

## EXECUTIVE/COUNCIL APPROVAL FORM

**MANAGEMENT ROUTING:**

**EXECUTIVE** Dave Somers  
**DEPUTY EXECUTIVE** Eric Parks  
**EXEC. DIRECTOR** Lacey Harper  
**DEPT. DIRECTOR** Tom Teigen TT  
**DEPARTMENT** Parks and Recreation  
**DIV. MGR.** Bridgid Smith BBS  
**DIVISION** Park Capital and Operations  
**ORIGINATOR** Logan Daniels LRD  
**DATE** March 17, 2021 **EXT.** 6619

**TO: COUNCIL CHAIRPERSON:**  
SNOHOMISH COUNTY COUNCIL

**EXECUTIVE RECOMMENDATION:**

Approve  No Recommendation  
 Further Processing  
 Requested By \_\_\_\_\_

**Lacey Harper**

Digitally signed by Lacey Harper  
Date: 2021.03.18 08:55:46 -07'00' /

Executive Office Signature \_\_\_\_\_  
 CEO Staff Review MG 3/17/2021  
 Received at Council Office EL 10:08 am 3 / 18 / 2021

**DOCUMENT TYPE:**

|   |   |
|---|---|
| <input type="checkbox"/> BUDGET ACTION:<br><input type="checkbox"/> Emergency Appropriation<br><input type="checkbox"/> Supplemental Appropriation<br><input type="checkbox"/> Budget Transfer<br><input checked="" type="checkbox"/> CONTRACT:<br><input type="checkbox"/> <input checked="" type="checkbox"/> NEW (Federal Rail Administration Grant)<br><input type="checkbox"/> Amendment | <input type="checkbox"/> GRANT APPLICATION<br><input type="checkbox"/> ORDINANCE<br><input type="checkbox"/> Amendment to Ord. # _____<br><input type="checkbox"/> PLAN<br><input type="checkbox"/> OTHER |
|---|---|

**DOCUMENT / AGENDA TITLE:**

Federal Rail Administration (FRA) Consolidated Rail Infrastructure and Safety Improvement (CRISI) Grant/Meadowdale Beach Park and Estuary Restoration Project – FRA grant for railroad bridge construction

**APPROVAL AUTHORITY:**

**EXECUTIVE** \_\_\_\_\_ **COUNCIL**   
**CITE BASIS** Charter Section 2.140

**HANDLING:** NORMAL  EXPEDITE  URGENT  DEADLINE DATE 4/09/21

**PURPOSE:**

Motion of the County Council accepting and authorizing the County Executive to electronically accept the Grant Agreement with the Federal Railroad Administration (FRA) for an amount not to exceed \$3,500,000 for construction of railroad bridge and underpass trail at Meadowdale Beach Park.

**BACKGROUND:**

Meadowdale Beach County Park, visited annually by more than 70,000 park patrons, is approximately 108-acres and extends from the rim of Lunds Gulch to the tidelands of Puget Sound. The County-owned tidelands are separated from the County-owned lower park lawn area by a 100-foot wide Burlington Northern Santa Fe (BNSF) right-of-way. BNSF's Scenic Subdivision Line Segment 50, which includes two main tracks supported by a raised rock-armored embankment, is located within the 100-foot BNSF-owned right-of-way.

A major park development project completed in 1988 included securing an agreement with BNSF for shared use of the 6-foot wide, 5.5-foot high, 60-foot long culvert conveying Lunds Gulch Creek, a salmon-bearing stream, through the BNSF embankment for the purpose of providing public beach access.

(Continued on next page)

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Over time, increased runoff and rainfall events within the gulch have resulted in sediment delivery, flooding, public safety,

and fish impediment issues at the entrance to and within the culvert. Under flooded conditions, the public, determined to get to the beach, trespass across BNSF right-of-way.

A Feasibility Study commenced in October 2014 for the Meadowdale Beach Park and Estuary Restoration Project and concluded with selection of a Preferred Alternative to address the identified issues. The Preferred Alternative, developed through a public process, included replacing the undersized culvert and approximately 128 linear feet of hard armored BNSF railroad embankment with a multi-span railroad bridge, providing a widened opening for creek meander and sediment delivery, restoration of a pocket estuary for juvenile Chinook and other salmonids, and providing an ADA-accessible path (Underpass Trail) under the bridge and separated from the creek and critical areas, in order to address public safety issues.

The design phase, including preparation of bid documents, permitting and bid assistance, commenced in 2016 and is now complete, including BNSF's plan approval. BNSF Structures Team will drive the piles and install the bridge sections with the County-procured contractor providing temporary support systems for bridge construction. The project advertised on February 1, 2021 with bid opening on March 16, 2021. An Underpass Agreement which includes the County and BNSF's responsibilities, long-term maintenance and ownership, estimated construction costs, and temporary access and permanent easement documents will be routed to Council and the Executive upon completion by BNSF.

The Engineer's Estimate for the project is \$15,000,000.

Snohomish County Department of Parks, Recreation, and Tourism submitted an application on September 14, 2018 to the Federal Rail Administration (FRA) for the Consolidated Rail Infrastructure Safety Improvement (CRISI) grant program requesting \$3,500,000 for construction of the railroad bridge portion of the Meadowdale Beach Park and Estuary Restoration project. FRA notified the County of the grant award on June 13, 2019.

The CRISI grant request is based on a total estimated railroad bridge cost of \$7,522,629, for which the FRA grant will contribute up to 46.5263% of the total railroad bridge cost, not to exceed \$3,500,000 with the County match of 53.4737% totaling \$ 4,022,629.

The match for this agreement has been identified in the adopted 2021 Capital Improvement Program with Motion 20-401 authorizing reimbursement of County expenditures on the Meadowdale Beach Park and Estuary Restoration Project with proceeds of tax-exempt bonds. Approximately \$3,454,078 has been awarded through Washington State Recreation & Conservation Office (RCO), National Oceanic and Atmospheric Administration (NOAA) and the Environmental Protection Agency (EPA) National Estuary Program (NEP) Coastal Watershed Grant (CWG).

FRA will send the Grant Agreement comprised of Attachment 1 Standard Terms and Conditions, Attachment 1A CRISI Clauses, Attachment 2 Statement of Work, Attachment 3 Deliverables and Approved Project Schedule, Attachment 4 Approved Project Schedule, and Attachment 5 Performance Measures via GrantSolutions for electronic signature once FRA receives the executed Underpass Agreement between the County and BNSF.

According to FRA, there will be a delay of four to six (4-6) weeks following submittal of the executed Underpass Agreement to FRA and obligation of FRA funds. The Council authorized, via Motion 21-037, the Executive to sign a Pre-Authorization Request Letter which would allow reimbursement of costs associated with review of project submittals by the Consultants and procurement of certain construction materials by the County-procured contractor (Bid 002-21SB) and BNSF, during the four (4) to six (6) week delay in order to facilitate the project's tight schedule. FRA approved the County's request for pre-award costs in a letter dated February 18, 2021.

The urgency for Council to authorize the Executive to execute the grant agreement upon email delivery from FRA via GrantSolutions is to minimize the duration of work performed under FRA's pre-authorization approval.

**FISCAL IMPLICATIONS:**

| EXPEND: FUND, AGY, ORG, ACTY, OBJ, AU  | CURRENT YR         | 2 <sup>ND</sup> YR |  |
|--|--------------------|--------------------|--|
| 309-51094621346599<br>Meadowdale-Grants-Constr Svcs                                  | \$3,500,000        |                    |  |
| 309-51094621366599 (Match) Meadowdale –<br>Bond-Constr Svcs (within proposed budget) | \$4,022,629        |                    |  |
| <b>TOTAL</b>   | <b>\$7,522,629</b> |                    |  |

| REVENUE: FUND, AGY, ORG, REV, SOURCE                                     | CURRENT YR         | 2ND YR |           |
|--|--------------------|--------|-----------|
| 309-310985460325 (FRA Grant)   | \$3,500,000        |        |           |
| 309-310985469110 Bond Proceeds (PAR) - Parks<br>(within proposed budget) | \$4,022,629        |        |           |
| <b>TOTAL</b>   | <b>\$7,522,629</b> |        | <b>\$</b> |

**DEPARTMENT FISCAL IMPACT NOTES:**

Snohomish County identified improvements to Meadowdale Beach County Park as a capital project for completion within the Capital Improvement Program since 2016. Matching funds for this project will be reimbursed from the tax exempt bonds approved by Motion 20-401

**BUDGET REVIEW:** Analyst JW Administrator NK Recommend Approval ✓

**CONTRACT INFORMATION:**

|           |               |            |  |        |                             |
|-----------|---------------|------------|--|--------|-----------------------------|
| ORIGINAL  | <b>X</b>      | CONTRACT # | <b>FRA Agreement No.</b>   | AMOUNT | <b>\$3,500,000</b>          |
|           |               |            | <u>                    </u> (assigned<br>when agreement is<br>sent electronically) |        |                             |
| AMENDMENT | <u>      </u> | CONTRACT # | <u>                    </u>  | AMOUNT | <u>                    </u> |

**CONTRACT PERIOD:**

|           |       |                             |     |                             |
|-----------|-------|-----------------------------|-----|-----------------------------|
| ORIGINAL  | Start | <b>Upon Execution</b>       | End | <b>06/30/23</b>             |
| AMENDMENT | Start | <u>                    </u> | End | <u>                    </u> |

**CONTRACT / PROJECT TITLE:**

FRA Grant Ageement/Meadowdale Beach Park Railroad Bridge

**CONTRACTOR NAME & ADDRESS (City/State only):**

Federal Rail Administration, Washington, D.C.

**APPROVED:**

RISK MANAGEMENT Yes X No       

COMMENTS Sheila Barker /s/ 3/16/2021

PROSECUTING ATTY - AS TO FORM: Yes        No       

**OTHER DEPARTMENTAL REVIEW / COMMENTS:**

**ELECTRONIC ATTACHMENTS :** (List & include path & filename for each, e.g. G:\ECAF\deptname\docname\_Motion)

- G:\ECAF\Council\20071235 ECAF
- G:\ECAF\Council\20071235 Motion
- G:\ECAF\Council\20071235 Attachments1-5
- G:\ECAF\Council\20071235 Pre-award Approval
- G:\ECAF\Council\20071235 copy-Motion 20-401
- G:\ECAF\Council\20071235 copy-Motion 21-037

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 21-108

AUTHORIZING ACCEPTANCE OF THE CONSOLIDATED RAIL INFRASTRUCTURE  
SAFETY IMPROVEMENT GRANT AGREEMENT FROM THE FEDERAL RAILROAD  
ADMINISTRATION FOR THE MEADOWDALE BEACH PARK AND ESTUARY  
RESTORATION PROJECT

WHEREAS, Meadowdale Beach Park tidelands are separated from the County-owned lower park lawn area by the 100-foot wide Burlington Northern Santa Fe (BNSF) right-of-way; and

WHEREAS, BNSF's Scenic Subdivision Line Segment 50, which includes two main tracks supported by a raised rock-armored embankment, is located within the 100-foot BNSF-owned right-of-way; and

WHEREAS, a major park development project completed in 1988 included securing an agreement with BNSF for shared use of the 6-foot wide, 5.5-foot high, 60-foot long culvert conveying Lunds Gulch Creek, a salmon-bearing stream through the BNSF embankment for the purpose of providing public beach access; and

WHEREAS, over time, increased runoff and rainfall events within the gulch have resulted in sediment delivery, flooding, public safety, and fish impediment issues at the entrance to and within the culvert and under flooded conditions public determined to get to the beach trespass across BNSF right-of-way; and

WHEREAS, a Preferred Alternative, developed through public process during the Feasibility phase in 2014-2015, included replacing the undersized culvert and approximately 128 linear feet of hard armored BNSF railroad embankment with a multi-span railroad bridge, providing a widened opening for creek meander and sediment delivery, restoration of a pocket estuary for juvenile Chinook and other salmonids, and providing an ADA-accessible path (Underpass Trail) under the bridge separated from the creek and critical areas, in order to address public safety issues; and

WHEREAS, the design phase including preparation of bid documents, permitting and bid assistance commenced in 2016 and is now complete with an Engineer's Estimate for the project of \$15,000,000; and

WHEREAS, the project includes work performed by BNSF and work performed by a County-procured contractor which advertised on February 1, 2021 with bid opening on March 16, 2021; and

WHEREAS, an Underpass Agreement which includes County and BNSF's responsibilities, long-term maintenance and ownership, estimated construction costs, and temporary access and permanent easement documents will be routed to Council and the Executive upon completion by BNSF; and

WHEREAS, the Snohomish County Department of Parks, Recreation, and Tourism submitted an application on September 14, 2018 to the Federal Rail Administration (FRA) for the Consolidated Rail Infrastructure Safety Improvement (CRISI) grant program requesting \$3,500,000 for construction of the railroad bridge portion of the Meadowdale Beach Park and Estuary Restoration project; and

WHEREAS, Snohomish County Department of Parks, Recreation, and Tourism was notified by FRA of the grant award on June 13, 2019; and

WHEREAS, the CRISI grant request is based on a total estimated railroad bridge cost of \$7,522,629 (Seven Million, Five Hundred Twenty-Two Thousand, Six Hundred Twenty-Nine Dollars), for which the FRA grant will contribute up to 46.5263% of the total railroad bridge cost, not to exceed \$3,500,000 (Three Million, Five Hundred Thousand Dollars) with the County match of 53.4737% totaling \$4,022,629 (Four Million, Twenty-Two Thousand, Six Hundred Twenty-Nine Dollars); and

WHEREAS, the match for this agreement has been identified in the adopted 2021 Capital Improvement Program with Motion 20-401 authorizing reimbursement of County expenditures on the Meadowdale Beach Park and Estuary Restoration Project with proceeds of tax-exempt bonds; and

WHEREAS, FRA approved the Pre-Authorization Letter Request signed by the Executive per Motion 21-037, allowing reimbursement of costs associated with review of project submittals by the consultants and procurement of certain construction materials by the County-procured contractor under Bid 002-21SB and BNSF, during the four (4) to six (6) week delay between delivery of the executed BNSF Underpass Agreement to FRA and grant obligation in order to facilitate the project's tight schedule; and

WHEREAS, FRA will send the Grant Agreement comprised of Attachment 1 Standard Terms and Conditions, Attachment 1A CRISI Clauses, Attachment 2 Statement of Work, Attachment 3 Deliverables and Approved Project Schedule, Attachment 4 Approved Project Schedule, and Attachment 5 Performance Measures via GrantSolutions for electronic signature once FRA receives the executed Underpass Agreement between the County and BNSF;

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby approves and authorizes the County Executive to execute the FRA Grant Agreement upon notification from GrantSolutions that the CRISI grant is ready for acceptance, along with any future related agreement amendments with the FRA for the purpose of constructing the railroad bridge improvements as part of the Meadowdale Beach Park and Estuary Restoration Project.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

\_\_\_\_\_  
Council Chair

ATTEST:

\_\_\_\_\_  
Asst. Clerk of the Council



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 18, 2021

Dave Somers  
Snohomish County Executive  
6705 Puget Park Drive  
Snohomish, WA 98296

Re: Request for Pre-Award Authority – FY18 CRISI – Snohomish County, Washington – Meadowdale Beach Park Railroad Bridge Project

Dear Mr. Somers,

This letter is in response to the Snohomish County, Washington (County) letter dated January 15, 2021, to the Federal Railroad Administration (FRA), requesting pre-award authority to begin February 15, 2021 for the Meadowdale Beach Park Railroad Bridge Project. The grant was awarded as part of the Fiscal Year 2018 Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program. The pre-award activities will include the procurement of construction materials, project administration and construction management. Additional detail regarding the estimated pre-award costs by Task can be found below in Table 1.

| <b>Table 1 – Estimated Pre-award Budget</b> |  |                             |                                 |                    |
|---|--|-----------------------------|---------------------------------|--------------------|
| <b>Task #</b>                               | <b>Task Activity</b>                               | <b>Federal Contribution</b> | <b>Non-Federal Contribution</b> | <b>Total Cost</b>  |
| 2.1   | Temporary Construction and Demolition              | \$645,320                   | \$741,680                       | \$1,387,000        |
| 2.2   | Bridge Construction                                | \$525,747                   | \$604,253                       | \$1,130,000        |
| 3   | Project Administration and Construction Management | \$39,547                    | \$45,453                        | \$85,000           |
| <b>TOTAL PRE-AWARD COST</b>                 |  | <b>\$1,210,614</b>          | <b>\$1,391,386</b>              | <b>\$2,602,000</b> |

FRA approves the County request for pre-award costs as detailed within this letter, commencing February 15, 2021. Based on the description in the County’s letter, FRA understands that it is necessary for the County to begin the procurement of construction materials, in addition to project administration and construction management. FRA further understands that costs covered by this pre-award request would be incurred on or after February 15, 2021, which is after the approval of the project’s Categorical Exclusion, signed on March 2, 2020.

In accordance with 2 CFR §200.458, pre-award costs are those incurred prior to the effective date of the federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. The costs must appear in the grant agreement scope of work to be eligible for reimbursement after the grant is awarded. Furthermore, the type and timing of costs incurred must be consistent with 23 CFR § 771.113, which prohibits final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction during the NEPA process.

All pre-award costs are incurred at the County's risk (i.e., the Federal awarding agency, FRA, is under no obligation to reimburse such cost if for any reason the County does not receive an award or until any such post-award prerequisites, including any required FRA reviews and approvals, are satisfied). In addition, this pre-award authority is subject to all of the other terms of FRA's grant agreement, including Buy America/Buy American provisions requiring compliance with 49 USC §24405(a)/41 USC §§8301-8305.

FRA is committed to assisting the County in advancing project implementation and FRA understands that the procurement of construction materials, in addition to project administration and construction management, is critical to completing the project on schedule.

If you have any questions, please contact Leo Maldonado, FRA Grant Manager, at [leonardo.maldonado@dot.gov](mailto:leonardo.maldonado@dot.gov).

Sincerely,

**JOHN A**  
**WINKLE**

Digitally signed by  
JOHN A WINKLE  
Date: 2021.02.18  
09:45:19 -05'00'

John Winkle  
Grants Team Lead  
Office of Railroad Policy & Development  
Federal Railroad Administration

cc: Valarie Kniss, Project Manager  
Leo Maldonado, Grant Manager



DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION

**Grant Agreement – Attachment 1**  
**STANDARD TERMS AND CONDITIONS**

December 2020

## PART I. ATTACHMENT OVERVIEW AND DEFINITIONS

Attachment 1 is part of the Agreement and contains the standard terms and conditions governing the execution of the Project and the administration of the Agreement. By entering into this Agreement with the Federal Railroad Administration (FRA), the Grantee agrees to comply with these terms and conditions and all applicable Federal laws and regulations, including those discussed in this Agreement. Terms that appear frequently throughout the Agreement are defined, as follows:

- a. **Agreement** means this Grant Agreement, including all attachments and amendments. As used on the Agreement cover sheet, section 9 “Previous Agreements” refers to the amount of the original Agreement, together with, if applicable, all amounts from amendments to the Agreement that precede the current amendment. As used on the Agreement cover sheet, section 10 “This Agreement” refers to the amount being added or subtracted with the current amendment, if applicable, or the original Agreement. As used on the Agreement cover sheet, and section 11 “Total Agreement” refers to the combined amounts of Section 9 “Previous Agreements” and Section 10 “This Agreement”.
- b. **Application** means the signed and dated application submitted by or on behalf of the Grantee, as may be amended, seeking Federal financial assistance for the Project, together with all explanatory, supporting, and supplementary documents, assurances and certifications filed with and accepted by FRA or DOT.
- c. **Approved Project Budget** is in Attachment 4 to this Agreement and means the most recently dated written statement, approved in writing by FRA, of the estimated total cost of the Project.
- d. **Approved Project Schedule** is in Attachment 3 to this Agreement.
- e. **Authorized Representative** means the person(s) at FRA or the Grantee who is able and approved to communicate on behalf of the organization, perform the referenced action, or commit the organization to the referenced action, pursuant to the organization’s internal policies, procedures, or reporting structure.
- f. **DOT** means the United States Department of Transportation, including its operating administrations.
- g. **Effective Date** means the earlier of the federal award date and the beginning of the Project Performance Period.
- h. **Federal Contribution** means the amounts obligated, whether paid or not, by FRA to the Grantee under this Agreement as shown in the “Federal” column in sections 9, 10 and 11 of the Agreement cover sheet.
- i. **Federal Funding Period** means the period that FRA provides funds under this Agreement as shown in section 5 of the Agreement cover sheet.

- j. Federal Government** means the United States of America and any executive department or agency thereof.
- k. Federal Railroad Administration or FRA** is an operating administration of the DOT and the Federal Awarding Agency for this Agreement.
- l. Grantee** means the entity identified on the Agreement cover sheet that receives Federal grant assistance directly from FRA for the accomplishment of the Project referenced in this Agreement.
- m. Grant** as used in this Agreement means funding awarded through a grant agreement as well as funding awarded through a cooperative agreement as each of those terms is defined in 2 C.F.R. Part 200.
- n. Non-Federal Contribution** means any amount, as shown under the “Non-Federal” column in sections 9, 10 and 11 of the Agreement cover sheet, including matching funds as used in 2 C.F.R. Part 200, not funded by FRA under this Agreement, regardless of whether the source of any or all of such contribution is a Federal source.
- o. Pre-Agreement Costs** means “pre-award costs,” as that term is defined in 2 C.F.R. § 200.458.
- p. Project** means the task or set of tasks set forth in the Statement of Work.
- q. Project Performance Period** means “period of performance” as defined in 2 C.F.R. § 200.1 and described in 2 C.F.R. § 200.309, and is shown in section 4 of the Agreement cover sheet.
- r. Statement of Work** means a detailed description of the work the Grantee will complete with the grant funding from this Agreement, and appears in Attachment 2 to this Agreement.
- s. Total Federal Assistance** means the combined total of the Federal Contribution and the portion, if any, of the Non-Federal Contribution that is from a Federal source.

Additional definitions are found in 2 C.F.R. § 200.1, and these definitions are incorporated herein by reference and made a part hereof. These definitions incorporated herein are not capitalized in this Agreement.

## **PART II. GENERAL TERMS AND CONDITIONS**

### **1. Grant Agreement:**

This Agreement constitutes the entire agreement between the Grantee and FRA. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement is governed by and subject to 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT's implementing regulations at 2 C.F.R. Part 1201.

### **2. FRA Role:**

This Agreement is between FRA and the Grantee. FRA is responsible for funding disbursements to the Grantee under this Agreement. FRA will also conduct oversight and monitoring activities to assess Grantee progress against established performance goals and the Statement of Work, as well as to assess compliance with terms and conditions and other requirements of this Agreement.

If this award is made as a Cooperative Agreement, FRA will have substantial programmatic involvement. Substantial involvement means that, after award, technical, administrative, or programmatic staff will assist, guide, coordinate, or otherwise participate with the Grantee in Project activities.

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

- a. Financial Analyst. The Financial Analyst will serve as the Grantee's point of contact for systems (e.g., GrantSolutions and the Delphi eInvoicing System) access and troubleshooting as well as for financial monitoring. The Financial Analyst is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, the delivery schedule, Project Performance Period or other terms or conditions.
- b. Grant Manager. The Grant Manager will serve as the Grantee's point of contact for grant administration and will oversee compliance with the terms and conditions in this Agreement. The Grant Manager reviews financial reports, performance reports, and works with the Regional Manager to facilitate effective Project delivery. The Grant Manager is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, Project Performance Period, or other terms and conditions.
- c. Regional Manager. The Regional Manager will be the Grantee's point of contact for the technical aspects of Project delivery. The Regional Manager coordinates Project deliverable review, evaluates Grantee technical assistance needs, and generally assesses Project progress and performance. The Regional Manager is not authorized to unilaterally change the Statement of Work, make any changes which affect this

Agreement's monetary amount, Project Performance Period, or other terms and conditions.

- d. Contact Information. FRA strongly prefers electronic submission of most documents (instructions for electronic submission are included under various requirements outlined in Part II of this attachment). If the Grantee must mail documentation, that documentation should be delivered to the Grant Manager at:

Federal Railroad Administration  
Office of Railroad Policy and Development  
Mail Stop 20  
1200 New Jersey, SE  
Washington, DC 20590  
ATTN: (ASSIGNED GRANT MANAGER)

### **3. Grantee Responsibility and Authority:**

The Grantee affirms that it had and has, as applicable, the legal authority to apply for the Grant, to enter into this Agreement, and to finance and carry out the proposed Project. The Grantee further affirms that any required resolution, motion or similar action has been duly adopted or passed as an official act authorizing the filing of the Application, where applicable, including all understandings and assurances contained therein, and the entering into of this Agreement. The Grantee will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Agreement without the written approval of the FRA, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Grantee. The Grantee agrees that this will be done in a manner acceptable to the FRA.

### **4. Project Scope, Schedule, and Budget:**

The Grantee agrees to carry out, complete and ensure the use of the Project in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, including the Approved Project Budget, the Statement of Work, the Approved Project Schedule, grant guidance, the Application as applicable, and all applicable laws, regulations, and published policies.

- a. Scope. The Grantee will furnish all personnel, facilities, equipment, and other materials and services, except as otherwise specified herein, that are necessary to complete the approved Project, in accordance with the representations, certifications and assurances set forth in the Grantee's Applications(s) as applicable, and any amendments thereto, incorporated herein by reference and made a part hereof.
- b. Schedule. The Grantee will complete this Project, as documented in the Statement of Work, within the Project Performance Period. Schedule and Project Performance

Period extension requests may be permitted, at the discretion of the FRA, subject to applicable law. The Grantee should request such an extension no later than 90 days prior to the Project Performance Period end date.

- c. Budget. The Grantee will complete the Project within the funding limits and parameters specified on the Agreement cover sheet and the Statement of Work.
  - 1) Project Costs and Funding Contributions. The Federal Contribution, Non-Federal Contribution and total estimated Project costs toward this Project are documented in sections 9, 10 and 11 of the Agreement cover sheet and may not be changed without a written request and justification from the Grantee, written approval from FRA, and an amendment or closeout to the Agreement. FRA will fund the Project at the lesser of the Federal Contribution or the Federal Contribution percentage of total Project costs, as reflected in sections 9, 10 and 11 of the Agreement cover sheet and the Statement of Work.
  - 2) Non-Federal Contribution. The Grantee is responsible for completing the Project, including providing the Non-Federal Contribution and any other funds necessary for completing the Project. The Grantee affirms that it will complete all actions necessary to provide the Non-Federal Contribution at or before the time that such funds are needed to meet Project expenses. The Grantee also affirms that it has sufficient funds available to assure operation and maintenance of items funded under this Agreement that it will own or control.
  - 3) Project Budget Detail. The Grantee agrees to carry out the Project according to the Approved Project Budget. The Grantee agrees to obtain the prior written approval from FRA for any revisions to this Approved Project Budget that equal or cumulatively exceed 10 percent of any budget line item (or pertain to a cost category involving contingency or miscellaneous costs), or amount to a reallocation of 10 percent or more of the total Approved Project Budget across cost categories.
- d. Property and Equipment.
  - 1) The Grantee will operate the property and equipment funded with this Agreement for the originally authorized purpose.
  - 2) If the Grantee is not the entity operating the property and/or equipment funded with this Agreement, then the Grantee represents that it will ensure the property and equipment funded with this Agreement will be used for the originally authorized purpose, if necessary, through appropriate arrangements with:
    - i. The entity or entities operating the property and/or equipment funded with this Agreement; and

- ii. If applicable, the owner of right-of-way used by the property and/or equipment funded with this Agreement.
- e. **Pre-Agreement Costs.** Grantee may request approval of Pre-Agreement costs incurred after the date of selection. Such a request must demonstrate the purpose and amount of the costs, and whether such costs serve as cost-sharing or matching funds. If FRA approves Pre-Agreement Costs, within the constraints described in the Statement of Work, the Grantee may seek reimbursement for these costs on or after the start of the Federal Funding Period specified on the Agreement cover sheet. Such costs are allowable for reimbursement only to the extent that they are otherwise allowable under the terms of this Agreement, and are consistent with 2 C.F.R. § 200.458.

**5. Grant Amendments:**

Other than close-out, modifications to this Agreement may be made only in writing, signed by an Authorized Representative for FRA and the Grantee, and specifically referred to as an amendment to this Agreement.

**6. Flow Down Provisions:**

The Grantee will ensure persons or entities that perform any part of the work under this Agreement, including subrecipients or Contractors, each as defined in 2 C.F.R. § 200.1, will comply with applicable federal requirements and federal guidance, and the applicable requirements of this Agreement. Grantee agrees that flowing down such requirements does not relieve it of any obligation to comply with the requirements itself.

For each of the Grantee's subawards or contracts to perform all or part of the work under this Agreement:

- a. The Grantee must include applicable grant regulations in the subaward or contract and ensure compliance with these provisions, including applicable provisions of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT's implementing regulations at 2 C.F.R. Part 1201 *See* 2 C.F.R. § 200.101.
- b. The Grantee must include applicable federal statutory and regulatory requirements in the subaward or contract and ensure compliance with these requirements, including applicable limitations on use of federal funds.
- c. The Grantee must include any other applicable requirements of this Agreement in the subaward or contract and ensure compliance with these requirements.
- d. There will be provisions for the further flow down of the regulations and requirements in subsections (A) and (B) of this section to each subsequent subaward or subcontract, as required.

**7. Successors and Assigns:**

The Grantee is not authorized to assign this Agreement without FRA's express prior written consent.

**8. Execution:**

This Agreement may be executed by the Grantee and FRA in separate counterparts, each of which when so executed and delivered will be deemed an original.

**9. Changed Conditions of Performance (Including Litigation):**

The Grantee agrees to immediately notify FRA, in a written statement to the FRA Grant Manager, of any change in local law, conditions, or any other event that may affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Grantee agrees to immediately notify the FRA Grant Manager of any decision pertaining to the Grantee's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable federal laws or regulations. Before the Grantee may name FRA as a party to litigation for any reason, the Grantee agrees first to inform the FRA Grant Manager in writing; this proviso applies to any type of litigation whatsoever, in any forum.

**10. Severability:**

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement will continue in full force and effect to the extent not inconsistent with such holding.

**11. Right of FRA to Terminate:**

- a. The Grantee agrees that, upon written notice, FRA may suspend and/or terminate all or part of the Federal Contribution if:
  1. Grantee fails to meet or violates the terms, conditions and obligations specified under this Agreement;
  2. Grantee fails to make reasonable progress on the Project;
  3. Grantee fails to provide the Non-Federal Contribution;
  4. Grantee violates any other provision of this Agreement that significantly endangers substantial performance of the Project;
  5. FRA determines that the purposes of the statute(s) under which the Project is authorized or funded would not be adequately served by continuation of the Federal Contribution; or
  6. FRA determines that termination of this Agreement is in the public interest.
- b. In general, suspension and/or termination of any part of the Federal Contribution will not invalidate obligations properly incurred by the Grantee and concurred in by FRA



before the termination date; to the extent those obligations cannot be canceled. However, FRA reserves the right to require the Grantee to refund the entire amount of the Federal Contribution provided under this Agreement or any lesser amount as may be determined by FRA in its sole discretion, if FRA determines that the Grantee has willfully misused the Federal Contribution, including by:

1. Failing to make adequate progress
2. Failing to make reasonable use of the Project property, facilities, or equipment, or
3. Failing to adhere to the terms of this Agreement.

## **12. Term**

This Agreement is in effect from the Effective Date until the end of the closeout period, regardless of whether FRA suspends or terminates all or part of the Federal Contribution provided herein. The expiration of any time period for performance or funding established for this Project does not, by itself, constitute an expiration or termination of this Agreement.

The end of the closeout period of this Agreement does not affect continuing obligations under 2 C.F.R. Part 200, including those in 2 C.F.R. § 200.345. Any right or obligation of the parties in this Agreement or the closeout notification which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## **PART III. GRANT MANAGEMENT TERMS AND CONDITIONS**

### ***Performance and Reporting Provisions***

## **13. Deliverables and Products:**

The Grantee will submit deliverables, including publications or other products, to FRA as stipulated in this Agreement. Substantive changes to the nature of the deliverables or significant timeline modifications require advanced written approval and may require an Amendment to this Agreement.

The Grantee will submit deliverables that adhere to all applicable laws, regulations, and FRA guidance within the timeframes established. In some instances, as articulated in the Statement of Work, the Grantee may be required to submit deliverables and obtain approval from FRA prior to continuing all or a portion of the work on the Project. Accordingly, the Grantee must account for FRA deliverable review time when planning work or submissions.

Whether for technical examination, administrative review, publication, or approval, all deliverable submissions will be of a professional quality and suitable for their intended purpose.

#### **14. Quarterly Progress Reports:**

The Grantee will submit one completed progress report quarterly (totaling four annually), in the form/format provided by FRA at <http://www.fra.dot.gov/Page/P0274>. For the duration of the Project Performance Period, the Grantee must report for the periods of: January 1 – March 31; April 1 – June 30; July 1 – September 30; and October 1 – December 31. The Grantee will furnish one copy of the completed progress report to the assigned FRA Grant Manager on or before the thirtieth (30<sup>th</sup>) calendar day of the month following the end of the quarter for which the report is submitted.

The Grantee will complete the report in its entirety with the most accurate information available at the time of reporting. The Grantee must be able to support the information contained in its progress reports and ensure that the activities described in the report are commensurate with reimbursement requests and/or outlay figures reported for the quarter. This report will be consistent with 2 C.F.R. §§ 200.301 and 200.329.

#### **15. Quarterly Federal Financial Reports:**

The Grantee will submit the Federal Financial Report (Standard Form 425) on the same schedule as the required quarterly progress report (listed above). Reports should be submitted online through GrantSolutions. Reports will be submitted in accordance with the form's instructions. The final SF-425 is due within 120 days after the end of the Project Performance Period, but may be submitted as soon as all outstanding expenditures have been completed. The Grantee must be able to support the information contained in its financial reports and will ensure that all data included in the reports is accurate and consistent.

#### **16. Interim and Final Performance Reports:**

If required by the Statement of Work, the Grantee will submit interim reports at the intervals specified in the Statement of Work. The Grantee must submit a Final Performance Report via email to the FRA Grant Manager when the Project(s) funded through this Agreement are completed. The Grantee must complete closeout activities and submit reports, no later than 120 days after the end of the Project Performance Period for this Agreement or the FRA termination date.

#### **17. Project Completion and Closeout:**

- a. Final Documentation. As soon as the funded Project(s) are complete, the Grantee will submit a final SF-425, a final Progress Report, a final Performance Report, and a final payment request. Closeout activities by Grantee, including submission of the referenced documents, must be completed no later than 120 days after the end of the Project Performance Period for this Agreement or the FRA termination date.
- b. Excess Payments. If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee will promptly remit that excess and interest

as may be required by section 20(f) of this Attachment.

- c. Closeout. Grantees should begin closeout procedures when their Project(s) is complete. The Project closeout period is complete when all of the following is complete: 1) the required Project work is complete; 2) all administrative procedures described in 2 C.F.R. Part 200 (all sections), as applicable, have been completed; and 3) when FRA either notifies the Grantee of closeout or when FRA acknowledges the Grantee's remittance of a proper refund. Project closeout will not invalidate any continuing obligations imposed on the Grantee by this Agreement, including 2 C.F.R. § 200.345, or by the FRA's final notification or acknowledgment.

### **18. Transparency Act Requirements—Reporting Subawards and Executive Compensation:**

The Grantee will comply with the provisions of the Federal Funding Transparency and Accountability Act of 2006 (Pub. L. 109-282) and 2 C.F.R. Part 170, incorporated herein by reference and made part hereof. For more information, visit <https://www.fsr.gov/>.

### **19. Recipient Integrity and Performance Matters**

- a. General Reporting Requirement. If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the Project Performance Period, then the Grantee during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in subsection (b) of this section. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

- b. Proceedings About Which the Grantee Must Report.

Submit the information required about each proceeding that:

- 1) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the federal government;
- 2) Reached its final disposition during the most recent five-year period; and
- 3) Is one of the following:
  - A criminal proceeding that resulted in a conviction, as defined in subsection (e) of this section;

- A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - An administrative proceeding, as defined in subsection (e) of this section, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - Any other criminal, civil, or administrative proceeding if:
    - It could have led to an outcome described in subsection (b)(3) of this section;
    - It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Grantee's part; and
    - The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.
- c. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in section (b) of this section. The Grantee does not need to submit the same information a second time under assistance awards that the Grantee received if the Grantee already provided the information through SAM because the Grantee was required to do so under federal procurement contracts that the Grantee was awarded.
- d. Reporting Frequency. During any period of time when the Grantee is subject to the requirement in subsection (a) of this section, the Grantee must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the Grantee has not reported previously or affirm that there is no new information to report. Recipients that have federal contract, grant and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.
- e. Definitions. For purposes of this section:
- 1) Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

- 2) Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- 3) Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - Only the federal share of the funding under any federal award with a Grantee; and
  - The value of all expected funding increments under a federal award and options, even if not yet exercised.

### *Financial Management Provisions*

#### **20. Payments:**

- a. Request by the Grantee for Payment. The Grantee's request for payment of the Federal Contribution of allowable costs will be made to FRA and will be acted upon by FRA as set forth in this section. For states, payments are governed by Treasury/State CMIA agreements, and default procedures codified at 31 C.F.R. Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies. Non-states must comply with the provisions of 2 C.F.R. §200.305(b). To receive a Federal Contribution payment, the Grantee must:
  - 1) Demonstrate or certify that it has made a binding commitment of the Non-Federal Contribution, if applicable, adequate when combined with the Federal Contribution, to cover all costs to be incurred under the Project as of the date of the request. A Grantee required by federal statute or this Agreement to provide Non-Federal Contribution for the Project agrees:
    - i. to refrain from requesting or obtaining any Federal Contribution that is more than the amount justified by the Non-Federal Contribution that has been provided; and
    - ii. to refrain from taking any action that would cause the proportion of the Federal Contribution at any time to exceed the percentages authorized under this Agreement. The phasing or expenditure rate of the Non-Federal Contribution may be temporarily adjusted only to the extent expressly provided in writing by an Authorized Representative of FRA.
  - 2) Submit to FRA all financial and progress reports required to date under this Agreement; and

- 3) Identify the funding source(s) provided under this Project, if applicable, from which the payment is to be derived.
- b. Reimbursement Payment by FRA. Unless otherwise approved by FRA, FRA will disburse funds to the Grantee on a reimbursable basis, whereby the Grantee will be reimbursed for actual expenses incurred and paid, after the submission of complete and accurate invoices and payment records. The Grantee's request for payment will be made to FRA through the Department of Transportation's Delphi eInvoicing System and will be acted upon as set forth in this section.
- 1) Delphi eInvoicing System first-time users must obtain access to the System by contacting the Financial Analyst. Additional information on the System can be found at [www.dot.gov/cfo/delphi-einvoicing-system.html](http://www.dot.gov/cfo/delphi-einvoicing-system.html).
  - 2) Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FRA will authorize payment by direct deposit, provided the Grantee: (i) is complying with its obligations under this Agreement; (ii) has satisfied FRA that it needs the requested Federal Contribution for the period covered by the payment request (as identified on the Standard Form 270 Request for Advance or Reimbursement (SF-270)); and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FRA may reimburse allowable costs incurred by the Grantee up to the maximum amount of the Federal Contribution.

The Grantee agrees to give a written, five-day notice to the assigned FRA Grant Manager for any payment request totaling \$50 million or more. Grantees should note that FRA is unable to process single payment requests greater than \$99,999,999. The Grantee agrees to adhere to and impose upon its subrecipients all applicable foregoing "Reimbursement Payment by FRA" requirements of this Agreement.

If the Grantee fails to adhere to the foregoing "Reimbursement Payment by FRA" requirements of this Agreement, FRA may withhold funding disbursements.

- c. Allowable Costs. FRA will reimburse the Grantee's expenditures, within the Federal Funding Period, only if they meet all of these requirements:
- 1) Conform to the Project description, the Statement of Work, the Approved Project Budget, and all other terms of this Agreement;
  - 2) Be necessary in order to accomplish the Project;
  - 3) Be reasonable for the goods or services purchased;
  - 4) Be actual net costs to the Grantee (i.e., the price paid minus any applicable

credits, refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);

- 5) Be incurred (and be for work performed) within the Project Performance Period, unless specific authorization from FRA to the contrary is received in writing;
  - 6) Unless permitted otherwise by federal statutes or regulation, conform to federal guidelines or regulations and federal cost principles, as set forth in 2 C.F.R. Subpart E § 200.400 – 200.476.
  - 7) Be satisfactorily documented; and
  - 8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the Grantee, and those approved or prescribed by the Grantee for its subrecipients and contractors.
- d. Disallowed Costs. Disallowed costs include the following:
- 1) Any Project costs incurred, activities undertaken, or work performed outside of the Project Performance Period, unless specifically authorized by FRA in writing, allowed by this Agreement, or otherwise permitted by federal law or regulation;
  - 2) Any costs incurred by the Grantee that are not included in the latest Approved Project Budget; and
  - 3) Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FRA.

The Grantee agrees that reimbursement of any cost under this section does not constitute a final FRA decision about the allowability of that cost and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement. The Grantee understands that FRA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FRA determines that the Grantee is not entitled to receive any part of the Federal Contribution requested, FRA will notify the Grantee stating the reasons therefor. Project closeout will not alter the Grantee's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. Project closeout will not alter FRA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FRA may offset any Federal Contribution to be made available under this Agreement, as needed, to satisfy any outstanding monetary claims that the federal government may have against the Grantee. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable federal cost principals or other written

federal guidance.

- e. Bond Interest and Other Financing Costs. To the extent permitted in writing by FRA and consistent with 2 C.F.R. § 200.449, bond interest and other financing costs are allowable.
- f. Requirement to Remit Interest. The Grantee agrees that any interest earned by the Grantee on the Federal Contribution must be handled in accordance with 2 C.F.R. §200.305, and remittance back to the federal government must be made in accordance with the provisions thereof.

## **21. Accounting Procedures:**

- a. Project Accounts. The Grantee will establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 2 C.F.R. §§ 200.302, 200.303, and 200.305.
- b. Funds Received or Made Available for the Project. Grantees other than states will follow the provisions of 2 C.F.R. § 200.305(b) with respect to the use of banks and other institutions as depositories of any advance payments that may be received under this Agreement. States will follow the provisions of 2 C.F.R. §200.305(a).
- c. Documentation of Project Costs and program income. All costs charged to the Project, including any approved services contributed by the Grantee or others, will be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee will also maintain accurate records of all program income derived from Project implementation.
- d. Checks, Orders, and Vouchers. The Grantee will ensure that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project are clearly identified with a Grant Agreement number, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

## **22. Program Income:**

The Grantee is encouraged to earn income to defray Project costs, where appropriate, and should work with the assigned FRA Grant Manager to determine how this income may be applied to the grant, in accordance with 2 C.F.R. § 200.307 and 2 C.F.R. § 1201.80. Program income not deducted from total allowable costs may be used only for the purposes and under the terms and conditions established in this Agreement. Records of program income should be maintained consistent with subsection 21(c) of this Agreement.



## *Project Management Provisions*

### **23. Environmental Protection:**

- a. **Grantee Assistance.** Grantees must comply with the governing laws and regulations referenced in section 44(c) of this Attachment and may also be required to assist with FRA's compliance with applicable Federal laws, regulations, executive orders, and policies related to environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations (40 C.F.R. Part 1500 *et seq.*); FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545, and as updated in 78 FR 2713, January 14, 2013) or 23 C.F.R. Part 771, as applicable; Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*) and its implementing regulations (36 C.F.R. Part 800); Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303(c)), and its implementing regulations (23 C.F.R. Part 774). In providing such assistance, FRA may require that the Grantee conduct environmental and/or historic preservation analyses and to submit documentation to FRA.
- b. **Timing of Grantee Action.** The Grantee may not expend any of the funds provided in this Agreement on construction activities or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until FRA has provided the Grantee with a written notice authorizing the Grantee to proceed. See 23 C.F.R. § 771.113(a).
- c. **Minimization, Avoidance and Mitigation Measures.** The Grantee must implement all measures to minimize, avoid, or mitigate adverse environmental impacts identified by FRA in the categorical exclusion, Finding of No Significant Impact, or Record of Decision for the Project. The Grantee must also implement any additional measures identified through all other environmental or historic preservation review processes conducted to support Project construction and operation (e.g., any commitments included in a Memorandum of Agreement executed pursuant to Section 106 of the NHPA).
- d. **Revisions to Minimization, Avoidance or Mitigation Measures.** The Grantee must provide FRA with written notice if it has not, or cannot, implement any of the minimization, avoidance or mitigation measures identified in subsection (c). Upon receiving such notice, FRA will provide the Grantee direction in writing, which may include substitute mitigation measures. FRA may also revise its categorical exclusion, Finding of No Significant Impact, or Record of Decision.

## 24. Property, Equipment and Supplies:

Unless otherwise approved by FRA, the following terms and conditions apply to property, equipment, and supplies funded under this Agreement:

- a. **General Federal Requirements.** The Grantee will comply with the property standards of 2 C.F.R. §§ 200.310 through 200.316, including any amendments thereto, and other applicable guidelines or regulations. Exceptions to the requirements must be specifically approved by FRA in writing. The Grantee will use Project real property, as defined in 2 C.F.R. § 200.1, in accordance with the Property Standards of 2 C.F.R. § 200.311. Notwithstanding 2 C.F.R. § 200.313, subrecipients of states will comply with 2 C.F.R. § 1201.313 with respect to the use, management and disposal of equipment acquired under this Agreement.
- b. **Maintenance.** The Grantee agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- c. **Records.** The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section of this Agreement.
- d. **Transfer of Project Property, Equipment or Supplies.** The Grantee agrees that FRA may require the Grantee to transfer title to, or direct the disposition of, any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as required by 2 C.F.R. §§ 200.311 – 200.316.
- e. **Withdrawn Property, Equipment or Supplies.** If any Project property, equipment, or supplies are not used for the Project for the duration of their useful lives, as determined by FRA, whether by planned withdrawal, misuse or casualty loss, the Grantee agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies will be in accordance with 2 C.F.R. §§ 200.311 – 200.316.
- f. **Encumbrance of Project Property or Equipment.** Unless expressly authorized in writing by FRA, the Grantee agrees not to:
  - 1) Execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would dispose of or encumber the Grantee's title or other interest in any Project property or equipment; or
  - 2) Obligate itself in any manner to any third party with respect to Project property or equipment. The Grantee will refrain from taking any action or acting in a manner that would adversely affect FRA's interest or impair the Grantee's continuing control over the use of Project property or equipment.

## **25. Relocation and Land Acquisition:**

The Grantee agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.* and the U.S. DOT implementing regulations, 49 C.F.R. Part 24.

## **26. Flood Hazards:**

The Grantee agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition project.

## **27. Procurement:**

- a. Federal Standards. The Grantee may acquire property, goods or services in connection the Project. If the Grantee is a state, then it will use its own procurement procedures that reflect applicable state laws and regulations in compliance with 2 C.F.R. § 200.317. A subrecipient of a state will follow such policies and procedures allowed by that state when procuring property and services under this award consistent with 2 C.F.R. § 1201.317, notwithstanding 2 C.F.R. § 200.317. An entity that is not a state or a subrecipient of a state will comply with 2 C.F.R. §§ 200.318 – 200.327, and applicable supplementary U.S. DOT or FRA directives and regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.
- b. Cargo Preference -- Grantee will comply with the U.S. DOT Maritime Administration regulations, 46 C.F.R. Part 381 as follows:
  - 1) Use of United States-flag vessels:
    - Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Agreement, and which may be transported by ocean vessel, will be transported on privately owned United States-flag commercial vessels, if available.
    - Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section will be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

- 2) The Grantee will insert the following clauses in contracts let by the Grantee in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project.

“Use of United States-flag vessels: The contractor agrees -

- 1) To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- 2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in subsection (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.
- 3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”

- c. Notification Requirement. With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Grantee agrees to:

- 1) specify in any announcement of the awarding of the contract for such goods or services the amount of Federal Contribution that will be used to finance the acquisition; and
- 2) express said amount as a percentage of the total costs of the planned acquisition.

- d. Debarment and Suspension; and Drug-Free Work Place. The Grantee agrees to obtain certifications on debarment and suspension from its third-party contractors and subrecipients and otherwise comply with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. Part 1200, and Government-wide Requirements for Drug-Free Workplace (Grants), 49 C.F.R. Part 32.

- e. Small and Disadvantaged Business Requirements. The Grantee 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”), and to the extent applicable, 49 C.F.R. Part 26 (“Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs”).

## **28. Rights in Intangible Property:**

- a. Title to Intangible Property. Intangible property, as defined in 2 C.F.R. § 200.1, acquired in the performance of this Agreement vests upon acquisition in the Grantee. The Grantee must use that property for the originally-authorized purpose, and must not encumber the property without approval of FRA. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions of 2 C.F.R. § 200.313(e).
- b. Copyright. The Grantee may copyright any work that is subject to copyright and was developed or for which ownership was acquired under this Agreement. FRA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do so.
- c. Patents. The following provisions will apply to patents under this Agreement:
  - 1) The Grantee is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”.
  - 2) If the Grantee secures a patent with respect to any invention, improvement, or discovery of the Grantee or any of its subrecipients or contractors conceived or first actually reduced to practice in the course of or under this Project, the Grantee agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process.
- d. Research Data. For any research data (as defined in 2 C.F.R. § 200.315(e)(3)) acquired under a grant or contract, FRA has the right to:
  - 1) Obtain, reproduce, publish, or otherwise use the research data produced under this Agreement; and
  - 2) Authorize others to receive reproduce, publish, or otherwise use such data.
- e. Freedom of Information Act (FOIA). Responding to a FOIA request under this Agreement will be handled in accordance with the provisions of 2 C.F.R. § 200.315(e), including any definitional provisions set forth therein. The “Federal awarding agency” is FRA, and the “non-Federal entity” is the Grantee

for purposes of this clause.

## **29. Acknowledgment of Support and Disclaimer:**

- a. Acknowledgement and Disclaimer. An acknowledgment of FRA support and a disclaimer of said support must appear in any Grantee publication developed under a research and development grant, or any other product based on or developed under the Agreement as directed by FRA, whether copyrighted or not, in the following terms:
  - 1) "This material is based upon work supported by the Federal Railroad Administration under [Grant/Cooperative Agreement number], [date of award]."
  - 2) "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT."
- b. Signs. The Grantee is encouraged to erect at the site of any construction, and to maintain during construction, signs identifying the Project and indicating that FRA is participating in the development of the Project.

## **30. Reprints of Publications:**

At such time as any article resulting from work under this Agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to the FRA Grant Manager, clearly referenced with the appropriate identifying information.

### ***Documentation and Oversight Provisions***

## **31. Record Retention:**

During the course of the Project and for three years after notification of grant closeout, the Grantee agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FRA may require. In cases where litigation, a claim, or an audit is initiated prior to the expiration of the record retention period, records must be retained until completion of the action and resolution of issues or the end of the record retention period, whichever is later. Reporting and record-keeping requirements are set forth in 2 C.F.R. §§ 200.334 – 200.338 Project closeout does not alter these requirements.

### **32. Audit and Inspection.**

- a. General Audit Requirements. The Grantee will comply with all audit requirements of 2 C.F.R. §§ 200.500 – 200.512.
- b. Inspection by Federal Officials. The Grantee agrees to permit the Secretary and the Comptroller General of the United States, or their Authorized Representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its contractors and subrecipients pertaining to the Project.

### **33. Fraud, Waste or Abuse:**

The Grantee agrees to take all steps, including initiating litigation, if necessary, to recover the Federal Contribution if the FRA determines, after consultation with the Grantee, that all or a portion of such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project.

### **34. Site Visits:**

FRA, through its Authorized Representatives, has the right, at all reasonable times, to make site visits to review Project activities, accomplishments, and management control systems and to provide such technical assistance as may be required. If any site visit is made by FRA under this Agreement on the premises of the Grantee, contractor, beneficiary or subrecipient, the Grantee will provide, or will ensure the provision of all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations will be performed in such a manner as will not unduly delay work being conducted by the Grantee or any subrecipient.

### **35. Safety Compliance:**

To the extent applicable, the Grantee agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety in general, and in the performance of this Agreement, in particular.

### **36. Electronic and Information Technology:**

The Grantee agrees that reports or information it provides to or on behalf of FRA will use electronic or information technology that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194.



### *Other Legislative and Regulatory Provisions*

#### **37. Buy American:**

- a. The Grantee's acquisition of steel, iron and manufactured goods with funding provided through this Agreement is subject to the requirements set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305, if applicable. The Grantee also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.
- b. Under 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, the Grantee 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 Grantee will 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.

#### **38. Ethics:**

- a. **Standards of Conduct.** The Grantee will maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by the Federal Contribution provided through this Agreement. The code or standards will provide that the Grantee's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subrecipients or contractors. The Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by state or local law or regulations, such code or standards will provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee's officers, employees, board members, or agents, or by subrecipients or their agents.
  - 1) **Personal Conflict of Interest.** The Grantee's code or standards must provide that no employee, officer, board member, or agent of the Grantee may participate in the selection, award, or administration of a contract supported by the Federal Contribution if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
  - 2) **Organizational Conflicts of Interest.** The Grantee's code or standards of conduct must include procedures for identifying and preventing real and

apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

- b. Existing Codes or Standards. This section does not require the Grantee to implement a new code or standards of conduct where a state statute, or written code or standards of conduct, already effectively covers all of the elements of Section 38(a) of this Attachment.

### **39. Civil Rights:**

The Grantee agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, 42 U.S.C. § 2000d *et seq.*, the DOT Title VI regulations at 49 C.F.R. part 21, which prohibits discrimination on the basis of race, color or national origin; (b) the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the DOT ADA regulations at 49 C.F.R. parts 37-38, section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and the DOT regulations at 49 C.F.R. part 27, which prohibits discrimination on the basis of disability; (c) the Age Discrimination in Employment Act, as amended (42 U.S.C. §§ 621 – 634), and the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (d) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex; (e) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (f) any nondiscrimination regulation implemented relating to the above stated statutes; (g) any nondiscrimination Executive Order implemented relating to the above stated statutes; (h) any U.S. DOT Order implemented relating to nondiscrimination, and (i) any other applicable federal laws, regulations, requirements, and guidance prohibiting discrimination.

### **40. SAM Registration and DUNS Number:**

The Grantee is responsible for maintaining an active SAM Registration and Data Universal Numbering System (DUNS) Number and ensuring that all SAM/DUNS information is current throughout the lifecycle of this Agreement, in accordance with 2 C.F.R. § 25.200(a)(2). If SAM/DUNS information becomes inactive, expired, or incorrect, the Grantee will not be able to do any grant-related business with FRA, including the obligation and/or payment of Federal grant funds, and FRA may take appropriate action to terminate this Agreement, in accordance with the terms of this Agreement.

### **41. Freedom of Information Act:**

The FRA is subject to the Freedom of Information Act (FOIA). The Grantee should, therefore, be aware that all applications and related materials submitted by the Grantee related to this Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

#### **42. Text Messaging While Driving:**

The Grantee is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the government. *See* Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving,” Oct. 1, 2009 (available at <http://www.gpo.gov/fdsys/pkg/FR-2009-10-06/pdf/E9-24203.pdf>) and DOT Order 3902.10 “Text Messaging While Driving,” Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP- 2010-01, Feb. 2, 2010, available at [http://www.dot.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)). This includes, but is not limited to, the Grantee:

- considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- encouraging voluntary compliance with the agency’s text messaging policy while off duty.

The Grantee is encouraged to insert the substance of this clause in all assistance awards.

Where a Grantee is located within a state that already has enacted legislation regarding texting while driving, that state’s law controls and the requirements of this section will not apply to or be a part of this Agreement.

#### **43. Trafficking in Persons:**

- a. Provisions applicable to a recipient that is a private entity.
  - i. You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not—
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.

- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
  - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
    - a) Associated with performance under this award; or
    - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - 1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - a) Associated with performance under this award; or
    - b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.
- c. Provisions applicable to any recipient.
  - 1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - 2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1) “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3) “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

ii. Includes:

(a) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(b) A for-profit organization.

4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

5) “Recipient” and “subrecipient” include for-profit entities for the purpose of this award term only.

#### **44. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:**

Grant, cooperative agreement, and loan recipients are prohibited from using government funds to enter into subawards or contracts (or extend or renew subawards or contracts) with entities that use covered technology. See section 889

of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, 1917 (Aug. 13, 2018). See also 2 C.F.R. § 200.471.

## **PART IV. GOVERNING LAWS AND REGULATIONS**

### **45. Governing Laws and Regulations:**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Grantee acknowledges and agrees that its performance will be governed by and in compliance with this Agreement, 2 C.F.R. §§ 200 – 200.521, including Appendices I – XI, and DOT’s implementing regulations at 2 C.F.R. Part 1201.
  
- b. Application of Federal, State, and Local Laws and Regulations.
  - 1) Federal Laws and Regulations. The Grantee understands that Federal laws, regulations, policies, and related administrative practices in place on the date this Agreement was executed may be modified from time to time. The Grantee agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing federal requirements, the Grantee agrees to include in all subawards and contracts financed with all or part of the Federal Contribution under this Agreement, specific notice that Federal requirements may change and the changed requirements will apply to the Project, as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
  
  - 2) State, Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts state, territorial, or local law, nothing in this Agreement will require the Grantee to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable state, territorial, or local law; however, if any of the provisions of this Agreement violate any applicable state, territorial, or local law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable state, territorial, or local law, the Grantee agrees to notify the FRA immediately in writing in order that FRA and the Grantee may make appropriate arrangements to proceed with the Project.
  
  - 3) The Grantee will ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including but not limited to, those protecting free speech,

religious liberty, public welfare, the environment, and prohibiting discrimination. Further, the Grantee will ensure compliance with all regulations, executive orders, policies, guidance, and requirements as they relate to the application, acceptance, and/or use of funds under this Agreement which may include, but are not limited to, those referenced in this Agreement.

c. Environmental Protection. In addition to complying with the requirements described in Section 23 of this Attachment, the Grantee will ensure that all work conducted under this Agreement complies with all applicable laws, regulations, executive orders, and policies related to environmental protection and historic preservation, including, but not limited to: Section 114 of the Clean Air Act (42 U.S.C. § 7414); and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318).



## **Consolidated Rail Infrastructure and Safety Improvements Clauses Attachment 1A**

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

### **a. Federal Contribution**

The Federal share of total Project costs shall not exceed 80 percent.

### **b. Performance Measures**

Grantee agrees to measure and report on the performance measures as stated in Attachment 5.

### **c. Buy America**

In lieu of Section 37(a) of Attachment 1 to this Agreement, the Grantee agrees to comply with the Buy America provisions set forth in 49 U.S.C. § 22905(a) for the Project.

Additional guidance on compliance with the Buy America provisions is available on FRA's website at: <https://railroads.dot.gov/legislation-regulations/buy-america/buy-america>.

### **d. Operators Deemed Rail Carriers**

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

### **e. Railroad Agreements.** In accordance with 49 U.S.C. § 22905(c)(1):

(1) If Grantee owns the rights-of-way used by the Project funded by this Agreement, then Grantee agrees that: the infrastructure capacity is adequate to accommodate both existing and future freight and passenger rail operations resulting from the Project, as applicable; railroad collective bargaining agreements with railroad employees (including terms

regulating the contracting of work) will remain in full force and effect according to their terms for work performed on the railroad transportation corridor; and the Grantee assures compliance with liability requirements consistent with 49 U.S.C. § 28103.

(2) If Grantee does not own all of the rights-of-way used by the Project funded by this Agreement, then Grantee represents that it has entered into a written agreement with the owner of rights-of-way used by the Project funded by this Agreement, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations resulting from the Project; an assurance by the owner that collective bargaining agreements with railroad employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by such employees on the railroad transportation corridor; and an assurance of compliance with liability requirements consistent with 49 U.S.C. § 28103.

#### **f. Labor Protective Arrangements**

In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project uses rights-of-way owned by a railroad, then Grantee will ensure compliance with the protective arrangements that are equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 836, with respect to employees affected by actions taken in connection with the Project financed in whole or in part by this Agreement.

#### **g. Davis-Bacon and Related Acts Provisions**

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

#### **h. Replacement of Existing Intercity Passenger Rail Service**

If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

# ATTACHMENT 2

## STATEMENT OF WORK

### Snohomish County

### Meadowdale Beach Park Railroad Bridge

### Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program FY 2018

#### I. AUTHORITY

|  |   |
|--|---|
| <b>Authorization</b>                   | Section 11301 of the Fixing America’s Surface Transportation (FAST) Act, Public Law 114–94 (2015); 49 U.S.C. 22907                                |
| <b>Funding Authority/Appropriation</b> | Consolidated Appropriations Act, 2018, Division L, Title I (Pub. L. 115-141 (March 23, 2018))   |
| <b>Notice of Funding Opportunity</b>   | Notice of Funding Opportunity for Consolidated Rail Infrastructure and Safety Improvements [Fiscal Year 2018] 83 Fed. Reg. 34283 (July 19, 2018)) |

To the extent there is a conflict between Attachment 1 and this Attachment 2, Attachment 1 governs.

#### II. BACKGROUND

This Agreement funds the Snohomish County, Washington (County or Grantee) for the replacement of a BNSF railroad embankment and culvert with a five-span railroad bridge, approximately 20 miles north of Seattle, WA in the Meadowdale Beach Park, to improve a pedestrian crossing (Project).

Meadowdale Beach Park, a Snohomish County Park, is a 108-acre park centered around Lund’s Gulch Creek, a coastal, fish bearing stream. The creek drains to Puget Sound through a 6-foot-wide box culvert under the BNSF mainline, which also serves as the only legal means of saltwater beach access at this park for 65,000 annual visitors.

Park patrons accessing the beach either choose to wade through critical habitat in fast flowing water or illegally trespass over the railway tracks. The curvature of the tracks at this illegal crossing creates an additional hazard to trespassers as the sound of trains is muffled by the bluff and sight distance is greatly reduced. Approximately 65 trains travel along this section of railroad per day, providing passenger and freight service for BNSF, Union Pacific, Amtrak, and Sound Transit.

## ATTACHMENT 2

The Project is part of a larger effort that will restore habitat and coastal processes at Meadowdale Beach Park. By providing a widened opening for the creek, 90 feet vs. the current 6 feet, several nearshore ecosystem processes will be restored. This process-based restoration effort will benefit the larger Puget Sound food web including endangered Southern Resident killer whales, by improving habitat for eelgrass, forage fish, and salmon.

### III. OBJECTIVE

The purpose of the Project is to construct a new double-track railroad bridge at Meadowdale Beach Park, in Edmonds, WA. The new bridge will replace 128 linear feet of BNSF hard armored railroad embankment, supporting two mainline tracks and associated 6-foot-wide concrete box culvert, with two (2) five-span railroad bridges to provide a widened 90-foot opening for Lund's Gulch Creek and an improved pedestrian crossing. The Project addresses public safety, flooding, fish blockage and restoration of coastal ecosystem processes at Meadowdale Beach Park.

This rail improvement project will:

- Address public safety concerns of illegal trespassing due to flooded legal access by eliminating backwater effects and flooding impacts to the only legal access point;
- Provide a pedestrian crossing to the beach area that is compliant with the American Disabilities Act (ADA);
- Allow for the re-establishment of an estuary for threatened Chinook salmon and other fish;
- Allow for the restoration of coastal ecological processes made possible by providing the widened opening under the bridge;
- Increase the resilience of the Pacific Northwest Rail Corridor between Seattle and Vancouver, British Columbia to extreme weather events and changing sea level conditions.

### IV. PROJECT LOCATION

This Project is located along the Washington State Segment of the Pacific Northwest Rail Corridor, between Milepost 21.71 (N316648.3718, E1271945.2779) and Milepost 21.94 (N317872.6893, E1271911.3155) of BNSF's Scenic Subdivision Line Segment 50, near Edmonds, WA, at Meadowdale Beach Park. Meadowdale Beach Park, addressed 15433 75<sup>th</sup> Pl W, Edmonds, Washington, is located approximately 20 miles north of Seattle, Washington at the northern end of Brown's Bay on Puget Sound.

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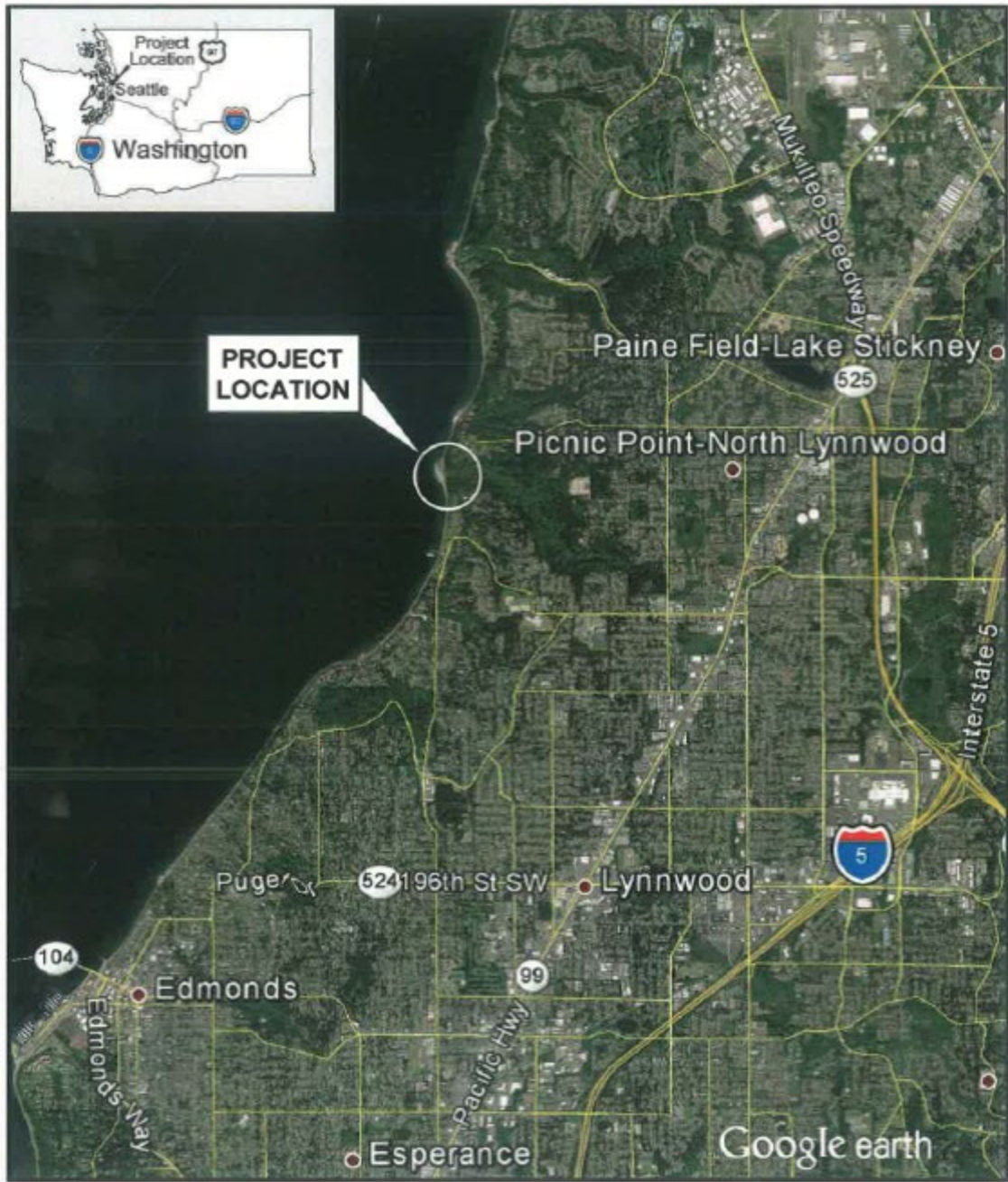


Figure 1: Project Location

### V. DESCRIPTION OF WORK

The Grantee will complete, or cause to be completed, the following Tasks:

#### **Task 1: Detailed Project Work Plan, Budget, and Schedule**

The Grantee will prepare a Detailed Project Work Plan, Budget, and Schedule for the following tasks, which may result in amendments to this Agreement. The Detailed Project Work Plan will

## ATTACHMENT 2

describe, in detail, the activities and steps necessary to complete the tasks outlined in this Statement of Work. The Detailed Project Work Plan will also include information about the project management approach (including team organization, team decision-making, roles and interaction with FRA), as well as address quality assurance and quality control procedures. Similarly, written descriptions of any agreements governing the construction, operation and maintenance of the Project (Project Agreements) will also be included in the Detailed Project Work Plan. The Grantee will transmit final, executed copies of any Project Agreement to FRA.

In addition, the Detailed Project Work Plan will include a Detailed Project Schedule (with Grantee and agency review durations), and a Detailed Project Budget. The Detailed Project Budget will be consistent with the Approved Project Budget (Attachment 4) but will provide a greater level of detail.

The Grantee acknowledges that work on subsequent tasks will not commence until the Detailed Project Work Plan, Budget, and Schedule has been completed, submitted to FRA, and the Grantee has received approval in writing from FRA, unless such work is permitted by pre-award authority provided by FRA. The FRA will not reimburse the Grantee for costs incurred in contravention of this requirement.

The Detailed Project Work Plan may require updates as the Project progresses. These updates will be submitted to FRA for review and approval.

### **Task 1 Deliverables:**

- Detailed Project Work Plan, Budget and Schedule
- Project Agreement(s)

### **Task 2: Construction**

The Grantee shall ensure the Project is constructed in accordance with the FRA approved Environmental Documentation and the FRA accepted Final Engineering Design documentation. The Grantee will submit a Final Design (FD) Package to FRA for review and acceptance. The FD Package will include Final Design Plans, specifications, cost estimates, and schedules. Final Design activities are not funded by this Agreement.

The Grantee is responsible for ensuring that commitments identified in the approved environmental decision document are accounted for in the final design process and implemented during construction.

The Grantee will provide FRA with written notification of bid letting, contract award and issuance of notice to proceed to any contractor performing work under this Agreement. The Grantee will provide FRA with written notification of construction substantial completion and final completion.

## ATTACHMENT 2

The bridge construction includes all work necessary to remove the existing railroad embankment, culvert and rail materials within the bridge footprint; install two pre-cast concrete bridge spans and all appurtenances necessary, including Main 2 track raise, to provide a fully operational double-track railroad bridge; and construction of an ADA-accessible pedestrian crossing. Work will take place within the 100-foot BNSF owned right-of-way and on the adjacent County-owned property.

The following subtasks will be completed as part of Task 2:

### **Task 2.1: Temporary Construction, Demolition, and Site Work**

The Grantee intends to hire a railroad bridge and earthwork contractor to construct temporary and supporting structures for the railroad bridge on infrastructure owned by BNSF; to install bridge appurtenances including fencing, signage, and abutment protection; and to construct the pedestrian crossing.

The Grantee will ensure completion of the following:

- Upgrading the existing roadway to the park to accommodate heavy construction equipment and materials delivered to the site;
- Installing a series of culverts to accommodate flows through the culvert and the temporary embankments;
- Preparing temporary access to the bridge construction area for equipment access and bridge material staging;
- Constructing temporary shoring to support one of the two main tracks while the bridge is built on the adjacent track;
- Removing the existing track embankment, demolition of the existing box culvert, and disposing the embankment and culvert materials;
- Grading of the quarry spall slopes around the bridge abutments and placement of a sheetpile wall on the south abutment to accommodate the ADA-compliant pedestrian crossing;
- Installing fencing and signage along new bridge alignment; and
- Constructing the pedestrian crossing under one of the bridge spans by installing concrete paving and curbing.

### **Task 2.2: Bridge Construction**

The Grantee intends to enter into an agreement with BNSF to construct the double-track railroad bridge, including completion of the following:

- Furnishing and driving steel H-piles;
- Partial removal of rock embankment material and concrete culvert;
- Furnishing and erecting precast concrete bridge components;
- Rehabilitation of the two tracks along the proposed bridge, including Main 2 track raise
- Provide flagging during bridge construction.

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### Task 2 Deliverables:

- None

### **Task 3: Project Administration and Construction Management**

The Grantee is responsible for facilitating the coordination of activities necessary for implementation of the Project as described in Section VIII. Project Management of this Attachment 2.

In addition, the Grantee will complete or cause to be completed, the following construction management activities, which include, but are not limited to:

- Attend contractor safety briefings
- Review shop drawings
- Respond to RFIs submitted by the contractor
- Prepare monthly progress reports
- Prepare work directives, change orders, including reasoning for these items
- Monitor compliance with environmental commitments and permits
- Document contractor's force account work
- Observe contractor's construction activities
- Prepare calculations of constructed bid quantities
- Prepare Field Reports
- Provide Record Survey, including survey field work and final record drawing preparation
- Conduct safety inspections

The Grantee will submit a Final Performance Report, along with other final reports as required under this Agreement, to FRA within 120 days of the end of the grant's Period of Performance end date. The Final Performance Report should describe the cumulative activities of the Project, including a complete description of the Grantee's achievements with respect to the project objectives and milestones.

### Task 3 Deliverables:

- Final Performance Report

## VI. ENVIRONMENTAL COMPLIANCE

FRA signed a categorical exclusion for this Project on March 2, 2020.

## VII. PROJECT COORDINATION

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

- BNSF Railway



## ATTACHMENT 2

- Amtrak
- Sound Transit
- FRA

### VIII. PROJECT MANAGEMENT

The Grantee is responsible for facilitating the coordination of all activities necessary for implementation of the Project. Upon award of the Project, the Grantee will monitor and evaluate the Project's progress through regular meetings scheduled throughout the Project Performance Period. The Grantee will:

- Participate in a project kickoff meeting with FRA
- Complete necessary steps to hire a qualified consultant/contractor to perform required Project work
- Coordinate activities with BNSF and other stakeholders, as necessary, to perform required Project work
- Inspect and approve work as it is completed
- Review and approve invoices as appropriate for completed work
- Perform Project closeout activities, including Project close-out audit to ensure contractual compliance and issue close-out report
- Comply with all FRA reporting requirements and submit to FRA all required Project documentation on-time, including periodic receipts and invoices
- Submit to FRA all required deliverables according to schedule
- Hold regularly scheduled Project meetings with FRA
- Provide FRA with the following information at the regularly scheduled Project meetings, including, but not limited to:
  - Summary of work accomplished and/or underway during previous project period;
  - Status of project by task, including percent complete;
  - Changes and reason for changes in scope, schedule, or budget, which may result in an update of the Detailed Project Work Plan, Budget, and Schedule;
  - Description of unanticipated problems and any resolution since the immediately preceding progress report;
  - Summary of work scheduled for the next progress period; and
  - Updated Project schedule.
- Read and understand the Terms and Conditions of this Agreement (Attachment 1)
- Notify FRA of changes to this Agreement that require written approval or modification to the Agreement

## ATTACHMENT 3

### DELIVERABLES AND APPROVED PROJECT SCHEDULE

Snohomish County

Meadowdale Beach Park Railroad Bridge

#### I. DELIVERABLES AND APPROVED PROJECT SCHEDULE

The deliverables associated with this Agreement are listed below. The Grantee must complete these deliverables to FRA's satisfaction to be authorized for funding reimbursement and for the Project to be considered complete

Unless otherwise approved, requests for extensions of the Project Performance Period must be submitted not later than 90 days before the end of the Project Performance Period, consistent with Section 4(b) of Attachment 1.

#### Deliverables

| <u>Task #</u> | <u>Deliverable Name</u>                         | <u>Due Date</u>  |
|---------------|---|--|
| 1             | Detailed Project Work Plan, Budget and Schedule | 02/28/2021   |
| 1             | Project Agreement(s)                            | 03/31/2021   |
| 3             | Final Performance Report                        | Within 120 days after the Period of Performance end date |

## ATTACHMENT 4

### APPROVED PROJECT BUDGET

Snohomish County

#### Meadowdale Beach Park Railroad Bridge

##### I. APPROVED PROJECT BUDGET

The total estimated cost of the Project is \$7,522,629, for which the FRA grant will contribute up to 46.5263% of the total Project cost, not to exceed \$3,500,000. The Grantee's Non-Federal Contribution is comprised of cash contributions only in the amount of \$4,022,629. Any additional expense required beyond that provided in this Agreement to complete the Project will be borne by the Grantee.

In a letter to the Grantee, dated February 18, 2021, FRA authorized the incurrence of certain pre-agreement costs on or after February 15, 2021 for Tasks 2 and 3 in the amount of \$2,602,000, of which \$1,210,614 is Federal Contribution and \$1,391,386 is Non-Federal Contribution, in anticipation of the execution of this Agreement. Such costs are allowable only to the extent that they are otherwise allowable under the terms of this Agreement.

##### Project Budget by Task

| Task # | Task Name  | Federal (FRA) Contribution | Non-Federal Contribution | Total Cost         |
|--------|--|----------------------------|--------------------------|--------------------|
| 1      | Detailed Project Work Plan, Budget, and Schedule   | \$0                        | \$0                      | \$0                |
| 2.1    | Temporary Construction, Demolition, and Site Work  | \$1,758,824                | \$2,021,455              | \$3,780,279        |
| 2.2    | Bridge Construction                                | \$1,302,736                | \$1,497,264              | \$2,800,000        |
| 3      | Project Administration and Construction Management | \$438,440                  | \$503,910                | \$942,350          |
|        | <b>Total</b>                                       | <b>\$3,500,000</b>         | <b>\$4,022,629</b>       | <b>\$7,522,629</b> |

Revisions to the Approved Project Budget shall be made in compliance with Attachment 1 of this Agreement. The Grantee will document expenditures by task, and by Federal and Non-Federal Contributions, when seeking reimbursement from FRA.

## ATTACHMENT 4

### Project Budget by Source

| <b>Funding Source</b>                      | <b>Project Contribution Amount</b> | <b>Percentage of Total Project Cost</b> |
|--|------------------------------------|---|
| Federal Contribution (Amount of FRA Grant) | \$3,500,000                        | 46.5263%                                |
| Non-Federal Contribution                   | \$4,022,629                        | 53.4737%                                |
| <i>Snohomish County</i>                    | <i>\$4,022,629</i>                 | <i>53.4737%</i>                         |
| <b>Total Project Cost</b>                  | <b>\$7,522,629</b>                 | <b>100%</b>                             |

# ATTACHMENT 5

## PERFORMANCE MEASUREMENTS

### Snohomish County

### Meadowdale Beach Park Railroad Bridge

#### I. PERFORMANCE MEASUREMENTS

The table below contains the performance measures that this Project is expected to achieve. These performance measures will enable FRA to assess Grantee's progress in achieving strategic goals and objectives. The Grantee will report on these performance measures per the frequency and duration specified in the table.

Upon Project completion, Grantee will submit reports comparing the Actual Project Performance of the new and or improved asset(s) against the Pre-Project (Baseline) Performance and Expected Post-Project Performance as described in Table 1 below. Grantee need not include any analysis in addition to the described data; however, Grantee is welcome to provide information explaining the reported data. Grantee will submit the performance measures report to the Project Manager in accordance with Table 1 below.

**Table 1: Performance Measurement Table**

| Performance Measure | Description of Measure   | Measurement  | Reporting  |
|---------------------|--|--|--|
| ADA Compliance      | Replacement of an existing non-ADA compliant walkway with a walkway and pedestrian trail that provides ADA-compliant access to the beach area. | <b>Pre-Project (Baseline) Performance:</b><br>Public safety requires an ADA accessible crossing free of deposited gulch sediments and not inundated by high creek flow events. The current underpass walkway which is shared with the creek is not ADA accessible and is frequently impassable due to high creek flow events and often overlain with gulch cobbles and gravels providing uneven surface. | <b>Actual Project Performance After Project Completion:</b><br>Comparison of actual performance of asset(s) versus the baseline and expected post-project performance. |
|                     |  |  | <b>Frequency:</b><br>Upon Project completion   |
|                     |  | <b>Expected Post-Project Performance:</b><br>ADA-compliant beach access is provided.   | <b>Duration:</b><br>One time   |

## ATTACHMENT 4

| Performance Measure        | Description of Measure  | Measurement  | Reporting  |
|----------------------------|---|--|--|
| Reportable Events / Safety | Reduction of reportable events or trespassing activity within the right-of-way to address public safety concerns. | <p><b>Pre-Project (Baseline) Performance:</b></p> <p>Vandalism of fence and presence of rogue trails are indication of trespass activity. Existing underpass conditions have resulted in illegal access by means of cutting the fence and by using rogue trails through vegetation to access the tracks.</p> | <p><b>Contents:</b></p> <p>Comparison of actual performance of asset(s) versus the baseline and expected post-project performance.</p> |
|                            |   |  | <p><b>Frequency:</b></p> <p>Annual</p>   |
|                            |   | <p><b>Expected Post-Project Performance:</b></p> <p>No presence of trespass activity due to improved access to the beach.</p>  | <p><b>Duration:</b></p> <p>For three years after the project's Project Performance Period end date.</p>                                |

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 20-401

DECLARING THE COUNTY'S OFFICIAL INTENT TO REIMBURSE  
EXPENDITURES FOR THE COUNTY MEADOWDALE BEACH PARK  
AND ESTUARY RESTORATION CAPITAL PROJECT WITH THE  
PROCEEDS OF TAX-EXEMPT BONDS

WHEREAS, Snohomish County (the "County") intends to make capital expenditures for the Meadowdale Beach Park and Estuary Restoration Capital Improvement Project ("the project"); and

WHEREAS, the County may finance all or a portion of the project through the issuance of one or more series of federally tax-exempt bonds in the maximum aggregate principal amount of \$10,000,000 (the "Bonds"); and

WHEREAS, prior to the issuance of the Bonds, the County intends to make capital expenditures in connection with the project from available funds of the County, and to reimburse those capital expenditures with proceeds of the Bonds, when and if issued; and

WHEREAS, Treasury Regulations Section 1.150-2 requires that the County declare it to be the official intent of the County to reimburse all or a portion of any such capital expenditures from the proceeds of the Bonds, when and if issued;

NOW, THEREFORE, ON MOTION, the Snohomish County Council declares its intent to reimburse itself for capital expenditures in connection with the project from the proceeds of the Bonds, when and if issued.

DATED this 14<sup>th</sup> day of December, 2020.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
\_\_\_\_\_  
Acting Council Chair

ATTEST:

  
\_\_\_\_\_  
Asst. Clerk of the Council

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 21-037

AUTHORIZING REQUEST FOR PRE-AWARD AUTHORITY OF THE  
CONSOLIDATED RAIL INFRASTRUCTURE SAFETY IMPROVEMENT GRANT  
FUNDS FROM THE FEDERAL RAILROAD ADMINISTRATION FOR THE  
MEADOWDALE BEACH PARK & ESTUARY RESTORATION PROJECT

WHEREAS, the Snohomish County Department of Parks, Recreation, and Tourism submitted an application on September 14, 2018, to the Federal Rail Administration (FRA) for the Consolidated Rail Infrastructure Safety Improvement (CRISI) grant program requesting \$3,500,000 for construction of the railroad bridge portion of the Meadowdale Beach Park and Estuary Restoration Project; and

WHEREAS, Snohomish County Department of Parks, Recreation, and Tourism was notified by FRA of grant award on June 13, 2019; and

WHEREAS, the CRISI grant request is based on a total estimated railroad bridge cost of \$7,522,629, for which the FRA grant will contribute up to 46.5263% of the total railroad bridge cost, not to exceed \$3,500,000 with the County match of 53.4737% totaling \$ 4,022,629; and

WHEREAS, the match for this agreement has been identified in the adopted 2021 Capital Improvement Program with Motion 20-401 authorizing reimbursement of County expenditures on the Meadowdale Beach Park and Estuary Restoration Project with proceeds of tax-exempt bonds; and

WHEREAS, the final agreement with FRA obligating the grant funds is dependent on FRA receiving the executed Underpass Agreement between the County and BNSF; and

WHEREAS, there will be a delay of four to six (4-6) weeks following submittal of executed Underpass Agreement to FRA and obligation of FRA funds; and

WHEREAS, BNSF will have authorization by the County to commence work following Council action authorizing execution of the Underpass Agreement; and

WHEREAS, the County Contractor will have authorization by the County to commence work on the Meadowdale Beach Park and Estuary Restoration Project (Bid 002-21SB) which includes a portion of railroad bridge work, following Council action to award the bid; and



WHEREAS, procurement process and shop drawing review and Contractor/County coordination are initial steps of construction that are time-sensitive activities that if delayed could adversely impact the project; and

WHEREAS, FRA allows the grantee to request pre-authorization of funds to be used for procurement and related costs prior to grant obligation, as warranted and allowed; and

WHEREAS, FRA has accepted the Pre-Award Letter as written but requires signature, prior to making the document part of the Grant Agreement; and

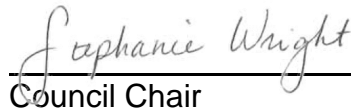
WHEREAS, the County acknowledges that pre-award costs are considered at-risk until the grant agreement has been executed as indicated in the letter; and

WHEREAS, no pre-award funds shall be used prior to execution of the Underpass Agreement by BNSF and Snohomish County;

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby approves and authorizes the County Executive to execute the Pre-Award Authority Letter addressed to the FRA, in effort to prevent unnecessary delays to start of construction of the Meadowdale Beach Park and Estuary Restoration Project.

DATED this 1<sup>st</sup> day of February, 2021.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
\_\_\_\_\_

Council Chair

ATTEST:

  
\_\_\_\_\_

Asst. Clerk of the Council

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