Services, and should the any liability or sanctions be imposed against District for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse District for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by District.

CONFLICTS OF INTEREST.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of District or which would in any way hinder Contractor's performance of the Services. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the District Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District in the performance of this Agreement.

District understands and acknowledges that Contractor is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Contractor is unaware of any stated position of District relative to such projects. Any future position of District on such projects shall not be considered a conflict of interest for purposes of this section.

District understands and acknowledges that Contractor will perform non-related services for other governmental agencies and private Parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such

information or work product to persons or entities other than District without prior written authorization from the District Manager, except as may be required by law.

Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the District Manager or unless requested by the District Attorney of District, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives District notice of such court order or subpoena.

If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then District shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

Contractor shall promptly notify District should Contractor, its officers, employees, agents or subcontractors, be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. District retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with District and to provide District with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by District to control, direct, or rewrite said response.

INDEMNIFICATION.

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless District and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or sub-contractors of Contractor, in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless District, and any and all of its

employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or sub-contractors of Contractor.

(c) Indemnification from Subcontractors. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor agrees to be fully responsible according to the terms of this section. Failure of District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend District as set forth herein is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

(d) Limitation of Indemnification. Notwithstanding any provision of this section to the contrary, in California design professionals are required to defend and indemnify the District only to the extent permitted by California Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code. To the extent that California Civil Code Section 2782.8 applies to this Agreement, the indemnification obligations of Contractor shall be limited in accordance with that section.

(e) District's Negligence. The provisions of this section do not apply to claims occurring as a result of District's sole negligence. The provisions of this section shall not release District from liability arising from gross negligence or willful acts or omissions of District or any and all of its officials, employees and agents.

INSURANCE.

Contractor agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by District as to form and content. These requirements are subject to amendment or waiver if so approved

in writing by the District Manager. Contractor agrees to provide District with copies of required policies upon request.

ASSIGNMENT.

The expertise and experience of Contractor are material considerations for this Agreement. District has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Contractor's duties or obligations under this Agreement without the prior written consent of the District. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling District to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 20 "Termination of Agreement." District acknowledges, however, that Contractor, in the performance of its duties pursuant to this Agreement, may utilize sub-contractors.

PROJECT MANAGER AND CONTINUITY OF PERSONNEL.

Consultant designates [INSERT NAME] as its Project Manager for this Agreement. The Project Manager, or a District approved designee, shall be accessible to District during normal District working hours and shall respond within twenty-four (24) hours to District inquiries or requests. The Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants including, but not limited to (1) assigning qualified personnel to perform the work and prepare deliverables; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants. There shall be no change in the person designated as the Project Manager without prior written approval by District.

Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services. Contractor shall notify District of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

TERMINATION OF AGREEMENT.

Termination for Convenience. District may terminate this Agreement, in whole or in part, at any time by giving written notice of termination to Contractor if District determines that termination is in its best interest. In the event such notice is given, Contractor shall cease immediately all work in progress. Contractor shall be paid its costs, including contract close-out costs, on work performed up to the time of termination.

Termination for Cause. If District notifies Contractor of a default under Section 21 "Default" and Contractor fails to cure the default within the time frame provided, District

may terminate this Agreement immediately. Contractor will only be paid for Services performed in accordance with the manner of performance set forth in this Agreement.

Property of District. Upon termination of this Agreement by either Contractor or District, all property belonging exclusively to District which is in Contractor's possession shall be returned to District. Contractor shall furnish to District a final invoice for work performed and expenses incurred by Contractor, prepared as set forth in Section 4 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 "Compensation and Method of Payment" of this Agreement.

DEFAULT.

In the event that Contractor is in default under the terms of this Agreement, the District may give notice to Contractor specifying the nature of the default and providing the Contractor a timeframe to cure the default. The District may hold all invoices until the default is cured. If Contractor does not cure the default to District's satisfaction in the timeframe given, the District may take necessary steps to terminate this Agreement under Section 20 "Termination of Agreement." Any failure on the part of the District to give notice of the Contractor's default shall not be deemed to result in a waiver of the District's legal rights or any rights arising out of any provision of this Agreement.

EXCUSABLE DELAYS.

Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of District, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

COOPERATION BY DISTRICT.

All public information, data, reports, records, and maps as are existing and available to District as public records, and which are necessary for carrying out the Services shall be furnished to Contractor in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To Contractor: _____

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

ADMINISTRATION AND IMPLEMENTATION.

This Agreement shall be administered and executed by the District Manager or his or her designated representative. The District Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 27 "Amendment" and the District Manager's contracting authority under District's ordinances, rules and regulations.

AMENDMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the District. The District Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the District Manager's contracting authority under the District's ordinances, rules and regulations. All other amendments shall be approved by the District's Board. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

By written notice or order, District may, from time to time, order work suspension or make changes to the Services to be provided by Contractor. If any such work suspension or change causes an increase or decrease in the price of this Agreement or in the time required for its performance, or otherwise necessitates an amendment to this Agreement, Contractor shall promptly notify District thereof within ten (10) days after the change or work suspension is ordered, and an amendment to this Agreement shall be

negotiated. However, nothing in this clause shall excuse Contractor from complying immediately with the notice or order issued by District.

BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

FEDERAL PROVISIONS.

District will be using money received from the federal government to pay all or a part of the compensation to Contractor for the Services. The federal government requires certain clauses to be included in contracts where federal money will be used in the contract. Contractor agrees to adhere to the federally-required provisions included in Exhibit "D" hereto and incorporated herein by reference. If there is a conflict between any provision in Exhibit "D" and the body of this Agreement, Exhibit "D" shall control. In addition, the Federal Highway Administration's Required Contract Clauses for Federal Aid Construction Projects (FHWA Form 1273, revised May 1, 2012; <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>) is incorporated by reference herein.

WAIVER.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by District of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

LAW TO GOVERN; VENUE.

In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Dorado, California where the dispute arises from Services performed in California, or shall lie exclusively in the County of Douglas, Nevada where the dispute arises from Services performed in Nevada. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of California for Services performed in California, or in the District of Nevada for Services performed in Nevada.

ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and District prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

CONFLICTING TERMS.

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

**TAHOE TRANSPORTATION
DISTRICT**

Carl Hasty
District Manager

ATTEST:

Judi Allen
Clerk of the Board

APPROVED AS TO FORM

Sergio Rudin
Interim General Counsel

By: _____

By: _____

Its: _____

Its: _____

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

EXHIBIT "A"
SCOPE OF SERVICES

I. Contractor will perform the following Services:

- A.
- B.
- C.
- D.

II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the District:

- A.
- B.
- C.
- D.

III. During performance of the Services, Contractor will keep the District apprised of the status of performance by delivering the following status reports:

- A.
- B.
- C.
- D.

IV. The tangible work products and status reports will be delivered to the District pursuant to the following schedule:

- A.
- B.

C.

D.

V. Contractor will utilize the following personnel to accomplish the Services:

A.

B.

C.

D.

VI. Contractor will utilize the following subcontractors to accomplish the Services:

A.

B.

C.

D.

EXHIBIT "B"
COMPENSATION

I. Contractor shall use the following rates of pay in the performance of the Services:

- A. [job] [hourly rate]
- B. [job] [hourly rate]
- C. [job] [hourly rate]
- D. [job] [hourly rate]
- E. [job] [hourly rate]

II. Contractor may utilize sub-contractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed \$_____ per hour without written authorization from the District Manager or his or her designee.

EXHIBIT "C" INSURANCE

[Select/Deselect the Appropriate Insurance for Each Contract.]

A. Insurance Coverages. Contractor shall provide and maintain insurance, acceptable to the District, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Contractor, its agents, representatives or employees. Contractor shall procure and maintain the following scope and limits of insurance:

Only the following “marked” requirements are applicable:

X **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Contractor and District against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

X **Vehicle Liability Insurance:** Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the District.

X **Workers' Compensation Insurance:** Workers' Compensation insurance as required by the State of California and/or Nevada and a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Agreement, Contractor is to defend and indemnify the District from such claim.

X **Professional Liability Insurance:** Professional liability insurance appropriate to the Contractor's profession in an amount not less than one million dollars \$1,000,000 per

OAK #4819-3383-6370 v2

occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional three (3) year period, Contractor shall annually and upon request of the District submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to District.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. District, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to District, and their respective elected and appointed officers, officials, or employees.

b. Contractor's insurance coverage shall be primary insurance with respect to District, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by District, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Contractor's insurance.

c. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage

OAK #4819-3383-6370 v2

provided to District, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against the District, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the District Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against District, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Contractor.

C. Other Requirements. Contractor agrees to deposit with District, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy District that the insurance provisions of this contract have been complied with. The District may require that Contractor furnish District with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. District reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Contractor shall furnish certificates and endorsements from each subcontractor identical to those Contractor provides.

2. Any deductibles or self-insured retentions must be declared to and approved by District. At the option of District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District or its respective elected or appointed officers, officials, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

EXHIBIT “D”
FEDERAL PROVISIONS

TERM B.1
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 Technical Application and by entering into this agreement under the FY 2022 SMART grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Office of the Secretary (OST), 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.

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.

SMART award recipients should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, and implementing regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. The Department's and the applicable Operating Administrations' Offices of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

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 FY 2022 SMART grant 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 FY 2022 SMART 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.
11. The Recipient shall retain all documents relevant to this Grant Agreement and the Grant Project for a period of three (3) years after completion of all projects undertaken pursuant to the Grant Agreement and receipt of final reimbursement from the U.S. Treasury, whichever is later. It shall furnish DOT, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement,

litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Recipient, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by DOT.

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 DOT/OST'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 DOT/OST. You must keep records, reports, and submit the material for review upon request to DOT/OST, 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 U.S. Department of Transportation under the FY 2022 SMART grant program. 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 FY 2022 SMART grant program.

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, Maritime Administration (DOT/OST), 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 DOT/OST 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 DOT/OST, 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 DOT/OST 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 DOT/OST 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 Consolidated Appropriations Act, 2022 (Pub. L. 116-260, Dec. 27, 2020) the Regulations for the Administration of FY 2022 SMART grant program, and the policies and procedures prescribed by the Maritime Administration (DOT/OST) 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:

A. 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).

ATTACHMENT B

SMART PROGRAM TERMS AND CONDITIONS

U.S. DEPARTMENT OF TRANSPORTATION

**GENERAL TERMS AND CONDITIONS UNDER THE
FISCAL YEAR 2022 STRENGTHENING MOBILITY AND REVOLUTIONIZING
TRANSPORTATION (SMART) GRANT PROGRAM:**

Revision date: June 20, 2023

Table of Contents

Article 7 Purpose.....	7
7.1 Purpose.....	7
Article 8 USDOT Role.....	8
8.1 Division of USDOT Responsibilities.....	8
Article 9 Recipient Role.....	9
9.1 Statements on the Project.....	9
9.2 Statements on Authority and Capacity.....	9
9.3 USDOT Reliance.	9
9.4 Project Delivery.	9
9.5 Rights and Powers Affecting the Project.	10
9.6 Notification of Changes to Key Personnel.....	10
Article 10 Award Amount, Obligation, and Time Periods	11
10.1 Federal Award Amount.....	11
10.2 Federal Obligations.	11
10.3 Budget Period.....	11
10.4 Period of Performance.	11
Article 11 Statement of Work, Schedule, and Budget Changes	12
11.1 Notification Requirement.....	12
11.2 Statement of Work Changes.	12
11.3 Schedule Changes.	12
11.4 Budget Changes.	12
11.5 USDOT Acceptance of Changes.....	13
Article 12 General Reporting Terms.....	14
12.1 Report Submission.	14
12.2 Paperwork Reduction Act Notice.	14
Article 13 Progress and Financial Reporting	15
13.1 Quarterly Program Performance Reports.....	15
13.2 Quarterly Financial Status.....	15
Article 14 Performance Reporting	16
14.1 Evaluation and Data Management Plan.....	16
14.2 Implementation Report	16
Article 15 Noncompliance and Remedies.....	18
15.1 Noncompliance Determinations.....	18
15.2 Remedies.....	18
15.3 Other Oversight Entities.....	19
Article 16 Agreement Termination.....	20
16.1 USDOT Termination.....	20
16.2 Closeout Termination.....	20
16.3 Post-Termination Adjustments.	21
16.4 Non-Terminating Events.....	21
16.5 Other Remedies.....	21
Article 17 Monitoring, Financial Management, Controls, and Records.....	22
17.1 Recipient Monitoring and Record Retention.	22
17.2 Financial Records and Audits.	22
17.3 Internal Controls.	22
17.4 USDOT Record Access.	23
Article 18 Contracting and Subawards	24
18.1 Build America, Buy America.....	24

18.2	Buy American Act	26
18.3	Small and Disadvantaged Business Requirements.	30
18.4	Engineering and Design Services.	30
18.5	Foreign Market Restrictions.....	30
18.6	Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment... <td>30</td>	30
18.7	Recipient Responsibilities for Subawards.....	30
Article 19	Costs, Payments, and Unexpended Funds	31
19.1	Limitation of Federal Award Amount.....	31
19.2	Projects Costs.....	31
19.3	Timing of Project Costs.	31
19.4	Recipient Recovery of Federal Funds.....	31
19.5	Unexpended Federal Funds.....	31
19.6	Timing of Payments to the Recipient.....	31
19.7	Payment Method.	31
19.8	Information Supporting Expenditures.....	32
19.9	Reimbursement Frequency.	32
Article 20	Liquidation, Adjustments, and Funds Availability	33
20.1	Liquidation of Recipient Obligations.....	33
Article 21	Agreement Modifications	34
21.1	Bilateral Modifications.	34
21.2	Unilateral Contact Modifications.....	34
21.3	USDOT Unilateral Modifications.....	34
21.4	Other Modifications.	34
Article 22	Climate Change and Environmental Justice	35
22.1	Climate Change and Environmental Justice.	35
Article 23	Racial Equity and Barriers to Opportunity	36
23.1	Racial Equity and Barriers to Opportunity.....	36
Article 24	Federal Financial Assistance, Administrative, and National Policy Requirements	37
24.1	Uniform Administrative Requirements for Federal Awards.....	37
24.2	Federal Law and Public Policy Requirements.	37
24.3	Federal Freedom of Information Act.	37
24.4	History of Performance.....	37
24.5	Whistleblower Protection.....	37
24.6	External Award Terms and Obligations.....	37
24.7	Incorporated Certifications.	38
Article 25	Assignment	39
25.1	Assignment Prohibited.....	39
Article 26	Waiver.....	40
26.1	Waivers.	40
Article 27	Additional Terms and Conditions.....	41
27.1	Disclaimer of Federal Liability	41
27.2	Environmental Review.....	41
27.3	Railroad Coordination.....	42
27.4	Relocation and Real Property Acquisition.....	42
27.5	Equipment Disposition.....	43
Article 28	Mandatory Award Information	44
28.1	Information Contained in a Federal Award.	44
Article 29	Construction and Definitions	45
29.1	Attachments.	45
29.2	Exhibits.	45

29.3	Construction.....	45
29.4	Integration.....	45
29.5	Definitions.....	45
Article 30	Agreement Execution and Effective Date	47
30.1	Counterparts.....	47
30.2	Effective Date	47
30.3	Termination.....	47

Index of Definitions

Federal Share	13
FHWA.....	26
NOFO.....	6
Notice of Funding Opportunity (the “NOFO”)	6
OMB	14
Program Statute.....	45
Project	46
Project Closeout.....	20
Recipient	6
SMART Grant.....	46
Technical Application.....	46
USDOT	6

GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”) established the Strengthening Mobility and Revolutionizing Transportation (SMART) Discretionary Grant Program (BIL Section 25005) and appropriated additional funds to the United States Department of Transportation (the “USDOT”) under Division J, Title VIII of BIL to implement the program. The funding will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64355). The funds are available to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The program funds projects that are focused on using technology interventions to solve real-world challenges and build data and technology capacity and expertise in the public sector.

The USDOT published a Notice of Funding Opportunity (the “NOFO”) to solicit applications for Federal financial assistance in Fiscal Year 2022 for the Strengthening Mobility and Revolutionizing Transportation (SMART) (87 FR 58187).

These general terms and conditions are incorporated by reference in a project-specific grant agreement under the fiscal year 2022 SMART Grants Program. Articles 1–6 are in the project-specific portion of the agreement. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through D are project-specific attachments.

ARTICLE 7

PURPOSE

- 7.1 **Purpose.** The purpose of this award is to conduct demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The program funds projects that are focused on using technology interventions to solve real-world challenges and build data and technology capacity and expertise in the public sector. The parties will accomplish that purpose by achieving the following objectives:
- (a) timely completing the Project; and
 - (b) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by section 3.3 and Attachment B.

ARTICLE 8 **USDOT ROLE**

8.1 Division of USDOT Responsibilities.

The Office of the Secretary of Transportation is ultimately responsible for the USDOT's administration of the SMART Grant Program.

USDOT Program Contacts.

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

ARTICLE 9 **RECIPIENT ROLE**

- 9.1 **Statements on the Project.** The Recipient states that:
- (a) all material statements of fact in the Grant Application were accurate when that application was submitted; and
 - (b) Attachment B documents all material changes in the information contained in that application.
- 9.2 **Statements on Authority and Capacity.** The Recipient states that:
- (a) it has the authority to receive Federal financial assistance under this agreement;
 - (b) it has the legal authority to complete the Project;
 - (c) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
 - (d) not less than the difference between the “Total Eligible Project Cost” and the “SMART Grant Amount” listed in section 3.3 are committed to fund the Project;
 - (e) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 9 and in section 24.7 on behalf of the Recipient.
- 9.3 **USDOT Reliance.** The Recipient acknowledges that:
- (a) the USDOT relied on statements of fact in the Grant Application to select the Project to receive this award;
 - (b) the USDOT relied on statements of fact in both the Grant Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;
 - (c) the USDOT relied on statements of fact in both the Grant Application and this agreement to establish the terms of this agreement; and
 - (d) the USDOT’s selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.
- 9.4 **Project Delivery.**
- (a) The Recipient shall complete the Project under the terms of this agreement.

- (b) The Recipient shall ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.
- (c) The Recipient shall provide any certifications or assurances deemed necessary by the USDOT in ensuring the Recipient's compliance with all applicable laws, regulations, and policies.
- (d) The Recipient shall provide access to records as provided at 2 CFR 200.337.

9.5 Rights and Powers Affecting the Project.

- (a) The Recipient shall not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this agreement without written approval of the USDOT.
- (b) The Recipient shall act, in a manner acceptable to the USDOT, promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this agreement.
- (c) The Recipient shall ensure that the funds provided by DOT are not misappropriated or misdirected to any other account, need, project, line-item, or the like.

9.6 Notification of Changes to Key Personnel. The Recipient shall notify all USDOT representatives who are identified in Section 4.4 in writing within 30 calendar days of any change in key personnel who are identified in Section 4.3.

ARTICLE 10

AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

10.1 **Federal Award Amount** The USDOT hereby awards a SMART Grant to the Recipient in the amount listed in Section 2.2 as the SMART Grant Amount.

10.2 **Federal Obligations.**

This agreement obligates for the period of performance listed in section 2.3 of the grant agreement.

10.3 **Budget Period**

The budget period for this award begins on the date of this agreement and ends on the budget period end date that is listed in section 2.4, which shall be no later than 2 years from the date of grant execution. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.

10.4 **Period of Performance.**

- (a) The period of performance for this award begins on the effective date of award listed in page 1 item 2 and ends on the period of performance end date that is listed in Section 2.3.
- (b) In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

ARTICLE 11

STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

- 11.1 **Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 4.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient's plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 11.1 is separate from any requirements under this article 11 that the Recipient request amendment of this agreement.
- 11.2 **Statement of Work Changes.** If the Project's activities differ from the statement of work that is described in section 3.1 and Attachment B, then the Recipient shall request an amendment of this agreement to update section 3.1.
- 11.3 **Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement to update the relevant dates:
 - (a) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2; or
 - (b) a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.3.
- For other schedule changes, the Recipient shall request an amendment of this agreement unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- 11.4 **Budget Changes.**
 - (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient's obligation under this agreement to complete the Project; and
 - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
 - (b) The Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B if, in comparing the Project's budget to the amounts listed in section 3.3:
 - (1) the "Non-Federal Funds" amount decreases; or
 - (2) the "Total Eligible Project Cost" amount decreases.

- (c) For budget changes that are not identified in section 11.4(b), the Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- (d) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3, then the Recipient may propose to the USDOT, in writing consistent with applicable requirements, specific additional activities that are within the scope of this award, as defined in sections 7.1 and 3.1, and that the Recipient could complete with the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs.
- (e) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3 and either the Recipient does not make a proposal under section 11.4(d) or the USDOT does not accept the Recipient’s proposal under section 11.4(d), then:
 - (1) in a request under section 11.4(b), the Recipient shall reduce the Federal Share by the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs; and
 - (2) if that amendment reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall request to add additional project work that is within the scope of this project.

In this agreement, “**Federal Share**” means the sum of the “SMART Action Plan or Implementation Grant Amount” and the “Other Federal Funds” amounts that are listed in section 3.3.

- (a) The Recipient acknowledges that amounts that are required to be refunded under section 11.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).
- (b) The Recipient shall ensure compliance with Federal regulations requiring conduct of a Federally approved audit of any expenditure of funds of \$750,000 or more in a year in Federal awards.

11.5 USDOT Acceptance of Changes. The USDOT may accept or reject amendments requested under this article 11, and in doing so may elect to consider only the interests of the SMART grant program and the USDOT. The Recipient acknowledges that requesting an amendment under this article 11 does not amend, modify, or supplement this agreement unless the USDOT accepts that amendment request and the parties modify this agreement under section 21.1.

ARTICLE 12

GENERAL REPORTING TERMS

12.1 **Report Submission.** The Recipient shall send all reports required by this agreement to smartreports@dot.gov.

12.2 **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 (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0520.

ARTICLE 13

PROGRESS AND FINANCIAL REPORTING

- 13.1 **Quarterly Program Performance Reports.** The recipient shall submit to USDOT Quarterly Project Progress Reports in the format and with the content described in Exhibit-C. Due dates for reporting periods are 3/31, 6/30, 9/30, or 12/31, regardless of budget period start dates. Recipients shall submit quarterly reports are no later than 30 days after the end of the reporting period. Annual reports are due no later than 90 days after the end of the reporting period.
- 13.2 **Quarterly Financial Status.** Recipient shall submit a Federal Financial Report using SF-425 in accordance with specified due dates.

ARTICLE 14 **PERFORMANCE REPORTING**

14.1 Evaluation and Data Management Plan

The Recipient shall submit to the USDOT, not later than 90 days after receiving the grant award, a report that provides an overview of how the project will be evaluated and how the data collected will be managed and stored including

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

14.2 Implementation Report

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

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

- (e) the performance measurement data for each performance measure that is identified in the Performance Measure Table in Attachment A.

14.3 Performance Reporting Survival.

The data collection and reporting requirements in this article 14 survive the termination of this agreement which is three years post period of performance.

14.4 Program Evaluation.

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

ARTICLE 15

NONCOMPLIANCE AND REMEDIES

15.1 Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If the USDOT notifies the Recipient of a proposed determination of noncompliance under section 15.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
 - (1) accept the remedy;
 - (2) acknowledge the noncompliance, but propose an alternative remedy; or
 - (3) dispute the noncompliance.

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

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

15.2 Remedies.

- (a) If the USDOT makes a final determination of noncompliance under section 15.1(d), the USDOT may impose a remedy, including:
 - (1) additional conditions on the award;
 - (2) 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 USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or

- (3) any other remedy legally available.
- (b) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
- (c) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 15.2(a), before making a final determination of noncompliance under section 15.1(d). If it does so, then the notice provided under section 15.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (d) In imposing a remedy under this section 15.2 or making a public interest determination under section 15.2(c), the USDOT may elect to consider the interests of only the USDOT.
- (e) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 15.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

15.3 Other Oversight Entities.

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

ARTICLE 16

AGREEMENT TERMINATION

16.1 USDOT Termination.

- (a) The USDOT may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
 - (1) the Recipient fails to obtain or provide any non-SMART Grant contribution (all eligible project costs other than the SMART Grant Amount, as described in section 3.2 table (a) of the grant agreement) or alternatives approved by the USDOT as provided in this agreement and consistent with article 3;
 - (2) a construction start date for the Project or Strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
 - (3) a substantial completion date for the Project or Strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
 - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; or,
 - (5) the USDOT determines that termination of this agreement is in the public interest.
 - (6) the Recipient fails to expend the funds within 2 years after the date on which the government executes the grant agreement, which is the date funds are provided for the project.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
- (c) This section 16.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 15.2.
- (d) The Recipient may request that the USDOT terminate the agreement under this section 16.1.

16.2 Closeout Termination.

- (a) This agreement terminates on Project Closeout.
- (b) In this agreement, “**Project Closeout**” means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.344, Project

Closeout should occur no later than one year after the end of the period of performance.

16.3 **Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the USDOT’s authority to disallow costs, including costs that USDOT reimbursed before termination, and recover funds from the Recipient.

16.4 **Non-Terminating Events.**

- (a) The end of the period of performance described under section 10.4 does not terminate this agreement or the Recipient’s obligations under this agreement.
- (b) The liquidation of funds under section 20.1 does not terminate this agreement or the Recipient’s obligations under this agreement.

16.5 **Other Remedies.** The termination authority under this article 16 supplements and does not limit the USDOT’s remedial authority under article 15 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

ARTICLE 17

MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

17.1 Recipient Monitoring and Record Retention.

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:
 - (1) that those activities comply with this agreement; and
 - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

17.2 Financial Records and Audits.

- (a) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.
- (b) The Recipient shall keep accounts and records described under section 17.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303, 2 C.F.R. part 200, subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (c) The Recipient shall separately identify expenditures under the fiscal year 2022 SMART A grants program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
 - (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including “FY 2022” in the program name; and
 - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2022” in column c (“Additional Award Identification”).

17.3 Internal Controls. The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.

17.4 **USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.

ARTICLE 18

CONTRACTING AND SUBAWARDS

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

18.1 Build America, Buy America.

This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1294 (2021) and Office of Management and Budget (OMB) Memorandum M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure."

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

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

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

- (a) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

- (b) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and

- (c) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

Inapplicability.

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

Waivers.

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

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

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

- (a) applying the domestic content procurement preference would be inconsistent with the public interest;
- (b) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (c) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

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

Definitions

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Primarily iron or steel” means that the cost of the iron and steel content in the article, material, or supply exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

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

- (a) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1294 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (b) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

18.2 Buy American Act

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

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

Article 18 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material.

The Recipient shall not use foreign construction materials in performing this agreement, except that:

- (a) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the United States;
- (b) the Recipient may use information technology that is a commercial item;
- (c) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
- (d) the Recipient may use foreign construction materials if the USDOT has authorized their use under subsection (d) of Article 18.

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

The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under section 21.1, if the USDOT determines that:

- (a) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
- (b) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (c) the cost of domestic construction material is unreasonable. To determine if a cost is unreasonable, the USDOT will follow processes described in 48 C.F.R. 25.106.

The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under subsection (d) of Article 18. If the Recipient makes a request under this subsection (e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:

- (a) a description of the foreign and domestic construction materials;
- (b) unit of measure;
- (c) quantity;

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

The Recipient acknowledges that:

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

In Article 18, the following definitions apply: “commercially available off-the-shelf (COTS) item”

- (a) means any item of supply (including construction material) that is:
 - (1) a commercial item as defined by 48 C.F.R. § 2.101;
 - (2) sold in substantial quantities in the commercial marketplace; and
 - (3) offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (b) does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products. “construction material” means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to

the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“cost of components” means—

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

“domestic construction material” means—

- (a) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—
 - (1) An unmanufactured construction material mined or produced in the United States; or
 - (2) A construction material manufactured in the United States, if:
 - (i) the cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered in calendar year 2029 or later. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) the construction material is a COTS item manufactured in the United States; or
- (b) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of

all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of “cost of components” in this term.

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

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

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

- 18.3 **Small and Disadvantaged Business Requirements.** The Recipient shall 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”).
- 18.4 **Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under 2 CFR 200.320 or an equivalent qualifications-based requirement prescribed for or by the Recipient.
- 18.5 **Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 18.6 **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232, 2 C.F.R. 200.216 and 2 C.F.R. 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 18.7 **Recipient Responsibilities for Subawards.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.

ARTICLE 19

COSTS, PAYMENTS, AND UNEXPENDED FUNDS

- 19.1 **Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated on the SMART Grant cover page, Item 11, Federal Funds Obligated. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.
- 19.2 **Projects Costs.** This award is subject to the cost principles at 2 C.F.R. part 200 subpart E, including provisions on determining allocable costs and determining allowable costs.
- 19.3 **Timing of Project Costs.**
 - (a) The Recipient shall not charge to this award costs that are incurred after the period of performance.
 - (b) The Recipient shall not charge to this award costs that were incurred before the effective date of award of this agreement,
- 19.4 **Recipient Recovery of Federal Funds.** The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the USDOT.
- 19.5 **Unexpended Federal Funds.** Any Federal funds that are awarded at section 10.1 but not expended on allocable, allowable costs remain the property of the United States.
- 19.6 **Timing of Payments to the Recipient.**
 - (a) When reimbursement is used, the Recipient shall not request reimbursement of a cost before the Recipient has entered an obligation for that cost.
 - (b) Pursuant to 2 CFR 200.305, advance payments to Recipient must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Recipient in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Recipient for direct program or project costs and the proportionate share of any allowable indirect costs. The Recipient must make timely payment to contractors in accordance with the contract provisions.
- 19.7 **Payment Method.**

- (a) If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then the Recipient shall use the DELPHI eInvoicing System to request reimbursement or advance payment under this award unless the USDOT agreement officer provides written approval for the Recipient to use a different request and payment method.
- (b) The USDOT may deny a payment request that is not submitted using the method identified in section 5.2.

19.8 Information Supporting Expenditures.

- (a) If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF 270 (Request for Advance or Reimbursement), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (b) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

19.9 Reimbursement Frequency. If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then the Recipient shall not request reimbursement more frequently than monthly.

ARTICLE 20

LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

20.1 Liquidation of Recipient Obligations.

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) 2 years after the date on which the grant is provided.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

ARTICLE 21

AGREEMENT MODIFICATIONS

- 21.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 21.2 **Unilateral Contact Modifications.**
 - (a) The USDOT may update the contacts who are listed in sections 4.4 by written notice to all of the Recipient contacts who are listed in section 4.3.
- 21.3 **USDOT Unilateral Modifications.**
 - (a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
 - (b) To unilaterally modify this agreement under this section 21.3(a), the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.
- 21.4 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 21.1, 21.2, or 21.3. If an amendment, modification, or supplement is not permitted under section 21.1, not permitted under section 21.2, and not permitted under section 21.3, it is void.

ARTICLE 22
CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

- 22.1 **Climate Change and Environmental Justice.** Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), Attachment C documents the consideration of climate change and environmental justice impacts of the Project.

ARTICLE 23

RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

- 23.1 **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), Attachment D documents activities related to the Project to improve racial equity and reduce barriers to opportunity.

ARTICLE 24
**FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL
POLICY REQUIREMENTS**

24.1 Uniform Administrative Requirements for Federal Awards. The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.

24.2 Federal Law and Public Policy Requirements.

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

24.3 Federal Freedom of Information Act.

- (a) The USDOT is subject to the Freedom of Information Act, 5 U.S.C. 552.
- (b) The Recipient acknowledges that the Technical Application and materials submitted to the USDOT by the Recipient related to this agreement may become USDOT records subject to public release under 5 U.S.C. 552.

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

24.5 Whistleblower Protection.

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

24.6 External Award Terms and Obligations.

- (a) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:

- (1) Appendix A to 2 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 shall 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).

24.7 **Incorporated Certifications.** The Recipient makes the statements in the following certifications, which are incorporated by reference:

- (a) Appendix A to 49 CFR part 20 (Certification Regarding Lobbying).

ARTICLE 25

ASSIGNMENT

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

ARTICLE 26 **WAIVER**

26.1 Waivers.

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

ARTICLE 27

ADDITIONAL TERMS AND CONDITIONS

27.1 **Disclaimer of Federal Liability.** The USDOT shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this agreement.

27.2 Environmental Review

(a) In this section, “Environmental Review Entity” means:

(1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and

(2) for all other cases, an operating agency within the Department of Transportation will be identified to conduct NEPA evaluations.

(b) Except as authorized under section 27.3(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:

(1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and

(2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.

(c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).

(d) The Recipient acknowledges that:

(1) the Environmental Review Entity’s actions under section 27.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and

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

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

- (f) The activities described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align information in this agreement, then:
- (1) the parties may amend this agreement under section 21.1 for consistency with the selected build alternative; or
 - (2) if the USDOT determines that the condition at section 16.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 16.1(a)(5).
- (g) The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.
- (h) The Recipient may not expend any of the funds provided in this Agreement or incur expenses under this Agreement on final design, construction, or other activities that represent an irrevocable commitment of resources unless and until it complies with the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (“NEPA”), Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (“NHPA”), and any other applicable environmental laws and regulations, and DOT has provided the Recipient with a written notice that the environmental review process is complete. At that time, DOT may authorize the distribution and expenditure of funds. The Recipient may not obligate or expend any funds (federal, state or private) for final design, construction, or other activities that represent an irrevocable commitment of resources for the Project, or commence any part of final design, construction, or other activities that represent an irrevocable commitment of resources for the Project or any component of the Project, without receiving such written confirmation from DOT. The Recipient may participate in planning activities, as long as it doesn’t constitute an irrevocable commitment to a specific course of action. Depending on the outcome of the environmental review process, DOT may rescind this Agreement or may pursue any other permissible remedy under 2 C.F.R. § 200.338-200.342.

27.3 Railroad Coordination.

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

27.4 Relocation and Real Property Acquisition.

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

- (b) The Recipient shall provide a relocation assistance program offering the services described in 49 C.F.R. part 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24 subparts D–E.
- (c) The Recipient shall make available to displaced persons, within a reasonable period of time prior to displacement, comparable replacement dwellings in accordance with 49 C.F.R. part 24 subpart E.

27.5 Equipment Disposition.

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the FHWA.
- (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.
- (c) The Recipient shall ensure compliance with this section 27.6 for all tiers of subawards under this award.

ARTICLE 28
MANDATORY AWARD INFORMATION

28.1 **Information Contained in a Federal Award.** For 2 C.F.R. 200.211:

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

ARTICLE 29

CONSTRUCTION AND DEFINITIONS

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

- Attachment A Performance Measurement Information
- Attachment B Changes from Application
- Attachment C Climate Change and Environmental Justice Impacts
- Attachment D Racial Equity and Barriers to Opportunity
- Attachment E Labor and Workforce
- Attachment F Critical Infrastructure Security and Resilience

29.2 **Exhibits.** The following exhibits, which are in the document titled “Exhibits to Grant Agreements Under the Fiscal Year 2022 SMART Grant Program”, available at <https://www.transportation.gov/grants/SMART>, are part of this agreement

- Exhibit A Applicable Federal Laws and Regulations
- Exhibit B Additional Standard Terms
- Exhibit C Quarterly Reports and Recertifications: Format and Content
- Exhibit D Certification for Contracts, Grants, Loans, And Cooperative Agreements
- Exhibit E FAA Regulations
- Exhibit F Communications Technology
- Exhibit G Equipping or Retrofitting Motor Vehicles
- Exhibit H Eligible Cost
- Exhibit I Data Collection Requirements

29.3 **Construction.**

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

29.4 **Integration.**

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

29.5 **Definitions.** In this agreement, the following definitions apply:

“Program Statute” means the BIL Section 25005 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; and statutory text under the heading “Strengthening mobility and revolutionizing transportation grant program” in title I of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November

15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading.

“Project” means the project proposed in the Grant Application, as modified by the negotiated provisions of this agreement, including article 3 and Attachments A–E.

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

“Grant Application” means the application identified in section 2.1, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

ARTICLE 30

AGREEMENT EXECUTION AND EFFECTIVE DATE

- 30.1 **Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.
- 30.2 **Effective Date.** The agreement will become effective when all parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a SMART Grant when the USDOT's authorized representative signs it.
- 30.3 **Termination.** Should this Grant Agreement be terminated prior to the end date of the Period of Performance, DOT reserves the right to require that the Recipient return to DOT any of the funds reimbursed for expenses subsequently deemed ineligible.

ATTACHMENT C

LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

ATTACHMENT D

DISBARMENT/SUSPENSION CERTIFICATION

Certification regarding Debarment and Suspension

The undersigned bidder or proposer certifies that its principals, affiliates, and subcontractors (if any) are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

1. Debarred from participation in any federally assisted Award;
2. Suspended from participation in any federally assisted Award;
3. Proposed for debarment from participation in any federally assisted Award;
4. Declared ineligible to participate in any federally assisted Award;
5. Voluntarily excluded from participation in any federally assisted Award; or
6. Disqualified from participation in any federally assisted Award.

This certification is a material representation of fact relied upon by TTD. If it is later determined by TTD that the undersigned knowingly rendered an erroneous certification, in addition to remedies available to TTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The undersigned agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this bid or offer is valid and throughout the period of any contract that may arise from this bid or offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature of Authorized Official

Name and Title of Authorized Official

Date