



# **Metropolitan Council**

**PROPOSED AMENDMENTS PACKET  
FOR THE COUNCIL MEETING OF  
TUESDAY, AUGUST 1, 2023**

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Mr. President-

I move to amend the 2019-2023 Metropolitan Council Rules of Procedure by amending Rule 28 as shown below:

### **Substitute Rule**

#### **28. Public addressing Council**

The public shall be provided an opportunity to address the Council ~~regarding matters that are germane to items on the agenda~~ during a public comment period at the beginning of each regular and special meeting of the Council and of a Council committee. ~~Individuals will be required to provide notice of the desire to participate in the public comment period to the Council Office no later than the Thursday before the meeting.~~ The public comment period for regular and special meetings of the Council shall be limited to twenty (20) minutes. The public comment period for regular and special meetings of Council Committees shall be limited to eight (8) minutes. Individuals shall be allowed to speak for up to two (2) minutes each. Public comment periods will not be held for any meeting where there are no actionable items on the agenda ~~The Council Office shall make policies and procedures necessary to facilitate the public comment period, including access to language interpretation and other related accessibility needs.~~

During all other public hearings, individuals shall be allowed to speak for up to two (2) minutes regarding each matter.

Members of the public may address the Council in a public hearing format regarding a specific resolution or ordinance, when a public hearing is not otherwise required by law, if the Council approves a Council member's motion by a two-thirds (2/3) vote of the Council members present at such meeting to allow members of the public to address the Council. Such motion shall specify the subsequent meeting at which the public hearing is to take place.

For regular and special meetings of the Council, ~~the~~ Clerk shall keep time in accordance with this rule. For regular and special meetings of Council committees, the Chair shall designate a member of the committee to keep time in accordance with this rule.

SPONSORED BY:

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Dave Rosenberg  
Member of Council

SUBSTITUTE ORDINANCE NO. BL2023-2010

An ordinance amending Metropolitan Code of Laws Section 17.20.140 regarding access management studies (Proposal No. 2023Z-004TX-001).

WHEREAS, the Nashville Department of Transportation and Multimodal Infrastructure (NDOT) has collaborated with a variety of stakeholders including ULI, Walk Bike Nashville, NAIOP, TDOT, local traffic consultants, the Traffic and Parking Commission, the Mayor's Office, Metro Planning Department, Metro Legal, and Metro ITS regarding access management studies, and seeks to amend Section 17.20.140 of the Metropolitan Code of Laws as set forth in this ordinance to support its mission of unifying NDOT's and the Metropolitan Government of Nashville and Davidson County's transportation goals through the modernization of the development review process; and,

WHEREAS, NDOT has leveraged up-to-date industry research, peer city best practices, and technical standards from leading professional organizations such as ITE, NACTO, and FHWA, to develop transportation analysis guidance that supports a connected and safe multimodal network; and,

WHEREAS, NDOT needs tools to effectively mitigate the impacts of new development through the implementation of projects that improve public safety, increase access to goods and services, and support the buildout of an efficient multimodal transportation network; and,

WHEREAS, NDOT has proposed this ordinance to ensure the associated multimodal transportation analysis guidelines are consistent with ~~current plans, policies, and strategies~~ Metro Nashville Transportation Plan, WalknBike Nashville, Vision Zero, Metro Code Updates (2017), Access 2040, and Nashville Next adopted by NDOT and other Metro Departments; and,

WHEREAS, this updated development review process will enable NDOT to analyze traffic operations, multimodal mobility, and the safety of all roadway users, so as to inform the selection of effective improvements that serve transportation needs of local communities and Davidson County as a whole.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Metropolitan Code of Laws subsection 17.20.140 is hereby amended by deleting it in its entirety and replacing it with the following:

17.20.140 - Multimodal Transportation Analysis.

- A. The purpose of a multimodal transportation analysis is to evaluate the impact of a proposed development on the safety, operations, and condition of the adjacent transportation network, and to identify what transportation mitigations, if any, are necessary to offset the impact caused by additional trips generated by the proposed development.
  1. Elements of the adjacent transportation network to be evaluated may include intersection operational performance, multimodal connectivity, and safety of the transportation network for all road users.
  2. Transportation mitigations may include, but are not limited to, the provision of roadway traffic operations and capacity facilities; modifications to the roadway network that increase safety; micromobility enhancements; the addition or enhancement of bicycle, pedestrian, and transit facilities; and/or development of

programs to encourage an appropriate mix of travel modes and complete streets where appropriate.

- B. Requirements for a multimodal transportation analysis. A multimodal transportation analysis shall be required by the Planning Department for applications to the Metropolitan Planning Commission (MPC) or the Nashville Department of Transportation and Multimodal Infrastructure (NDOT) for all other development which contains:
1. Residential developments with more than seventy-five dwelling units; or
  2. Nonresidential developments of more than fifty thousand square feet; or
  3. Combinations of residential and nonresidential uses expected to generate seven hundred fifty trips or more per day, or one hundred or more peak-hour trips; or
  4. In the opinion of NDOT, a multimodal transportation analysis is needed for developments not meeting the above thresholds.
  5. ~~NDOT shall set requirements for the level of analysis, modes considered, and analysis methodology for applicants meeting any of the above thresholds.~~

NDOT shall set requirements for the level of analysis, modes of transportation considered, and analysis methodology for applicants meeting any of the above thresholds.

C. Levels of multimodal transportation analysis required.

1. Level 1. A level 1 multimodal transportation analysis is required for smaller scale projects that are not anticipated to have a significant impact on the overall transportation system but will have impacts at the site access.
  - a. A Level 1 multimodal transportation analysis shall be required in cases where the proposed development will create a through connection between collector roadways and/or roadways of greater functional classification based on ~~Metro Classification~~ the Major and Collector Street Plan.
  - b. The project access points to public roadways, public alleys, private driveways, and joint access easements will be evaluated, and this includes those locations that the Planning Department or NDOT ~~feels~~ determines are necessary to provide for an adequate review of the proposed project's impact.
  - c. The multimodal infrastructure and the safety of all modes of transportation in the vicinity of the project will also be analyzed as part of a Level 1 analysis.
2. Level 2. A level 2 multimodal transportation analysis is required for larger scale development projects that are anticipated to have a significant transportation impact on the overall transportation system. A level 2 multimodal transportation analysis will evaluate impacts at site access points and appropriate nearby intersections as well as impacts to the multimodal transportation network and safety for all modes of transportation. ~~a modified level 1 multimodal transportation analysis containing reduced analysis requirements for vehicular, bike, transit, and/or pedestrian modes based on development characteristics and area context.~~
  - a. ~~The purpose of a A level 2 multimodal transportation analysis~~ will include an analysis of the project's access points, all roadways serving the project;

and, all intersections up to the first collector roadway, or the first roadway of higher functional classification, and the intersections of these roadways with arterial roadways based on the Major and Collector Street Plan. is to adapt study requirements to the transportation needs of the area adjacent to a development and minimize analysis that may be redundant or trivial.

~~b. A level 2 multimodal transportation analysis may be granted by NDOT on a case by case basis. The property owner or their representative shall provide sufficient justification with a request to conduct a level 2 multimodal transportation analysis.~~

b. e. Elements that may be considered by NDOT during review of a level 2 multimodal transportation analysis request include parking supply, existing or planned multimodal infrastructure adjacent to the development, proximity to transit, population density of the area adjacent to the development, and traffic congestion.

c. The study area includes intersections and transportation facilities that the Planning Department and NDOT determine are necessary to provide for an adequate review of the proposed project's impacts.

~~3. Level 3. A level 3 multimodal transportation analysis evaluates impacts at site access points and appropriate nearby intersections as well as impacts to the multimodal network and safety for all modes.~~

~~a. The study parameters include an analysis of the project's access points, an analysis of all roadways serving the project, an analysis of all intersections up to the first collector roadway or the first roadway of higher functional classification, and the intersections of these roadways with arterial roadways based on Metro classification.~~

~~b. This includes those intersections that the Planning Department and NDOT feel are necessary to provide for an adequate review of the proposed project's impacts.~~

D. **Rezoning Analysis.** The purpose of a rezoning analysis is to analyze the capacity of the existing transportation system to accommodate potential new development in the absence of mitigation measures.

1. A rezoning analysis compares the typical and maximum potential trip generation of representative uses permitted in the existing zoning with the typical and maximum representative uses permitted under the requested zoning or through design-based districts.

2. Completing a rezoning analysis does not preclude the need to complete a more thorough multimodal transportation analysis upon submission of development plans for the subject property(s) and/or requests for the issuance of permits for construction.

3. Specific mitigation measures will be identified through the detailed multimodal transportation analysis process.

E. Multimodal Transportation Analysis Scoping. Upon determination that a new development meets the threshold for a multimodal transportation analysis, the applicant must contact NDOT and submit a Scoping Evaluation Form for review. The purpose of the form is to

provide NDOT with basic information about a new development, set analysis parameters, and guide the applicant through a preliminary assessment of the transportation network within the study area. NDOT shall review and provide comments or approval of a submitted scoping document within ten business days of submittal.

EF. Phased Development.

1. If a development is phased, the sequence and timing of a development shall be incorporated into the multimodal transportation analysis.
2. An overall multimodal transportation analysis may be required with additional analysis for individual phases of construction.
3. Completing a multimodal transportation analysis for one phase of development does not preclude the need to complete additional analysis upon submission of development plans for the subject property(s) and/or requests for the issuance of permits for construction.

EG. Waiver of a multimodal transportation analysis. A property owner or their representative who demonstrates that a development will not have a significant impact on the transportation system may request a waiver of a multimodal transportation analysis.

1. A request to waive a multimodal transportation analysis shall be made by a property owner or their representative in writing to NDOT and for applications to the ~~p~~Planning ~~e~~Commission, the ~~p~~Planning ~~d~~Department. Sufficient documentation shall be included that supports the waiver request.
2. A copy of the request to waive a multimodal transportation analysis shall concurrently be sent by the property owner or their representative to the member(s) of the metropolitan council in whose district(s) the development is located.
3. NDOT will make a decision on the waiver request within fifteen business days, and for applications to the ~~p~~Planning ~~e~~Commission, will consider a recommendation from the ~~p~~Planning ~~d~~Department.

EH. Approval of multimodal transportation analysis.

1. If a multimodal transportation analysis is required ~~for a submitted planning application, t~~ per Subsection B above, the multimodal transportation analysis and transportation mitigation strategies should be reviewed and approved by NDOT prior to the Planning Commission review. The Planning Department may recommend deferral as a staff recommendation to the Planning Commission for applications without an approved multimodal transportation analysis.
2. The multimodal transportation analysis shall be approved by NDOT and, for applications to the ~~p~~Planning ~~e~~Commission, the ~~p~~Planning ~~d~~Department, with all applicable performance requirements incorporated into any site and building plans.
3. NDOT shall review and provide comments or approval of a submitted multimodal transportation analysis within twenty business days of submittal.

HI. Applicability of a multimodal transportation analysis. A previously approved multimodal transportation analysis may require revision if the following criteria are met:

1. Zoning approval or permit approval not obtained within 60 months (five years) of multimodal transportation analysis approval; or
2. Changes in access points from proposed development are made from site plan submitted as part of approved multimodal transportation analysis; or
3. Increase in daily or peak hour trips resulting from a change in proposed land use types or intensities.
4. Developments meeting the above criteria shall revise and resubmit a multimodal transportation analysis. If a multimodal transportation analysis is required for a submitted planning application, the planning department may recommend deferral as a staff recommendation to the planning eCommission for applications with a multimodal transportation analysis meeting any of the above criteria without approval from NDOT.

IJ. Implementation of multimodal transportation analysis recommendations.

1. The multimodal transportation analysis may consider the Capital Improvements Budget and improvements for which council has adopted a resolution appropriating funds.
  2. Any required improvements which have not been funded or otherwise completed by the metropolitan government shall be completed by the developer prior to the issuance of a use and occupancy permit by the zoning administrator.
  3. When it can be demonstrated that a development will only partially contribute to the need for additional off-site improvements, NDOT or planning department (as applicable) may require a pro-rata contribution.
  4. Prior to the issuance of a ROW permit and per Section 13.20.050 of this Code, the applicant's contractor shall be required to obtain a performance bond executed by the contractor and its Surety or Sureties, guaranteeing the execution of transportation infrastructure follows NDOT requirements and the payment of all legal debts pertaining to the performance of the work. Surety(ies) shall be authorized to do business in the State of Tennessee and be listed on the United States Department of the Treasury Financial Management Service list of approved bonding companies.

Section 2. The Metropolitan Clerk is directed to publish a notice announcing such change in a newspaper of general circulation within five days following final passage.

Section 3. This Ordinance shall take effect upon publication of above said notice announcing such change in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:

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Brett Withers  
Member of Council



AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-2068

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-2068 as follows:

- I. By attaching the elevations included in Exhibit A to the preliminary SP plan and making them a part of that document.
- II. By amending Section 4 to add the following condition:

8. Residential units fronting Pennington Bend Road shall be constructed in the traditional style, as identified on the elevations included with the preliminary SP plan. Residential units constructed in the contemporary style shall not front Pennington Bend Road.

INTRODUCED BY:

\_\_\_\_\_  
Jeff Syracuse  
Member of Council

# Exhibit A

## Contemporary Architectural Style

\*Contemporary Architectural style for homes not fronting Pennington Bend Rd.



## Traditional Architectural Style

\*Traditional Architectural style for homes fronting Pennington Bend Rd.



## Pennington Bend Concept 0 Pennington Bend Nashville, TN 37214

This project includes approximately 39 homes on Pennington Bend in Nashville, TN.

### Applicable Codes:

2012 International Building Code (IBC),  
the 2018 International Residential Code (IRC),  
the 2012 International Fire Code (IFC),  
the 2012 International Plumbing Code (IPC),  
the 2017 National Electrical Code (NEC),  
and the 2012 International Mechanical Code (IMC)



	Date:	7/15/2023
	Project:	Pennington Bend
	Model:	Preliminary Concept
	Title:	Title Sheet
	Sheet:	A100



○ Street Elevation from Pennington  
 1" = 30'-0"



○ Enlarged Street Elevation, Traditional Style  
 1" = 10'-0"



	Date:	7/15/2023
	Project:	Pennington Bend
	Model:	Preliminary Concept
	Title:	Street view
	Sheet:	A110.1



① Street Elevation  
1" = 30'-0"



② Enlarged Street Elevation, Contemporary Style  
1" = 10'-0"

	Date:	7/15/2023
	Project:	Pennington Bend
	Model:	Preliminary Concept
	Title:	Street view
	Sheet:	A110.2

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-2078

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-2078 by amending Section 4 to add the following conditions:

17. Prior to commencement of construction, Developer will present a construction plan and schedule to the community which will include a developer contact for complaints, general timelines and expectations for the project, timelines for when blasting and concrete pours will occur, a construction parking plan, and the creation of a website to provide updates on the construction schedule.
18. The developer shall work with WeGo to encourage participation and use of Easy Ride passes for employees of all businesses within the development who work on site.

INTRODUCED BY:

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Brett Withers  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-2087

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-2087 by amending Section 4 to add the following conditions:

13. Prior to commencement of construction, Developer will present a construction plan and schedule to the community which will include the following: a specific prohibition on direct access to the site, for construction vehicles, from Woodland, a developer contact for complaints, general timelines and expectations for the project, timelines for when blasting and concrete pours will occur, a construction parking plan, and the creation of a website to provide updates on the construction schedule.
14. Prior to blasting, the Developer will perform pre-blast surveys for any dwelling house, public building, school, church, commercial or institutional building normally occupied within 600' of the blast hole. Developer will also host an informational meeting with the impacted neighbors who are within the state mandated notice zone as well as surrounding schools, churches and daycares, and the blasting contractor will answer questions and present the blasting plan and schedule for the project and Developer will agree to providing bi-weekly updates on the seismic readings to these impacted neighbors. Developer will share the dates and times of the planned blasts with the impacted neighbors as well as adjacent churches, daycares, schools and the MNPD Cross-Guard Division if they request notice.
15. The developer shall work with WeGo to encourage participation and use of Easy Ride passes for employees of all businesses within the development who work on site.
16. Outdoor sound amplification equipment shall be prohibited for any business with frontage and ingress/egress on Woodland Street.
17. The developer shall prohibit the use of any musical instrument or other entertainment device using amplification unless such music or other entertainment is provided within a totally enclosed structure. Such music or other entertainment may be provided outside of a structure only between the hours of 7:00 a.m. and 9 p.m.
18. The developer shall provide easily accessible parking for the retail uses on site.

INTRODUCED BY:

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Brett Withers  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-2095

Mr. President –

I hereby move to amend Ordinance No. BL2023-2095 by amending Section 4 to amend Condition 1 as follows:

1. ~~A 20 foot wide alley shall be provided from McAlpine through the project site. The alley will be signed one way from McAlpine north through the site. Traffic will not be permitted to exit from the alley onto McAlpine.~~ There shall be no alley connection provided from McAlpine Ave. to the project site.

INTRODUCED BY:

\_\_\_\_\_  
Emily Benedict  
Member of Council

SUBSTITUTE ORDINANCE NO. BL2023-2102

An ordinance to amend Title 17 of the Metropolitan Code of Laws, the Zoning Ordinance of The Metropolitan Government of Nashville and Davidson County, by changing from AR2A and RS15 to ~~HR~~ SP zoning for properties located at 4520 Ashland City Highway and Cato Road (unnumbered), approximately 825 feet east of Amy Lynn Drive (27.58 acres), all of which is described herein (Proposal No. 2023Z-052PR-001).

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 17 of the Code of Laws of The Metropolitan Government of Nashville and Davidson County, is hereby amended by changing the Official Zoning Map for Metropolitan Nashville and Davidson County, which is made a part of Title 17 by reference, as follows:

By changing from AR2A and RS15 to ~~HR~~ SP zoning for properties located at 4520 Ashland City Highway and Cato Road (unnumbered), approximately 825 feet east of Amy Lynn Drive (27.58 acres), being Property Parcel Nos. 040 and 200 as designated on Map 058 and Property Parcel No. 012.01 as designated on Map 068 of the Official Property Identification Maps of The Metropolitan Government of Nashville and Davidson County, all of which is described by lines, words and figures on the attached sketch, which is attached to and made a part of this ordinance as though copied herein.

Section 2. Be it further enacted, that the Metropolitan Clerk is hereby authorized and directed, upon the enactment and approval of this ordinance, to cause the change to be made on Maps 058 and 068 of said Official Zoning Map for Metropolitan Nashville and Davidson County, as set out in Section 1 of this ordinance, and to make notation thereon of reference to the date of passage and approval of this amendatory ordinance.

Section 3. Be it further enacted, that the uses within Area 1 as shown on the preliminary SP plan shall be limited to the warehouse use with the general office use as an accessory use. The uses within Area 2 as shown on the preliminary SP plan shall be limited to religious institution and single family residential uses.

Section 4. Be it further enacted, that the following conditions shall be completed, bonded or satisfied as specifically required:

1. Comply with all conditions and requirements of Metro Reviewing Agencies.
2. A corrected copy of the preliminary SP plan incorporating the conditions of approval by Metro Council shall be provided to the Planning Department prior to or with final site plan application.
3. The Preliminary SP plan is the site plan and associated documents. If applicable, remove all notes and references that indicate that the site plan is illustrative, conceptual, etc.
4. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any of any building permits.
5. The storage of chemicals shall be prohibited in any warehouse use within the SP boundary.
6. All traffic from Area 1 shall be routed to Ashland City Hwy.
7. A Standard Type D-3 Landscape Buffer Yard shall be provided around Area 1 as shown on the preliminary SP plan. The minimum width of this buffer yard shall be as identified on the preliminary SP plan.
8. Where possible, existing trees shall be retained and protected during construction.



9. All recommendations from the Traffic Impact Study for this project by Burch Transportation dated 5/19/23 shall be implemented.

Section 5. Be it further enacted, a corrected copy of the preliminary SP plan incorporating the conditions of approval by Metro Council shall be provided to the Planning Department prior to or with final site plan application.

Section 6. Be it further enacted, minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.

Section 7. Be it further enacted, if a development standard, not including permitted uses, is absent from the SP plan and/or Council approval, Area 1 as shown on the preliminary SP plan shall be subject to the standards, regulations and requirements of the IR zoning district, and Area 2 as shown on the preliminary SP plan shall be subject to the standards, regulations and requirements of the RS15 zoning district as of the date of the applicable request or application.

Section 3 8. The Metropolitan Clerk is directed to publish a notice announcing such change in a newspaper of general circulation within five days following final passage.

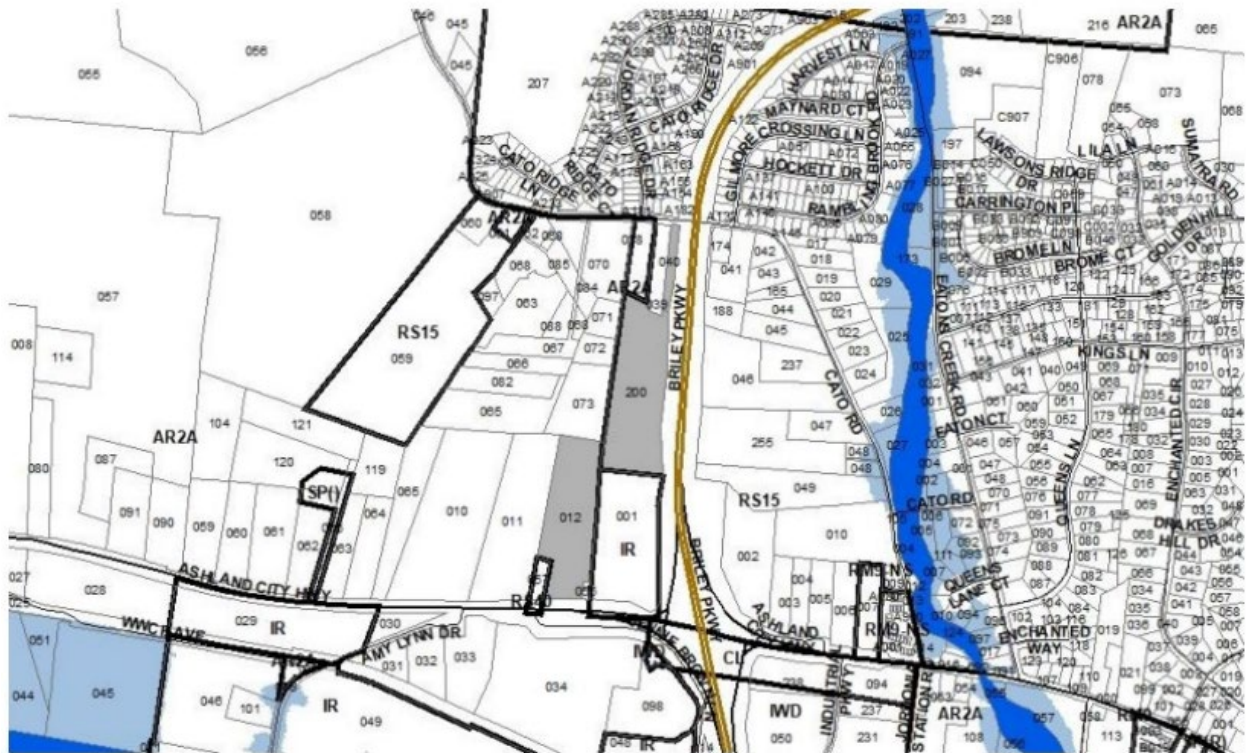
Section 4 9. This Ordinance shall take effect upon publication of above said notice announcing such change in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

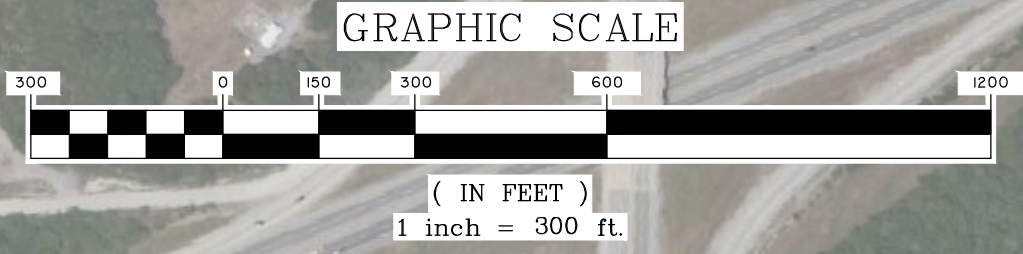
INTRODUCED BY:

\_\_\_\_\_  
Burkley Allen  
Member of Council

2023Z-052PR-001  
Map 058, Parcel(s) 040, 200  
Map 068, Parcel(s) 012.01  
Subarea 03, Bordeaux – Whites Creek – Haynes Trinity  
District 01 (Hall)  
Application fee paid by: Ryan Moses

A request to rezone from AR2A and RS15 to IR SP zoning for properties located at 4520 Ashland City Highway and Cato Road (unnumbered), approximately 825 feet east of Amy Lynn Drive (27.58 acres), requested by Thomas & Hutton, applicant, Eskimo Ashland and Church of the Living God, The Pillar and Ground of Truth, Trustees, owners





**ASHLAND CITY HIGHWAY TRACT**  
 PRELIMINARY SP PLAN  
 CLIENT:  
 BEST BRANDS INCORPORATED  
 LOCATION: NASHVILLE, TN  
 DATE: 07/28/2023  
 JOB NUMBER: J-31043.0000

DRAWN BY: CA  
 REVIEWED BY: SH

SHEET: EX1.1  
 SCALE: 1" = 300'

**THOMAS & HUTTON**  
 500 11th Avenue. N. • Suite 800  
 Nashville, TN 37203 • 615.349.4990  
[www.thomasandhutton.com](http://www.thomasandhutton.com)

SUBSTITUTE RESOLUTION NO. RS2023-2295

A resolution approving a grant contract between the Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Health, and Why We Can't Wait, Inc., and authorizing a grant contract with Gideon's Army, for the provision of violence interruption services.

WHEREAS, Section 7-3-314 of the Tennessee Code Annotated states that metropolitan forms of government may provide financial assistance to nonprofit organizations; and,

WHEREAS, Section 5.04.070 of the Metropolitan Code of Laws provides that the Council may, by Resolution, appropriate funds for the financial aid of nonprofit organizations; and,

WHEREAS, the Community Safety Partnership Fund Advisory Board has recommended that \$750,000 be distributed to Why We Can't Wait, Inc., to be used to deliver a public health approach to reducing violent crime in the area of the Metropolitan Government of Nashville and Davidson County; and,

WHEREAS, the grant to Why We Can't Wait, Inc., will be utilized to provide best practices based violence interruption services, in collaboration with the Metropolitan Public Health Department, under the training and methodology of a nationally recognized violence interruption organization; and,

WHEREAS, the Community Safety Partnership Fund Advisory Board also recommended that a grant be given to Gideon's Army to be used to deliver a public health approach by reducing violent crime in the area of the Metropolitan Government of Nashville and Davidson County; and,

WHEREAS, it is appropriate to authorize the Metropolitan Government to enter into a grant contract with Gideon's Army for these services and the Metropolitan Council encourages the appropriate entities to come to an agreement on the grant terms; and

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that the grant contract between the Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Health, and Why We Can't Wait, Inc., be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That there is hereby appropriated \$750,000 from Fund No. 30216 to fund a grant to Why We Can't Wait, Inc., to be used to provide violence interruption services.

Section 2. That the grant contract between the Metropolitan Government of Nashville and Davidson County, acting by and through the Metropolitan Board of Health, and Why We Can't Wait, Inc., for the provision of violence interruption services, attached hereto and incorporated herein, is hereby approved.

Section 3. The Metropolitan Government is hereby authorized to enter into a grant contract with Gideon's Army for \$750,000 for the provision of violence interruption services under the same or similar terms and conditions as the grant contract with Why We Can't Wait, Inc.

Section 4. The Metropolitan Government is hereby further authorized to allow access to training in violence interruption provided by any provider contracted with the Metropolitan Government to provide such training.

Section 35. That this Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:

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Kyonzte Toombs  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
RESOLUTION NO. RS2023-2352

Mr. President –

I hereby move to amend Resolution No. RS2023-2352 by adding the following after the eight recital:

WHEREAS, Metro Animal Care and Control (MACC) reports an increased intake volume of stray animals -- predominantly dogs -- during the 10 day period surrounding Fourth of July festivities, with a recorded high of 169 animals during this period in 2023, indicating reactive behavior to fireworks. Accordingly, MACC has expressed interest in pyrotechnic alternatives that don't cause noise levels disruptive to animal behavior; and

SPONSORED BY:

\_\_\_\_\_  
Kathleen Murphy  
Member of Council

RESOLUTION NO. RS2023-\_\_\_

A resolution honoring the life of George Harrison Cate, Jr., the first Vice Mayor of the Metropolitan Government of Nashville and Davidson County.

WHEREAS, George Harrison Cate, Jr. passed away on December 18, 2020 at the age of 92; and

WHEREAS, Cate, Jr. was a lifelong resident of Nashville, graduating from East Nashville High School as valedictorian in 1945, and then attending Vanderbilt University; and

WHEREAS, at Vanderbilt, Cate, Jr. was elected president of the Student Union, the Student Christian Association, and the Honor Council. He graduated Cum Laude in 1949, and went on to Vanderbilt Law School where he graduated Summa Cum Laude in 1951; and

WHEREAS, Cate, Jr. married his wife Carolyn Ward Bass in 1949, and the couple raised four children together; Lyn, Cathy, Emily, and George III; and

WHEREAS, in 1951, Cate, Jr. began his legal career as a partner with his father, George H. Cate, Sr. at Cate & Cate, Attorneys until his father's death in 1978; and

WHEREAS, Cate, Jr.'s legal career spanned 63 years, ending with his retirement in 2014. During his career, Cate, Jr. received the John C. Tune Public Service Award, an honor given to the Nashville Bar Association member who has shown the highest degree of dedication to the betterment of the community in which he or she lives; and

WHEREAS, Cate, Jr. also served in the military beginning in 1952 with two years of active duty as First Lieutenant in the U.S. Army Judge Advocate General's Corps in Washington, D.C. He continued his military service as a member of the Army Reserve and was promoted to Brigadier General in 1979, serving until 1984 as commander of a military police brigade; and

WHEREAS, Cate, Jr. received the Legion of Merit for his outstanding military service and achievements; and

WHEREAS, Cate, Jr. was instrumental in the creation of the Metropolitan Government of Nashville and Davidson County in the 1960s; and

WHEREAS, after the Metro Charter was defeated in a referendum in 1958, Cate, Jr. Chaired the Citizens for Better Government group and led the campaign for the adoption of the Metro Charter, speaking on the merits of the proposed consolidation of city and county governments; and

WHEREAS, Cate, Jr.'s efforts were successful and on June 28, 1962, the Metro Charter passed by referendum and Nashville and Davidson County became the first consolidated Metropolitan Government in the nation; and

WHEREAS, in November 1962, Cate, Jr. was elected as the first Vice Mayor of Metro Nashville and served from April 1, 1963 until January 1966; and

WHEREAS, after his service as Vice Mayor, Cate, Jr. continued to dedicate his time and effort to Nashville and Davidson County through his membership on the Metro Nashville Board of Education where he served as chair in 1981 and 1982, the Metro Historical Commission from 2008 to 2014, and as a member of the planning committee for the 50<sup>th</sup> anniversary of Metro celebration in 2013; and

WHEREAS, in addition to his service on Metro Nashville's boards and commissions, Cate, Jr. served in leadership roles on various organizations including the YMCA, the Salvation Army, Civitan Club, Sigma Chi Foundation, Old Oak Club, Youth Villages Board, and Council of Community Services; and

WHEREAS, Cate, Jr. was committed to preserving the history of Metro Government, frequently speaking about Metro's formation and history to various local organizations, including Leadership Nashville, and to delegations from other cities across the nation contemplating a similar form of government; and

WHEREAS, he spent his entire adult life as a member of West End United Methodist Church and was an avid outdoorsman and naturalist who loved the lakes, streams, and woodlands of Middle Tennessee. He actively shared his enthusiasm for wildlife and their habitat with family and friends; and

WHEREAS, George Harrison Cate Jr. will be remembered for his lifelong love of music, his professionalism and eloquence, his kindhearted and optimistic nature, and his dedicated service to Nashville and Davidson County.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. The Metropolitan Council hereby goes on record as honoring the life of George Harrison Cate Jr., the first Vice Mayor of the Metropolitan Government of Nashville and Davidson County.

Section 2. This Resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:

---

Angie Henderson  
Member of Council



RESOLUTION NO. RS2023-\_\_\_

A resolution approving Tranche Amendment 2 between the Tennessee Valley Authority, Nashville Electric Service, and the Metropolitan Government of Nashville and Davidson County, for the purchase of renewable energy.

WHEREAS, Resolution RS2020-441 approved a "Green Invest Agreement" between the Tennessee Valley Authority ("TVA"), Nashville Electric Service ("NES"), and the Metropolitan Government of Nashville and Davidson County ("Metro"), for the potential purchase of renewable energy; and,

WHEREAS, Resolution RS2020-634 approved Tranche Amendment 1 for the purchase of renewable energy at the price of \$1.25 per Renewable Energy Certificate or REC; and,

WHEREAS, the parties wish to enter into Tranche Amendment 2 to amend the Renewable Energy Certificate price to \$3.08; and,

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that Tranche Amendment 2 be approved for Metro to pursue timely compliance with its near and long-term Renewable Portfolio Standard benchmarks laid out in the Metropolitan Code of Law Section 2.32.080.


NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Tranche Amendment 2, attached hereto and incorporated herein, is hereby approved, and the Director of the Metropolitan Department of Finance is authorized to execute the same.


Section 2. Any further amendments, renewals, or extension of the terms of Tranche Amendment 2 may be approved by resolution of the Metropolitan Council.

Section 3. That this resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY:

  
\_\_\_\_\_  
Kelly Flannery, Director  
Department of Finance

INTRODUCED BY:

  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Assistant Metropolitan Attorney

Member(s) of Council

JOHN COOPER  
MAYOR



## METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

July 24, 2023

Metropolitan Council Office  
One Public Square, Suite 204  
Nashville, TN 3721

Re: Late Filing Request for the Tranche Amendment 2

Dear Council Members,

I am writing to request approval to late file legislation. The legislation approves an amendment to the agreement between Metro, NES and TVA for the purchase of renewable energy. Metro Nashville's participation in the Green Invest program is one of several strategies being used to comply with the city's renewable portfolio standard, which requires Metro general government's electricity to be 100% from renewable energy sources by 2041. This installation, once operational, will place Metro Government operations roughly 15% of the way towards this goal. Due to fluctuations in the solar market, TVA has updated Green Invest pricing and this legislation updates the modified pricing.

This bill was not timely filed because the Metro Legal attorney assigned to this matter had to unexpectedly go out of the office on Friday, July 21. In order to avoid interruption, and to allow Council at least one meeting for deferral and further consideration, I am seeking to late file this legislation now.

Sincerely,

A handwritten signature in blue ink that reads "Kyonzte Toombs". The signature is written in a cursive style.

Kyonzte' Toombs  
Councilmember, District 2

**TRANCHE AMENDMENT # 2**

Contract No. 99818372, Supp. No. \_\_\_\_

This Green Invest Tranche Amendment ("**Amendment**") is among THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY ("**Company**"); THE METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY, acting by and through the Electric Power Board of said Government ("**Distributor**"), and TENNESSEE VALLEY AUTHORITY, a corporate agency and instrumentality of the United States of America created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended, ("**TVA**"), and is subject to the provisions of the Green Invest Agreement Contract No. 99818372, as amended ("**Agreement**"). This Amendment is effective as of the date of TVA's signature below.

<p><b>Renewable Energy Facility</b></p>	<p>Company will purchase from TVA the Product derived from the Renewable Energy Facility identified below, on an as-generated basis contingent on availability accounting for 20% of that Renewable Energy Facility's total renewable generation.</p> <p>Developer: <u>SR Tullahoma LLC</u>                  PPA Contract Number: <u>6555561</u>                  Contract Output (MWac): <u>200 MW (of which 20% equals 40 MWac)</u>                  Location: <u>35°20'49.10"N, 86°16'15.88"W</u>                  Expected Delivery Point: <u>delivery point on the TVA Franklin-Wartrace 161-kV transmission line #2 adjacent to the site</u>                  Expected Initial Delivery Date: <u>June 30, 2026</u>                  Delivery Period (years): <u>20</u>                  Company's Proportionate Damages Share: <u>8.54%</u></p> <p>TVA is excused from providing Product to Company under any Tranche Amendment if and to the extent that RECs are not generated by the Renewable Energy Facility and/or otherwise not delivered to TVA under the PPA.</p>
<p><b>Term</b></p>	<p>Subject to any earlier termination of this Amendment pursuant to the terms of the Agreement, the term of this Amendment runs until the expiration or termination of the term of the PPA.</p>
<p><b>Product Price</b></p>	<p>The Product price for generation from the applicable Renewable Energy Facility is \$3.08 per REC.</p>
<p><b>Renewable Energy Facility Underperformance</b></p>	<p>Subject to the section entitled Condition Precedent below, in the event of Renewable Energy Facility Underperformance, Company will be entitled to the following pursuant to Section 5.4 of the Agreement:</p> <ul style="list-style-type: none"> <li>(a) Company's Proportionate Damages Share multiplied by the total damages received by TVA in the event Developer fails to timely achieve the Initial Delivery Date in accordance with the terms of the PPA,</li> <li>(b) Company's Proportionate Damages Share multiplied by the total of any damages received by TVA under the PPA for Renewable Energy Facility Underperformance,</li> <li>(c) replacement RECs for the Product shortfall in the event they are received by TVA under the PPA, or</li> <li>(d) Company's Proportionate Damages Share multiplied by any Termination</li> </ul>

	Payment (as defined in the PPA) received by TVA in the event of TVA's early termination of the PPA pursuant to Article 9, "Early Termination; Remedies".
<b>Early Termination</b>	Section 7.3 of the Agreement will establish the early termination amount.
<b>Condition Precedent</b>	TVA's obligations to supply Company with Product or a share of damages or replacement RECs received under the PPA are conditioned on satisfaction of the Delivery Condition Precedent. For the avoidance of doubt, the Delivery Condition Precedent will not be deemed to occur until the first day following TVA's written approval pursuant to the PPA that all requirements necessary to achieve Notice to Proceed under the PPA have been satisfied.
<b>General Terms and Conditions</b>	<p><u>Ratification of the Agreement.</u> The Agreement, as amended by this Amendment, is ratified and confirmed as the continuing obligation of the parties.</p> <p><u>Defined Terms.</u> Capitalized terms not otherwise defined in this Amendment have the same meaning as in the Agreement and/or Power Contract.</p> <p><u>Conflicts.</u> In the event of any conflict between this Amendment and the Agreement, this Amendment controls.</p> <p><u>Assignment.</u> This Amendment will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns and may be assigned only in accordance with the terms of the Agreement.</p> <p><u>Amendment.</u> This Amendment may be amended only by a written agreement signed by both parties.</p> <p><u>Counterparts.</u> This Amendment may be executed in multiple counterparts, each of which will be considered an original and all of which together will be considered to be but one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.</p>
<b>Performance Assurance</b>	Section 6 of the Agreement, as amended by Contract No. 99818372, Supp. No. 1, effective August 14, 2020 (" <b>Performance Assurance Agreement for the Green Invest Agreement</b> "), shall govern Company's Performance Assurance obligations with TVA throughout the term of this Amendment. As of date of execution, the amount of Credit Risk, as defined in Section 6.1.4 of the Agreement, is \$2,500,000 for this Amendment. This amount is subject to change in accordance with Section 6 of the Agreement. The amount of Credit Risk for this Amendment does not include the amount of Credit Risk that will apply to additional Tranche Amendments that the parties may enter into pursuant to the Agreement.
<b>Previous Agreements</b>	Contract No. 99818372, Supp. No. 3, is hereby terminated and replaced by this Amendment.

**Signatures on next page.**

By signing below, the parties agree to be bound by the terms and conditions contained in this Amendment and the Agreement.

**THE METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY**

**Approved as to and availability of funds**

By   
Kelly Flannery  
Director, Department of Finance

**Approved as to form and legality**

By   
Tara Ladd  
Metropolitan Attorney

**THE METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY**

By \_\_\_\_\_  
John Cooper  
Metropolitan County Mayor

**ATTEST**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**BY** \_\_\_\_\_  
Metropolitan Clerk

*Signatures continue on next page.*

Attest:

DocuSigned by:

*David Frankenberg*

DAE47D2A19884AE...

Secretary

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY**  
Acting by and through the Electric Power Board  
of said Government

DocuSigned by:

*Robert A. McLane, Jr.*

BF02E00D90B84DD...

By

Chairman of the Board

Approved:

DocuSigned by:

*Jessica Brasler-Aplin*

6C850CEC2725404...

By

President and Chief  
Executive Officer

Date 7/19/2023

Approved as to Form and Legality:

DocuSigned by:

*Laura Smith*

80A6A1C6A07046C...

By

General Counsel

Date 7/19/2023

**Tennessee Valley Authority**

Signature:

Title:

Printed Name:

Date:

Resolution No. RS2023-\_\_\_\_\_

A resolution approving an intergovernmental agreement between the United States Department of Transportation (USDOT) and the Metropolitan Government of Nashville and Davidson County, acting by and through the Nashville Department of Transportation and Multimodal Infrastructure (NDOT), for the acceptance of a Strengthening Mobility and Revolutionizing Transportation (SMART) Grant from USDOT to NDOT, to install LiDAR and video camera technologies at key intersections and mid-block segments for “near-miss” data collection. (Federal No. SMARTFY22N1P1G50, Prop. No. 2023M-036AG-001)

WHEREAS, Resolution RS2023-1937 approved NDOT’s application for a SMART Grant from USDOT for an award amount of \$2,000,000, with no cash match required, to use video and other sensor data to identify safety issues outside of traditional crash reports, implement targeted safety measures, and evaluate these measures in downtown Nashville’s complex multimodal environment; and,

WHEREAS, USDOT Agreement SMARTFY22N1P1G50 (attached hereto) provides the grant award amount to NDOT, not to exceed \$2,000,000, to install LiDAR and video camera technologies at key intersections and mid-block segments for “near-miss” data collection; and,

WHEREAS, Tennessee Code Annotated Section 12-9-104(a)(2)(b) authorizes the Metropolitan Government of Nashville and Davidson County to enter into intergovernmental agreements with the Federal Government; and,

WHEREAS, it is in the interest of the Metropolitan Government of Nashville and Davidson County that this intergovernmental agreement be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the intergovernmental agreement between the United States Department of Transportation (USDOT) and the Metropolitan Government of Nashville and Davidson County, by and through the Nashville Department of Transportation and Multimodal Infrastructure (NDOT), for the acceptance of the Strengthening Mobility and Revolutionizing Transportation (SMART) Grant from USDOT to NDOT, in an amount not to exceed \$2,000,000, to install LiDAR and video camera technologies at key intersections and mid-block segments for “near-miss” data collection, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Metropolitan Mayor is authorized to execute the same.

Section 2. That the amount of the SMART Grant be appropriated to NDOT, based on the revenues estimated to be received and any match to be applied.

Section 3. That this resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

**RECOMMENDED BY:**

DocuSigned by:  
*Diana W Alarcon*  
CCA6046554B9461...

\_\_\_\_\_  
Diana W. Alarcon, Director  
Nashville Department of Transportation  
and Multimodal Infrastructure

**INTRODUCED BY:**

*Erin Evans*  
\_\_\_\_\_  
\_\_\_\_\_

**APPROVED AS TO AVAILABILITY  
OF FUNDS**

DocuSigned by:  
*Kelly Flannery*  
CF513D4D905F4EB...

\_\_\_\_\_  
Kelly Flannery, Director  
Department of Finance

\_\_\_\_\_  
Member(s) of Council

**APPROVED AS TO FORM AND  
LEGALITY:**

DocuSigned by:  
*Erica Haber*  
B4F54A5015BD454...

\_\_\_\_\_  
Assistant Metropolitan Attorney





**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

**JOHN COOPER  
MAYOR**

**NASHVILLE DEPARTMENT OF TRANSPORTATION  
AND MULTIMODAL INFRASTRUCTURE**

July 26, 2023

Metropolitan Council  
Historic Metro Courthouse  
1 Public Square  
Suite 204, Metro Council Office  
Nashville, TN 37201

Vice Mayor Shulman and Council Members:

The Nashville Department of Transportation and Multimodal Infrastructure (NDOT) is filing a resolution on the award acceptance of United States Department of Transportation (USDOT) Strengthening Mobility and Revolutionizing Transportation (SMART) grant. The grant with an award of \$2,000,000 with no cash match will be used to implement our Leveraging Advanced Data to Deliver Multimodal Safety (LADDMS) project.

LADDMS will advance NDOT’s Vision Zero Action Plan by improving data quality, prioritizing equity, and increasing collaboration and transparency by partnering with local Tennessee universities to provide visionary analysis for safety improvements in North Nashville. This project will benefit the North Nashville area by improving safety to all transportation network users with an emphasis on pedestrians and bicyclists who have been traditionally underrepresented in safety studies. Through the installation of LiDAR and video camera technologies at key intersections and mid-block segments, we plan to collect and evaluate “near-miss” data that would not be identified using traditional evaluation methods, enabling us to further protect our transportation network’s most vulnerable users. NDOT is joined by the University of Tennessee at Chattanooga, Vanderbilt University, and Tennessee State University in this initiative.

The reason for this late file is to ensure that NDOT complies with USDOT’s project start date of August 15, 2023. As NDOT normally avoids late filing legislation, in this instance, we find it necessary as we approach the end of the Council term. The award was extended to Metro through NDOT on July 26, 2023. It is in the interest of the Metropolitan Government of Nashville and Davidson County that this intergovernmental agreement be brought before Council during the August 1<sup>st</sup> Council meeting to ensure compliance with USDOT’s grant start date.

Sincerely,

DocuSigned by:

CCA6046554B9461...  
Diana W. Alarcon, Director

Nashville Department of  
Transportation and Multimodal Infrastructure (NDOT)

**U.S. DEPARTMENT OF TRANSPORTATION**

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

Revision date: June 20, 2023

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## GENERAL TERMS AND CONDITIONS

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

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

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

**ARTICLE 7  
PURPOSE**

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

- (a) timely completing the Project; and
- (b) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by section 3.3 and Attachment B.



## **ARTICLE 8 USDOT ROLE**

### **8.1 Division of USDOT Responsibilities.**

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

#### **USDOT Program Contacts.**

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

**ARTICLE 9  
RECIPIENT ROLE**

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

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

**9.5 Rights and Powers Affecting the Project.**

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

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

**ARTICLE 10**  
**AWARD AMOUNT, OBLIGATION, AND TIME PERIODS**

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

10.2 **Federal Obligations.**

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

10.3 **Budget Period**

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

10.4 **Period of Performance.**

(a) The period of performance for this award begins on the effective date of award listed in page 1 item 2 and ends on the period of performance end date that is listed in Section 2.3.

(b) In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

**ARTICLE 11  
STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 11.1 **Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 4.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient's plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 11.1 is separate from any requirements under this article 11 that the Recipient request amendment of this agreement.
- 11.2 **Statement of Work Changes.** If the Project's activities differ from the statement of work that is described in section 3.1 and Attachment B, then the Recipient shall request an amendment of this agreement to update section 3.1.
- 11.3 **Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement to update the relevant dates:
- (a) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2; or
  - (b) a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.3.

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

- 11.4 **Budget Changes.**
- (a) The Recipient acknowledges that if the cost of completing the Project increases:
    - (1) that increase does not affect the Recipient's obligation under this agreement to complete the Project; and
    - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
  - (b) The Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B if, in comparing the Project's budget to the amounts listed in section 3.3:
    - (1) the "Non-Federal Funds" amount decreases; or
    - (2) the "Total Eligible Project Cost" amount decreases.

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

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

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

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

**ARTICLE 12  
GENERAL REPORTING TERMS**

- 12.1 **Report Submission.** The Recipient shall send all reports required by this agreement to smartreports@dot.gov.
- 12.2 **Paperwork Reduction Act Notice.**

Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0520.

**ARTICLE 13**  
**PROGRESS AND FINANCIAL REPORTING**

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



## **ARTICLE 14 PERFORMANCE REPORTING**

### **14.1 Evaluation and Data Management Plan**

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

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

### **14.2 Implementation Report**

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

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

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

**14.3 Performance Reporting Survival.**

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

**14.4 Program Evaluation.**

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

**ARTICLE 15  
NONCOMPLIANCE AND REMEDIES**

**15.1 Noncompliance Determinations.**

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

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

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

**15.2 Remedies.**

- (a) If the USDOT makes a final determination of noncompliance under section 15.1(d), the USDOT may impose a remedy, including:
  - (1) additional conditions on the award;
  - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs,

requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or

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

### 15.3 **Other Oversight Entities.**

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

## **ARTICLE 16 AGREEMENT TERMINATION**

### **16.1 USDOT Termination.**

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

### **16.2 Closeout Termination.**

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

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

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

16.4 **Non-Terminating Events.**

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

(b) The liquidation of funds under section 20.1 does not terminate this agreement or the Recipient’s obligations under this agreement.

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

**ARTICLE 17**  
**MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS**

**17.1 Recipient Monitoring and Record Retention.**

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

**17.2 Financial Records and Audits.**

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

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

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



## ARTICLE 18 CONTRACTING AND SUBAWARDS

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

### 18.1 **Build America, Buy America.**

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

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

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

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

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

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

*Inapplicability.*

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

*Waivers.*

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

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

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

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

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

### *Definitions*

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

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

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

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

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

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

### **18.2 Buy American Act**

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

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

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

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

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

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

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

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

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

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

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

The Recipient acknowledges that:

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

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

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

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

“cost of components” means—

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

“domestic construction material” means—

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

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

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

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

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

- 18.3 **Small and Disadvantaged Business Requirements.** The Recipient shall expend all funds under this award in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).
- 18.4 **Engineering and Design Services.** The Recipient shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under 2 CFR 200.320 or an equivalent qualifications-based requirement prescribed for or by the Recipient.
- 18.5 **Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 18.6 **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232, 2 C.F.R. 200.216 and 2 C.F.R. 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.
- 18.7 **Recipient Responsibilities for Subawards.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.

**ARTICLE 19  
COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

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



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

**19.8 Information Supporting Expenditures.**

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

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

**ARTICLE 20**  
**LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY**

**20.1 Liquidation of Recipient Obligations.**

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

**ARTICLE 21  
AGREEMENT MODIFICATIONS**

21.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.

21.2 **Unilateral Contact Modifications.**

(a) The USDOT may update the contacts who are listed in sections 4.4 by written notice to all of the Recipient contacts who are listed in section 4.3.

21.3 **USDOT Unilateral Modifications.**

(a) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.

(b) To unilaterally modify this agreement under this section 21.3(a), the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

21.4 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 21.1, 21.2, or 21.3. If an amendment, modification, or supplement is not permitted under section 21.1, not permitted under section 21.2, and not permitted under section 21.3, it is void.

**ARTICLE 22**  
**CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE**

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

**ARTICLE 23  
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY**

- 23.1 **Racial Equity and Barriers to Opportunity.** Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Attachment D documents activities related to the Project to improve racial equity and reduce barriers to opportunity.

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

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

24.2 **Federal Law and Public Policy Requirements.**

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

24.3 **Federal Freedom of Information Act.**

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

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

24.5 **Whistleblower Protection.**

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

24.6 **External Award Terms and Obligations.**

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

- (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. 175.15(b): Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient shall comply with:

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

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

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

**ARTICLE 25  
ASSIGNMENT**

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



**ARTICLE 26  
WAIVER**

**26.1 Waivers.**

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

**ARTICLE 27**  
**ADDITIONAL TERMS AND CONDITIONS**

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

27.2 **Environmental Review**

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

- (1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and
- (2) for all other cases, an operating agency within the Department of Transportation will be identified to conduct NEPA evaluations.

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

- (1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
- (2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.

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

(d) The Recipient acknowledges that:

- (1) the Environmental Review Entity’s actions under section 27.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
- (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.

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

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

### **27.3 Railroad Coordination.**

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

### **27.4 Relocation and Real Property Acquisition.**

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

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

**27.5 Equipment Disposition.**

- (a) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the FHWA.
- (b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (c) The Recipient shall ensure compliance with this section 27.6 for all tiers of subawards under this award.

**ARTICLE 28**  
**MANDATORY AWARD INFORMATION**

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

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

**ARTICLE 29  
CONSTRUCTION AND DEFINITIONS**

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

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

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

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

29.3 **Construction.**

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

29.4 **Integration.**

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

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

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

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

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

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

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

**ARTICLE 30**  
**AGREEMENT EXECUTION AND EFFECTIVE DATE**

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





**U.S. DEPARTMENT OF TRANSPORTATION**  
**EXHIBITS TO USDOT/OST GRANT AGREEMENTS UNDER THE**  
**FISCAL YEAR 2022 SMART GRANT PROGRAM**

## EXHIBIT A

### APPLICABLE FEDERAL LAWS AND REGULATIONS

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

#### General Federal Legislation

- a. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- b. Hatch Act - 5 U.S.C. § 1501, et seq.
- c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- d. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- e. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- f. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- g. Clean Air Act – 42 U.S.C. §§ 7401, et. seq.
- h. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- i. Endangered Species Act – 16 U.S.C. §§ 1531 et seq.
- j. Coastal Zone Management Act – 16 U.S.C. §§ 1451 et seq.
- k. Flood Disaster Protection Act of 1973 – 42 U.S.C. §§ 4001 et seq.
- l. Age Discrimination Act of 1975, as amended - 42 U.S.C. § 6101, et seq.
- m. American Indian Religious Freedom Act, 42 U.S.C. 1996
- n. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- o. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- p. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- q. Architectural Barriers Act of 1968 - 42 U.S.C. §§ 4151, et seq.
- r. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. §§ 3701, et seq.
- t. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- u. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- v. Wild and Scenic Rivers Act – 16 U.S.C. §§ 1271, et seq.
- w. Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- x. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- y. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- bb. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d, et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C.

- §§ 1101–1104
- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
  - ee. Freedom of Information Act - 5 U.S.C. § 552, as amended
  - ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. §§ 1801, et seq.
  - gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. §§ 4201, et seq.
  - hh. Noise Control Act of 1972 – 42 U.S.C. §§ 4901, et seq.
  - ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. §§ 661, et seq.
  - jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
  - kk. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and 23 U.S.C. § 138
  - ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – 42 U.S.C. §§ 9601, et seq.
  - mm. Safe Drinking Water Act – 42 U.S.C. §§ 300f, et seq.
  - nn. The Wilderness Act – 16 U.S.C. §§ 1131, et seq.
  - oo. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
  - pp. Migratory Bird Treaty Act 16 U.S.C. §§ 703, et seq.
  - qq. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
  - rr. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
  - ss. Build America, Buy America Act – Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298
  - tt. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

#### **Executive Orders**

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

### **General Federal Regulations**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)

Specific assurances required to be included in the FY 2022 SMART Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

**EXHIBIT B**  
**ADDITIONAL STANDARD TERMS**

**TERM B.1  
TITLE VI ASSURANCE  
(Implementing Title VI of the Civil Rights Act of 1964, as amended)**

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

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

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

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

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

**DOT Order No. 1050.2A**

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 SMART grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Office of the Secretary (OST), it is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

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

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

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

**Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2022 SMART grant program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2022 SMART Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer



of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.
11. The Recipient shall retain all documents relevant to this Grant Agreement and the Grant Project for a period of three (3) years after completion of all projects undertaken pursuant to the Grant Agreement and receipt of final reimbursement from the U.S. Treasury, whichever is later. It shall furnish DOT, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement,

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

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

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2022 SMART grant program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2022 SMART grant program.

## APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Maritime Administration (DOT/OST), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or DOT/OST to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or DOT/OST, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or DOT/OST may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or DOT/OST may direct as a means of enforcing such provisions including

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

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Consolidated Appropriations Act, 2022 (Pub. L. 116-260, Dec. 27, 2020) the Regulations for the Administration of FY 2022 SMART grant program, and the policies and procedures prescribed by the Maritime Administration (DOT/OST) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

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

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

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

## APPENDIX C

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

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

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.\*

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

## APPENDIX D

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

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

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.\*

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



## APPENDIX E

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

### A. Pertinent Non-Discrimination Authorities:

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

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

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

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

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

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 SMART grant program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2022 SMART Grant, as set out below.

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

(Applicable to all first-tier subawards regardless of potential value and require first tier-subrecipients and lower-tier subrecipients to similarly check SAM.gov; and, for all first-tier procurement contracts with a value of \$25,000 or more and all lower tiers of subcontracts under covered non-procurement transactions (2 CFR § 180.220).

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds

and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
  - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
  - 4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

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

- a. The prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in

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

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2023 (Pub. L. 116-260), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

1. Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
2. Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

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

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

“**Execution of Grant Agreement**” Signing of this Grant Agreement by DOT and the Recipient.

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

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

“**Tax Delinquency**” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed,



and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

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

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

- 1) Certify whether the entity has a Tax Delinquency; and
- 2) Certify whether the entity has a Felony Conviction.

4. **Prohibition.** If

- 1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- 2) an entity provides an affirmative response to either certification in section 3; or
- 3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made

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

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

- 1) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
- 2) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
- 3) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

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

- a. require the SAM check in section 2;

- b. require the certifications in section 3;
- c. include the prohibition in section 4; and
- d. require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

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

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

For the purpose of this Term B.3, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.3, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.3, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.3, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

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

- (1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
  - (i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
  - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

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

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

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

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

## EXHIBIT C

### QUARTERLY REPORTS AND RECERTIFICATIONS: FORMAT AND CONTENT

1. **Purpose.** The purpose of the Quarterly Reports and Recertifications under this agreement for the FY 2022 SMART grant program are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.
  
2. **Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the USDOT, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the USDOT. Some projects will have a more extensive quarterly status than others. For smaller projects, the USDOT may determine that the content of the quarterly reports will be streamlined, and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.
  - a. **Project Overall Status.** This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.
  
  - b. **Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance. This section should specifically address progress towards compliance and issues related to the National Environmental Policy Act (NEPA), the Build America Buy America Act, and the high labor standards prioritized in Executive Order 14052, "Implementation of the Infrastructure Investments and Jobs Act."
  
  - c. **Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

- d. **Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.
- e. **Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:
- Current overall project completion percentage vs. latest plan percentage.
  - Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
  - Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.
- f. **Project Cost.** An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked, and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line-item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

**g. Certifications.**

- i. A certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements).
  - ii. The certification required under 2 C.F.R. 200.415(a).
3. Recipients are required to complete post-award reports per the terms and conditions of the award. The types of reports include financial, performance, and other types of required reports.
4. End dates for reporting periods are 3/31, 6/30, 9/30, or 12/31, regardless of budget period start dates. Deadlines for quarterly and semi-annual reports are no later than 30 days after the end of the reporting period. Annual reports are due no later than 90 days after the end of the reporting period. The Recipient shall provide all reporting deliverables detailed below. Reports should be submitted/mailed to [smartreports@dot.gov](mailto:smartreports@dot.gov).

<b>Deliverable</b>	<b>Due Date</b>
<p><b>Milestone Progress Performance Reports</b></p> <p>Submit progress reports to monitor project progress and ensure accountability and financial transparency, as well as to document activities performed, anticipated activities, and any changes to schedule or anticipated issues.</p>	<p>Quarterly (or semi-annual if directed)</p>
<p><b>Federal Financial Report (FFR) (SF-425)</b></p> <p>The Federal Financial Report (SF-425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Milestone Progress Performance Reports. The form is available at <a href="https://www.grants.gov/forms/post-award-reporting-forms.html">https://www.grants.gov/forms/post-award-reporting-forms.html</a>.</p>	<p>Quarterly (or semi-annual if directed)</p>
<p><b>Evaluation and Data Management Plan</b></p> <p>The Recipient shall submit an evaluation and data management plan that provides an overview of how the project will be evaluated and how the data collected will be managed and stored. The Evaluation and Data Management Plan shall include the following three sections:</p> <ol style="list-style-type: none"> <li>a. An overview of how the proof-of-concept or prototype will be evaluated and how the data collected will be managed and stored.</li> <li>b. A description of the anticipated impact areas (i.e. goals) of the project if implemented at scale and the methods that will be used to estimate the anticipated benefits and costs associated with implementation.</li> <li>c. Robust performance metrics and measurable targets based on the project goals to inform whether the proof-of-concept or prototype meets expectations and whether full implementation would meet program goals</li> <li>d. The baseline data for each performance measure that is identified in the Performance Measure Table in Attachment A and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure.</li> </ol>	<p>Within 90 calendar days after execution of this Agreement.</p>
<p><b>Implementation Report</b></p> <p>The Recipient shall submit an implementation report that assesses the anticipated costs and benefits of the project and demonstrates the feasibility of at-scale implementation. The Implementation Report shall include the following five sections:</p>	<p>Annual- Stage 1 grants require a Draft report due within 1 year of the grant award.</p>



<ul style="list-style-type: none"> <li>a. A description of the anticipated deployment and operational costs of the project as compared to the benefits and savings from the project if implemented at scale.</li> <li>b. The means by which the project has met the original expectation, as projected in the grant application, including data describing the means by which the project met the specific goals.</li> <li>c. Lessons learned and recommendations for future deployment strategies to optimize transportation efficiency and multimodal system performance.</li> <li>d. A description of the requirements for a successful at-scale deployment and an assessment of the feasibility of at-scale implementation.</li> <li>e. An analysis of the success, challenges and validity of the initial approach, any changes or improvements they would make in Stage 2 if recommended for award and any challenges to continued maintenance and operations in stage 2.</li> <li>f. The performance measurement data for each performance measure that is identified in the Performance Measure Table in Attachment A.</li> </ul>	
<p><b>Program Evaluation</b></p> <p>As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by USDOT or another agency or partner. Evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all the selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. As a part of the evaluation, as a condition of award, grant recipients must agree to</p> <ul style="list-style-type: none"> <li>a. Make records available to the evaluation contractor or USDOT staff.</li> <li>b. Provide access to program records, and any other relevant documents to calculate costs and benefits.</li> <li>c. In case of an impact analysis, facilitate the access to relevant information as requested.</li> <li>d. Follow evaluation procedures as specified by the evaluation contractor or USDOT staff.</li> </ul>	<p>As applicable</p>

<p><b>Reporting of Matters Related to Recipient Integrity and Performance</b></p> <p>If the total value of a selected applicant'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 period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition.</p> <p>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.</p>	As applicable
<p><b>Tangible Personal Property Report (SF-428)</b></p> <p>The recipient must report on the status of personal property in which the Federal Government retains an interest. Interim property reports may be required at DOT discretion. A final personal property report is required at closeout.</p>	As applicable
<p><b>Real Property Status Report (SF-429)</b></p> <p>The report is a multi-purpose form that DOT may require for general reporting about real property acquired or constructed under a federal award, as well as for recipients to make a request related to acquisition or improvement of real property or to request disposition instructions. If applicable, recipients shall submit this report in accordance with the terms provided in 2 CFR § 200.329, no less frequently than annually.</p>	As applicable
<p><b>Final Report</b></p> <p>The Recipient shall submit (in a format to be provided by DOT) the Recipient's assessment of the Grant Project to DOT within the Closeout process of the grant agreement.</p>	Final report shall be submitted not later than 120 days after the end of the period of performance
<p><b>Additional Reporting</b> may be required</p>	As applicable

## **EXHIBIT D**

### **CERTIFICATION REGARDING INFLUENCING ACTIVITIES CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Influencing Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

## **EXHIBIT E**

### **FAA REGULATIONS**

Innovative aviation projects must comply with all FAA and other federal, state, and local regulations relevant to the technologies and usages thereof. For instance, in the case of innovative aviation projects involving small, unmanned aircraft systems (UAS), applicants are responsible for complying with regulations which may include, and are not limited to the following, as necessary to achieve desired outcomes:

- 14 CFR Part 91 General Operating and Flight Rules
- 14 CFR Part 107 small UAS rule; Small UAS
- UAS Operations over People rule; Operations Over People General Overview
- UAS Remote identification rule; UAS Remote Identification Overview

Proponents of innovative aviation projects are also responsible for using U.S. government tools and resources which may include, and are not limited to the following, as necessary to fulfill requirements to operate technologies and achieve desired outcomes:

- FAA DroneZone, used to register UAS
- FAA Low Altitude Authorization and Notification Capability (LAANC), used to obtain airspace authorization to fly in controlled airspace
- Part 107 Waiver Resources, used to enable more complex UAS operations

## **EXHIBIT F**

### **Communications Technology**

Projects that use communications technologies must either:

- 1) use Vehicle-to-Everything (V2X) services that utilize Cellular Vehicle-to-Everything (C-V2X) based technology designed to operate within the 30 MHz of spectrum (5.895 - 5.925 GHz) that are consistent with the rules established in waivers associated with Federal Communications Commission (FCC) ET Docket No. 19-138 and future Report and Orders effective at the time when the Department selects projects for funding under the FY22-SMART Grants Program; or
- 2) leverage other communications technologies that can support V2X services and operate in spectrum outside of the 5.895 -5.925 GHz range.

## **EXHIBIT G**

### **Equipping or Retrofitting Motor Vehicles**

Projects that involve equipping or retrofitting motor vehicles with additional technologies are only eligible if the vehicles are publicly owned, leased or used in a contracted service; equipping privately owned and operated vehicles outside of a leased or contracted service is not an eligible activity. Projects involving motor vehicles must involve only vehicles that comply with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) and Federal Motor Carrier Safety Regulations (FMCSRs), or vehicles that are exempt from the requirements in a manner that allows for the legal acquisition and operation of the vehicles in the proposed project.

## **EXHIBIT H**

### **Eligible Costs**

Broadly, eligible activity costs must comply with the cost principles set forth in 2 CFR Part 200, Subpart E (i.e., 2 CFR § 200.403 and § 200.405). USDOT reserves the right to make cost eligibility determinations on a case-by-case basis. Eligible development and construction activities for grant funding are the following:

- planning;
- feasibility analyses;
- revenue forecasting;
- environmental review;
- permitting;
- preliminary engineering and design work;
- systems development or information technology work;
- acquisition of real property (including land and improvements to land relating to an eligible project);
- construction;
- reconstruction;
- rehabilitation;
- replacement;
- environmental mitigation;
- construction contingencies; and
- acquisition of equipment, including vehicles.

The following are not eligible costs for SMART Grants Program funding:

- reimbursement of any pre-award costs or application preparation costs of the SMART grant application;
- traffic or parking enforcement activity; or
- purchase or lease of a license plate reader.

Federal funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

## **EXHIBIT I**

### **Data Collection Requirements Data Management**

To fulfill the reporting requirements and in accordance with the USDOT Public Access Plan, award recipients must consider, budget for, and implement appropriate data management for data and information outputs acquired or generated during the grant. Applicants are expected to account for data and performance reporting in their budget submission. Projects must:

- Defaulting to open access when appropriate (exceptions include protecting personally identifiable information [PII], Indigenous data sovereignty, or confidential business information [CBI]);
- Protecting PII, intellectual property rights, and CBI;
- Utilize, when possible, open licenses and protect USDOT's non-exclusive copyright to data and corresponding outputs;
- Make the source code or tools necessary to analyze the data available to the public, if relevant;
- Provide relevant metadata (in a DCAT-US file, and, optionally, a discipline-appropriate metadata standard file), and data documentation (README.txt files, data dictionaries, code books, supporting files, imputation tables, etc.); and
- Where applicable, consider contributing data to voluntary resources such as NHTSA's AV TEST Initiative.

Projects should implement data management best practices including, but not limited to, implementation of published data specifications and standards (formal and informal); increasing data discoverability and data sharing; and enabling interaction of systems, interoperability, and integration of data system





**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

- 1. Award No.**  
SMARTFY22N1P1G50
- 2. Effective Date**  
See No. 17 Below
- 3. Assistance Listings No.**  
20.941
- 4. Award To**  
Metropolitan Government of  
Nashville-Davidson County
- 5. Sponsoring Office**  
U.S. Department of Transportation  
Office of the Assistant Secretary for Research  
and Technology  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Unique Entity Id:  
LGZLHP6ZHM55

- 6. Period of Performance**  
08/15/2023 to 02/15/2025
- 7. Total Amount**  
Federal Share: \$2,000,000.00  
Recipient Share:  
Other Federal Funds:  
Other Funds:  
Total: \$2,000,000.00
- 8. Type of Agreement**  
Grant
- 9. Authority**  
Section 25005 of the Infrastructure Investment  
and Jobs Act (Pub. L. 117-58, November 15,  
2021; also referred to as the “Bipartisan  
Infrastructure Law” or “BIL”)
- 10. Procurement Request No.**
- 11. Federal Funds Obligated**  
\$2,000,000.00
- 12. Submit Payment Requests To**  
See article 19.
- 13. Payment Office**  
See article 19.

**14. Accounting and Appropriations Data** 69A3552341028

**15. Description of Project** Use LiDAR and camera technologies at key intersections to understand near misses in Nashville.

**RECIPIENT**

**16. Signature of Person Authorized to Sign**

**17. OFFICE OF THE ASSISTANT SECRETARY FOR RESEARCH AND TECHNOLOGY Signature of Agreement Officer**

\_\_\_\_\_  
Signature Date  
Name:  
Title:

\_\_\_\_\_  
Signature  
Name: Roxanne Ledesma  
Title: Supervisory Grant Management Specialist  
(Agreement Officer)

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**U.S. DEPARTMENT OF TRANSPORTATION**

**GRANT AGREEMENT UNDER THE  
FISCAL YEAR 2023 STRENGTHENING MOBILITY AND REVOLUTIONIZING  
TRANSPORTATION (SMART) GRANTS PROGRAM**

This agreement is between the [United States Department of Transportation (the “USDOT”)] and the Metropolitan Government of Nashville-Davidson County (the “Recipient”).

This agreement reflects the selection of the Recipient to receive a Strengthening Mobility and Revolutionizing Transportation (SMART) Grant for the Leveraging Advanced Data to Deliver Multimodal Safety (LADDMS)

The parties therefore agree to the following:

**ARTICLE 1  
GENERAL TERMS AND CONDITIONS**

- (1) In this agreement, “General Terms and Conditions” means the content of the document titled “General Terms and Conditions Under the Fiscal Year Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program,” dated June 20, 2023, which is available at <https://www.transportation.gov/grants/smart/grants-management>. Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (2) The Recipient states that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (BIL, div. G §§ 70901-27).
- (3) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, termination of the SMART Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the USDOT the SMART Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 2  
APPLICATION, PROJECT, AND AWARD**

**a. Application.**

Application Title: Leveraging Advanced Data to Deliver Multimodal Safety (LADDMS)

Application Date: November 18, 2022

**b. Award Amount.**

SMART Grant Amount: \$2,000,000.00

**c. Award Dates.**

Period of Performance End Date: 02/15/2025

**d. Budget Period**

Budget Period End Date: 02/15/2025

**FEDERAL AWARD IDENTIFICATION NUMBER.**

The Federal Award Identification Number is listed on page 1, line 1.

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ARTICLE 3**  
**SUMMARY PROJECT INFORMATION**

**a. Summary of Project's Statement of Work.**

Use LiDAR and camera technologies at key intersections to understand near misses in Nashville.

**b. Project's Estimated Schedule.**

<b>Milestone</b>	<b>Schedule Date</b>
Evaluation & Data Management Plan (NLT 3mo after start)	November 15, 2023
Draft Implementation Report (NLT 1 yr after start)	August 15, 2024
Final Implementation Report (by the end of the POP)	February 15, 2025

## Project's Estimated Costs.

## (1) Eligible Project Costs

<b>Eligible Project Costs</b>	
SMART Grant Amount:	\$2,000,000.00
Other Federal Funds:	
State Funds:	
Local Funds:	
In-Kind Match:	
Other Funds:	
<b>Total Eligible Project Cost:</b>	<b>\$2,000,000.00</b>

## (2) Supplemental Estimated Budget

<b>Cost Element</b>	<b>Federal Share</b>	<b>Non-Federal Share</b>	<b>Total Budget Amount</b>
Direct Labor	\$0	\$0	\$0
Fringe Benefits	\$0	\$0	\$0
Travel	\$0	\$0	\$0
Equipment	\$0	\$0	\$0
Supplies	\$0	\$0	\$0
Contractual/Consultant	\$0	\$0	\$0
Construction	\$2,000,000.00	\$0	\$2,000,000.00
Other	\$0	\$0	\$0
Indirect Costs	\$0	\$0	\$0

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<b>Total Budget</b>	\$2,000,000.00	\$0	\$2,000,000.00
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## (3) Cost Classification Table -Implementation Grants Only

Utilize the descriptions from the SF-424c to determine what cost goes in each row.

<b>Cost Classification</b>	<b>Total Costs</b>	<b>Non-SMART Previously Incurred Costs</b>	<b>Eligible Costs</b>
Administrative and legal expenses	\$0	\$0	\$0
Land, structures, rights-of-way, appraisals, etc.	\$0	\$0	\$0
Relocation expenses and payments	\$0	\$0	\$0
Architectural and engineering fees	\$200,000.00	\$0	\$200,000.00
Other architectural and engineering fees	\$700,000.00	\$0	\$700,000.00
Project inspection fees	\$0	\$0	\$0
Site work	\$0	\$0	\$0
Demolition and removal	\$0	\$0	\$0
Construction	\$620,000.00	\$0	\$620,000.00
Equipment	\$430,000.00	\$0	\$430,000.00
Miscellaneous	\$50,000.00	\$0	\$50,000.00
Contingency	\$0	\$0	\$0
<b>Project Total</b>	<b>\$2,000,000.00</b>	<b>\$0</b>	<b>\$2,000,000.00</b>

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 4  
RECIPIENT INFORMATION**

**a. Recipient's Unique Entity Identifier.**

LGZLHP6ZHM55

**b. Recipient Contact(s).**

Casey Hopkins  
Grants Coordinator  
1 Public Square  
Nashville, TN 37201-5007  
(615) 880-1676  
casey.hopkins@nashville.gov

**c. Recipient Key Personnel.**

Name	Title or Position
Casey Hopkins	Grants Coordinator

**d. USDOT Project Contact(s).**

Christopher M. Walston  
Strengthening Mobility and Revolutionizing Transportation Grants Program Manager  
U.S. Department of Transportation  
Office of the Assistant Secretary for Research and Technology 1200 New Jersey Avenue,  
S.E.  
Washington, DC 20590  
(770) 715-5987  
christopher.walston2@dot.gov

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 5  
USDOT ADMINISTRATIVE INFORMATION**

**5.1 Office for Subaward and Contract Authorization.**

- (a) USDOT Office for Subaward and Contract Authorization: Office of the Assistant Secretary for Research and Technology SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the AO are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327.

- (b) Unless described in the application and funded in the approved award, the Recipient must obtain prior written approval from the AO for the subaward, transfer, or contracting out of any work under this award above the Simplified Acquisition Threshold. This provision does not apply to the acquisition of supplies, material, equipment, or general support services. Approval of each subaward or contract is contingent upon the Recipient's submittal of a written fair and reasonable price determination, and approval by the AO for each proposed contractor/sub-recipient. Consent to enter into subawards or contracts will be issued through written notification from the AO or a formal amendment to the Agreement.
- (c) The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

(Fill in at award or by amendment)

**5.2 Reimbursement Requests**

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under section 2.2 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall use the DELPHI eInvoicing System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF 271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.



**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

- (c) The Recipient's supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient's share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the AO may withhold processing that request until the Recipient provides sufficient detail.
- (d) The USDOT shall not reimburse costs unless the Agreement Officer's Representative (the "AOR") reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.
- (e) The USDOT may waive the requirement in section 19.7(a) that the Recipient use the DELPHI eInvoicing System. The Recipient may obtain waiver request forms on the DELPHI eInvoicing website (<http://www.dot.gov/cfo/delphi-einvoicing-system.html>) or by contacting the AO. A Recipient who seeks a waiver shall explain why they are unable to use or access the Internet to register and enter payment requests and send a waiver request to

Director of the Office of Financial Management  
US Department of Transportation,  
Office of Financial Management B-30, Room W93-431  
1200 New Jersey Avenue SE  
Washington DC 20590-0001

or

[DOTElectronicInvoicing@dot.gov](mailto:DOTElectronicInvoicing@dot.gov).

- (f) To seek reimbursement from DOT, the Recipient shall submit documentary evidence of all expenditures associated with the Grant Project (those to be covered by the local and/or state contribution, as well as those covered by the Federal contribution) on a monthly basis. All reimbursement requests to DOT shall include sufficient documentation to justify reimbursement of the Recipient, including invoices and proof of payment of the invoice. In seeking reimbursements, grant recipients must provide invoices or other evidence of the expenditure, details about the expenditure and how it relates to the grant project, and evidence of payment.

The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ARTICLE 6  
SPECIAL GRANT TERMS**

- 6.1** SMART funds must be expended by the budget period end date in section 10.3 of the Terms and Conditions.
- 6.2** The Recipient should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, and implementing regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. The Department's and the applicable Operating Administrations' Offices of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.
- 6.3** There are no other special grant requirements for this award.

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT A**  
**PERFORMANCE MEASUREMENT INFORMATION**

**Baseline Measurement Date: Due 90 days after award**

**Baseline Report Date: Due 90 days after award**

**Table 1: Performance Measure Table**

<b>Measure</b>	<b>Category and Description</b>	<b>Measurement Frequency</b>
Safety and Reliability	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on emergency response and the safety of systems for pedestrians, bicyclists, and the broader traveling public	End of period of performance
Resiliency	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on the reliability and resiliency of the transportation system including cybersecurity and climate change	End of period of performance
Equity and Access	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on connecting or expanding access to jobs, education, and essential services for underserved or disadvantaged populations	End of period of performance
Climate	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on congestion, air pollution, emissions, and energy efficiency	End of period of performance
Partnerships	Qualitative Project Benefits: Qualitative description of the anticipated impacts of	End of period of performance

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<b>Measure</b>	<b>Category and Description</b>	<b>Measurement Frequency</b>
	at-scale implementation on the economic competitiveness and private sector investments or partnerships including technical and financial commitments	
Integration	Qualitative Project Benefits: Qualitative description of the anticipated impacts of at-scale implementation on the integration of systems and the connectivity of infrastructure, connected vehicles, pedestrians, bicyclists, and the broader traveling public	End of period of performance
Costs	Project Costs: Quantification of the cost of the proof-of-concept or prototype carried out using the grant (Stage 1)	End of period of performance
Costs	Project Costs: Quantification of the anticipated cost of at-scale implementation (Stage 2)	End of period of performance
Lessons Learned and Recommendations	Lessons Learned and Recommendations: Description of lessons learned and recommendations for future deployment strategies	End of period of performance

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ATTACHMENT B  
CHANGES FROM APPLICATION**

**INSTRUCTIONS FOR COMPLETING ATTACHMENT B:** Describe all material differences between the scope, schedule, and budget described in the application and the scope, schedule, and budget described in Article 3. The purpose of this attachment B is to document the differences clearly and accurately in scope, schedule, and budget to establish the parties' knowledge and acceptance of those differences. See section 10.1.

**Scope:**

**Schedule:**

**Budget:**

The table below provides a summary comparison of the project budget.

<b>Fund Source</b>	<b>Application</b>		<b>Section 3.3</b>	
	<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>
<b>Previously Incurred Costs (Non-Eligible Project Costs)</b>				
Federal Funds				
Non-Federal Funds				
<b>Total Previously Incurred Costs</b>				
<b>Future Eligible Project Costs</b>				
SMART Funds	2,000,000.00	100	2,000,000.00	100
Other Federal Funds				
Non-Federal Funds				
<b>Total Future Eligible Project Costs</b>				
<b>Total Project Costs</b>	<b>2,000,000.00</b>	<b>100</b>	<b>2,000,000.00</b>	<b>100</b>

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT C**  
**CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS**

**1. Consideration of Climate Change and Environmental Justice Impacts.**

The Recipient states that rows marked in the following table are accurate:

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

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<input type="checkbox"/>	The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. <i>(Describe the materials in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has taken other actions to consider climate change and environmental justice impacts of the Project, as described in the supporting narrative below.
<input checked="" type="checkbox"/>	The Recipient has not yet taken actions to consider climate change and environmental justice impacts of the Project but, before beginning construction of the Project, will take relevant actions described in Attachment A. <i>(Identify the relevant actions from Attachment A in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has not taken actions to consider climate change and environmental justice impacts of the Project and will not take those actions under this award.

**2. Supporting Narrative.**

[ Recipient - Insert supporting text in last page, as described in the table above. ]

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

**ATTACHMENT D  
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY**

**1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.**

The Recipient states that rows marked with “X” in the following table are accurate:

<input type="checkbox"/>	A racial equity impact analysis has been completed for the Project. <i>(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Recipient or a project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. <i>(Identify the relevant programs, plans, or policies in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. <i>(Identify the relevant investments in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. <i>(Identify the new or improved access in the supporting narrative below.)</i>
<input type="checkbox"/>	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. <i>(Identify the new or improved access in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity, as described in the supporting narrative below.
<input type="checkbox"/>	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but, before beginning construction of the project, will take relevant actions described in Attachment A. <i>(Identify the relevant actions from Attachment A in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

**2. Supporting Narrative.**

[Recipient- Insert supporting text in last page, as described in the table above. ]



## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT E  
LABOR AND WORKFORCE**

**1. Efforts to Support Good-Paying Jobs and Strong Labor Standards. Successful projects will also support the creation of good-paying jobs with the free and fair choice to join a union.**

As outlined in the Notice of Funding Opportunity, applicants are evaluated and selected based on criteria including the extent to which applicants identify the necessary planning and engagement activities that, as projects are fully implemented during Stage 2, will ensure high-quality job creation by supporting good-paying jobs with a free and fair choice to join a union, incorporating strong labor standards (e.g., wages and benefits at or above prevailing, use of project labor agreements, registered apprenticeship programs, pre-apprenticeships tied to 16 registered apprenticeships, etc.), and/or providing workforce opportunities for historically underrepresented groups (e.g., workforce development program, etc.). The table below enables The Recipient to demonstrate how this criteria is addressed.

The Recipient states that rows marked with “X” in the following table are accurate:

<input checked="" type="checkbox"/>	The Recipient demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Recipient or a project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project. <i>(Describe the relevant provisions in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. <i>(Describe the use of registered apprenticeship in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. <i>(Describe the training programs in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Recipient or a project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. <i>(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)</i>

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<input type="checkbox"/>	<p>The Recipient or a project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. <i>(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)</i></p>
<input checked="" type="checkbox"/>	<p>The Recipient or a project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i></p>
<input checked="" type="checkbox"/>	<p>The Recipient or a project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hire and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including:</p> <ul style="list-style-type: none"> <li>a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law;</li> <li>b. proactive partnerships with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements and meet the requirements as outlined in the Notice of Funding Opportunity to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women and goals that vary based on geography for construction work hours and for work being performed by people of color;</li> <li>c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements;</li> <li>d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin;</li> <li>e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and</li> <li>f. maintaining robust anti-retaliation measures covering employees and contractors.</li> </ul> <p><i>(Describe the equal opportunity plan in the supporting narrative below.)</i></p>
<input type="checkbox"/>	<p>The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i></p>

**STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM**

<input type="checkbox"/>	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient has not taken actions related to the Project to improving good-paying jobs and strong labor standards and will not take those actions under this award.

**a. Supporting Narrative.**

[ Recipient- Insert supporting text in last page, as described in the table above. ]

## STRENGTHENING MOBILITY AND REVOLUTIONIZING TRANSPORTATION (SMART) GRANTS PROGRAM

**ATTACHMENT F**  
**CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE**

**1. Efforts to strengthen the Security and Resilience of Critical Infrastructure against both Physical and Cyber Threats.**

The Recipient states that rows marked with “X” in the following table are accurate:

<input checked="" type="checkbox"/>	The Recipient demonstrates, prior to the signing of this agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities.
<input checked="" type="checkbox"/>	The Recipient appropriately considered and addressed physical and cyber security and resilience in the planning, design and oversight of the project, as determined by the Department and the Department of Homeland Security.
<input checked="" type="checkbox"/>	The Recipient complies with 2 CFR 200.216 and the prohibition on certain telecommunications and video surveillance services or equipment.
<input type="checkbox"/>	For projects in floodplains: The Recipient appropriately considered whether the project was upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law, in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967), and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Solicit and Considering Stakeholder Input (80 FR 6425).

**2. Supporting Narrative.**

[Recipient- Insert supporting text in last page as described in the table above.]

## SUPPORTING TEXT FOR CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

The goal of this project is to use real time data to promote alternative modes of transportation by providing data that encourages safety for users. As the project moves forward we will consider all climate change and environmental impacts that are described in our FY 22 SMART Grant application.

#### SUPPORTING TEXT FOR RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

The project will also be implemented by Metro to foster opportunities for Minority and Women-Owned Business Enterprise (MWBE) inclusion efforts. Through procurement regulation changes underway, Nashville is implementing a race and gender-neutral program that establishes a contract threshold, under which certain contracts become eligible by designation to only be bid on by small business in accordance with SBA guidelines. The program will also provide more time for prime contractors and subcontractors to plan for and prepare timely bids. This is to increase the ability for firms to form joint ventures or teaming arrangements and to obtain any needed support services. Metro is developing an enhanced communications plan for how it will better assist W/MBE Business community in understanding its programs, implementations and how to prepare for future procurement opportunities.

We will work with our procurement team to establish an acceptable DBE target goal for any construction, inspection, and other activities designed to ensure racial equity in the project.

This project will use real time data to promote safe alternative modes of transportation for our most vulnerable users.

## SUPPORTING TEXT FOR LABOR AND WORKFORCE

Metro is already promoting good-paying jobs with free and fair choice to join a union and expand strong labor standards as shown in our labor policy below:

### Chapter 3.56 Metro Charter - Labor Policy

#### 3.56.010 - Right of employees to organize - Collective bargaining

Employees of metropolitan government shall have, and be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization, or to refrain from belonging, and to bargain collectively through representatives of their own choosing on questions of wages, hours, retirement benefits and all other terms and conditions of employment for the purpose of representation free from actual interference, restraint or coercion.

Currently Metro Nashville has three (3) labor unions. The Fire Union (Fire Department), Fraternal Order of Police (Metro Nashville Police Department), and the Service Employee International Union (SEIU) for other employees.

To promote the entry and retention of underrepresented populations and minorities, Metro recognizes the growing expectations workers have for their employers and have implemented comprehensive strategies and policies to meet these expectations. This includes enhancing benefits packages offered by Metro to workers, ultimately aiming to increase employee retention and reduce turnover. Metro has implemented hiring policies that prioritize diversity, equity, and inclusion. This includes actively seeking underrepresented populations and minorities during the recruitment and hiring processes. By fostering a diverse and inclusive workforce, Metro aims to create an environment that values and embraces different perspectives and experiences. To further bolster this initiative Metro has hired a Chief Diversity Equity & Inclusion Officer with the central Human Resources department. The Chief DEIO is responsible to for the development and implementation of results-focused policies and strategies for Metro.

Metro regularly holds diversity and inclusion training in an effort to increase awareness and understanding of equity in the workplace. These include workshops, seminars, and cultural competency training to promote a respectful and inclusive work environment. Diversity classes are mandatory for all Metro employees.

SUPPORTING TEXT FOR CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

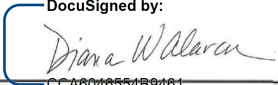
We comply with all local, state and federal laws.



**SIGNATURE PAGE  
FOR  
Strengthening Mobility and Revolutionizing Transportation (SMART) Grant**

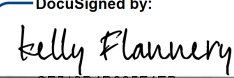
IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

DocuSigned by:  
  
\_\_\_\_\_  
Diana W. Alarcon, Director  
Nashville Department of Transportation  
and Multimodal Infrastructure

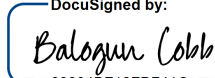
7/27/2023  
\_\_\_\_\_  
Date

**APPROVED AS TO AVAILABILITY  
OF FUNDS:**

DocuSigned by:  
  
\_\_\_\_\_  
Kelly Flannery, Director  
Department of Finance

7/27/2023  
\_\_\_\_\_  
Date

**APPROVED AS TO RISK AND INSURANCE:**

DocuSigned by:  
  
\_\_\_\_\_  
Director of Insurance

7/27/2023  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND  
LEGALITY:**

DocuSigned by:  
  
\_\_\_\_\_  
Metropolitan Attorney

7/27/2023  
\_\_\_\_\_  
Date

\_\_\_\_\_  
John Cooper  
Metropolitan Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Metropolitan Clerk

\_\_\_\_\_  
Date

AMENDMENT NO. 1  
TO  
ORDINANCE NO. BL2023-1869

Mr. President –

I hereby move to amend Ordinance No. BL2023-1869 by amending proposed Section 6.77.030 by adding a new subsection C, as follows:

- C. Any findings which reduce the number of entertainment transportation vehicle service providers and vehicles as required by the public convenience and necessity must be approved by resolution of the metropolitan council prior to being implemented by the MTLC. If the metropolitan council does not approve the findings, the MTLC shall review the findings and make a new submission to the council for approval.

INTRODUCED BY:

\_\_\_\_\_  
Russ Pulley  
Member of Council

AMENDMENT NO.   2    
TO  
ORDINANCE NO. BL2023-1869

Mr. President –

I hereby move to amend Ordinance No. BL2023-1869 as follows:

I. By amending Section 1, proposed Metropolitan Code of Laws Section 6.77.030, Subsection B, as follows:

B. In making the above findings, the MTLC shall, at a minimum, take into consideration the number of entertainment transportation vehicles already in operation, whether existing service is adequate to meet the public need, or so great as to be exceeding the public need and unnecessarily adding to traffic congestion; the character, experience, financial condition and responsibility of the applicant, and such criteria as may be adopted by the MTLC in its rules. However, the MTLC shall not take into consideration an entertainment transportation vehicle already in operation if the vehicle has forward-facing seating for all passengers, requires passengers to be seated while the vehicle is moving, travels a fixed route, and does not permit passengers to consume beer, ale, wine, or other alcoholic beverages.

II. By amending Section 2, proposed Metropolitan Code of Laws Section 6.77.060, Subsection C, as follows:

C. If the MTLC has made a finding that the number of entertainment transportation vehicles already in operation immediately prior to the annual meeting, is so great as to be exceeding the public need and adding to traffic congestion, the MTLC shall determine what lower number would meet the public need. All renewing and new applicants, except those meeting the provisions of subsection E, shall be placed on notice that at the annual meeting they must show cause why their application for a new certificate, a renewal, or for the addition of vehicles to their fleet should be among the new number determined to be adequate to meet, and not exceed, the public need. It, accordingly, may not be possible to renew every certificate and/or vehicle that was permitted in the preceding year. In the event the number of permits is reduced and any existing permits are not renewed at the annual meeting, such non-renewed permitted vehicles may continue operating for 100 days from the date of the non-renewal. In determining which applications will be granted, the MTLC may take into consideration the following non-exclusive factors, among any other criteria they see fit to adopt in their regulations. Whether the applicant for a new or renewed certificate has:

1. Violated any of the provisions of this chapter or failed to comply with any rule or regulation established by the MTLC;
2. Violated any provision of this code or other ordinances of the metropolitan government or laws of the United States or the State of Tennessee, the violation of which reflects unfavorably on the fitness of the holder to offer transportation services,

including but not limited to, violations for excessive noise or alcoholic beverage open containers;

3. Failed to pay assessments or taxes due to the metropolitan government; or

4. Made a misrepresentation or false statement when obtaining or renewing a certificate or additional permits, or transferring a certificate.

II. By amending Section 2, proposed Metropolitan Code of Laws Section 6.77.060 by adding a new Subsection E as follows:

E. Any entertainment transportation vehicle already in operation which has forward-facing seating for all passengers, requires passengers to be seated while the vehicle is moving, travels a fixed route, and does not permit passengers to consume beer, ale, wine, or other alcoholic beverages and is otherwise operating in compliance with all applicable regulations shall not be subject to the reduction described in Subsection C.

SPONSORED BY:

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Russ Pulley  
Member of Council

SUBSTITUTE ORDINANCE NO. BL2023-1869

An ordinance to amend Title 6, Chapter 77, ~~Article 4~~ of the Metropolitan Code of Laws, regarding renewal of Entertainment Transportation certificates of public necessity and convenience and Entertainment Transportation vehicle permits.

WHEREAS, the current renewal language of Chapter 6.77 does not provide a process for reducing the number of certificates of public necessity and convenience (CPCN); and,

WHEREAS, this ordinance should put ~~ET~~ entertainment transportation vehicle CPCN holders and permittees on notice that they should not necessarily expect a routine annual renewal of CPCN's and permits granted in April, 2023, at the April, 2024, meeting of the Transportation Licensing Commission, due to the need to reduce numbers of ~~ET~~ entertainment transportation vehicles to increase the pace of traffic in downtown Nashville; and,

WHEREAS, sightseeing tour vehicles provide a different, more family-friendly experience than other entertainment transportation vehicles since the primary purpose of sightseeing tour vehicles is to offer passengers the ability to see and learn about Nashville's cultural and historical places; and

WHEREAS, unlike other entertainment transportation vehicles, sightseeing tour vehicles require passengers to remain seated and forward-facing to protect safety; and

WHEREAS, at its meeting on April 27, 2023, the Metropolitan Transportation Licensing Commission (MTLC) ~~met and voted to recommend~~ the approval of an ordinance to allow the MTLC to set limits on the number of entertainment transportation vehicle operators and vehicles ~~this ordinance to Council.~~

NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 6.77.010 of the Metropolitan Code is hereby amended by adding the following new definition:

"Sightseeing tour vehicle" means a vehicle that meets each of the following criteria:

1. has forward-facing seating for all passengers;
2. requires passengers to be seated while the vehicle is moving;
3. travels a fixed route; and
4. does not permit passengers to consume beer, ale, wine, or other alcoholic beverages unless the vehicle has been chartered for a single event with a minimum charter duration of three hours.

Section ~~4~~2. That Section 6.77.030 of the Metropolitan Code be hereby amended by deleting the current section in its entirety and replacing it with the following:

**6.77.030 - Findings-Issuance of certificate, renewal or additional permits.**

A. The MTLC must make a prerequisite finding as to what number of entertainment transportation vehicle service providers and vehicles are required by the public convenience and necessity, in the metropolitan government area, before it may issue any new certificates of public convenience and necessity, renew any previously issued expiring certificates, or add any

additional permitted vehicles to an existing certificate-holder's permitted fleet. Further, the MTLC must find that an applicant is fit, willing, and able to provide such service and to conform to the provisions of this chapter and the rules promulgated by the MTLC, before the MTLC may issue a certificate of public convenience and necessity to a particular applicant. The certificate shall state the name and address of the applicant, the number of vehicles authorized upon such certificate and the date of issuance.

B. In making the above findings, the MTLC shall, at a minimum, take into consideration the number of entertainment transportation vehicles already in operation, whether existing service is adequate to meet the public need, or so great as to be exceeding the public need and unnecessarily adding to traffic congestion; the character, experience, financial condition and responsibility of the applicant, and such criteria as may be adopted by the MTLC in its rules.

C. Any findings that result in a reduction in the number of entertainment transportation vehicle service providers and vehicles as required by the public convenience and necessity must be approved by resolution of the metropolitan council prior to being implemented by the MTLC.

Section 2. That Section 6.77.060 of the Metropolitan Code of Laws be hereby amended by deleting the current section in its entirety and replacing it with the following:

**6.77.060 - Annual renewal.**

A. All certificates issued under the provisions of this chapter shall expire on April 30 of the year following the date on which the certificate was issued. All certificates may be renewed by the MTLC director for each successive year between April 1 and 30 of each year, if the applicant meets all applicable standards for renewal as established by the MTLC, and if it has not been determined, pursuant to section 6.77.030, above, that the number of entertainment transportation vehicles already in operation is so great as to be exceeding the public need and adding to traffic congestion. A renewal fee for each approved certificate and other licensing fees shall be charged at the annual renewal of the certificate.

B. All applicants for renewal must be current with all assessments and taxes due to the metropolitan government.

C. If the MTLC has made a finding that the number of entertainment transportation vehicles already in operation immediately prior to the annual meeting, is so great as to be exceeding the public need and adding to traffic congestion, the MTLC shall determine what lower number would meet the public need. All renewing and new applicants shall be placed on notice that at the annual meeting they must show cause why their application for a new certificate, a renewal, or for the addition of vehicles to their fleet should be among the new number determined to be adequate to meet, and not exceed, the public need. It, accordingly, may not be possible to renew every certificate and/or vehicle that was permitted in the preceding year. In the event the number of permits is reduced and any existing permits are not renewed at the annual meeting, such non-renewed permitted vehicles may continue operating for 100 days from the date of the non-renewal. In determining which applications will be granted, the MTLC may take into consideration the following non-exclusive factors, among any other criteria they see fit to adopt in their regulations. Whether the applicant for a new or renewed certificate has:

1. Violated any of the provisions of this chapter or failed to comply with any rule or regulation established by the MTLC;
2. Violated any provision of this code or other ordinances of the metropolitan government or laws of the United States or the State of Tennessee, the violation of which reflects

unfavorably on the fitness of the holder to offer transportation services, including but not limited to, violations for excessive noise or alcoholic beverage open containers;

3. Failed to pay assessments or taxes due to the metropolitan government; or

4. Made a misrepresentation or false statement when obtaining or renewing a certificate or additional permits, or transferring a certificate.

D. If a licensed entertainment transportation vehicle company or individual fails to submit an application to renew by the deadline set by the MTLC for same, the license shall expire.

E. The MTLC shall have the authority to determine whether a limit should be set on the number of permitted sightseeing tour vehicles, provided however that existing sightseeing tour vehicles that are currently operating in compliance with all applicable regulations as of July 1, 2023 shall not be subject to any reduction pursuant to subsection C. In the event of a reduction in the number of entertainment transportation vehicles pursuant to subsection C, no entertainment transportation vehicle operating at the time of the reduction shall be permitted to convert to a sightseeing tour vehicle unless and until the MTLC has inspected the vehicle to ensure it meets the definition of sightseeing tour vehicle set forth in Section 6.77.010.

Section 3. That section 6.77.090 of the Metropolitan Code of Laws be hereby amended by deleting the current section in its entirety and replacing it with the following:

**6.77.090 - Suspension and revocation.**

A. A certificate issued under the provisions of this chapter may be revoked, suspended, placed on probation, or otherwise restricted, by the MTLC if the holder thereof has:

1. Violated any of the provisions of this chapter or failed to comply with any rule or regulation established by the MTLC;

2. Violated any provision of this code or other ordinances of the metropolitan government or laws of the United States or the State of Tennessee, the violation of which reflects unfavorably on the fitness of the holder to offer transportation services, including but not limited to, violations for excessive noise or alcoholic beverage open containers;

3. Failed to pay assessments or taxes due to the metropolitan government; or

4. Made a misrepresentation or false statement when obtaining or renewing a certificate or additional permits, or transferring a certificate.

B. Prior to any action to revoke, suspend, place on probation, or otherwise restrict a certificate, the holder shall be given notice to the address listed on their certificate of the proposed action to be taken and shall have an opportunity to be heard by the MTLC.

C. If the holder commits an act in violation of the criminal laws of the United States of America or state of Tennessee Code and the MTLC director determines that holder poses a threat to the public safety, the MTLC director may enact an emergency suspension of the holder's certificate to remain in effect until the holder has the opportunity to be heard by the MTLC at the next available meeting, but in no circumstance later than sixty days from the date of the emergency suspension.

D. A certificate holder that has had a certificate revoked or suspended, shall not be permitted to apply for a certificate as a sightseeing tour vehicle.

Section 4. This Ordinance shall take effect from and after its passage, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:

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Russ Pulley  
Member of Council



AMENDMENT NO.   1    
TO  
ORDINANCE NO. BL2023-1992

Mr. President –

I move to amend Ordinance No. BL2023-1992 as follows:

Section 1. Section 2.24.230 of the Metropolitan Code of Laws is hereby amended ~~adding the following new subsection A.4. after subsection A.3~~ by deleting the provisions of the existing subsection A., and substituting in lieu thereof the following as subsection A:

- A. No legislation approving the lease of metropolitan government-owned property, where the appraised land value is greater than one million dollars, to a private entity for a lease term of more than five years, including permitted extensions, shall be considered by the metropolitan council on second reading unless and until a publicly-noticed community meeting has been held. The director of public property administration may adjust the one million dollars threshold annually based upon the percentage increase, if any, by which the consumer price index for the most recent calendar year ending before the beginning of such year exceeds the consumer price index for all urban consumers published by the United States Department of Labor for the previous calendar year. Notice of the community meeting shall be posted on the metro website, and the proposed lessee shall be responsible for distributing the notice of the community meeting by U.S. Mail or email at least one week prior to the meeting to neighborhood associations and community organizations registered with the mayor's office of neighborhoods that are located within a one-mile radius of the property to be leased.
1. Notice by mail or e-mail. At least fourteen days prior to the community meeting, the proposed lessee(s) of the subject property shall send written notice to all property owners within one thousand feet and, to identified neighborhood associations and community organizations located within a one-mile radius of the subject property. Neighborhood associations and community organizations shall include associations registered with the mayor's office of neighborhoods or incorporated condominium associations registered by with the metropolitan clerk. Such notice shall be sent by email if the property owner's, neighborhood association, or community organization's email address is known to the council member or lessee. Otherwise, such written notice shall be sent by U.S. Mail. Notice shall include the time, date and place of the required community meeting and of the council meeting at which the legislation is scheduled to be considered on second reading.
  2. Public notice signs shall be posted by the lessee in accordance with the following provisions on the subject property:

- (a) General Requirements. Public notice signs shall be posted on any property subject to the community meeting provisions of this section. Public notice signs shall be installed by the proposed lessee of the property.
  - (b) Display Period. Public notice signs shall be installed on affected properties no less than fourteen days prior to an established community meeting date, and shall be removed by the lessee following conclusion of the council consideration.
  - (c) Number and Placement of Public Notice Signs. Public notice signs shall be posted according to the following standards:
    - i. One sign shall be posted along each three hundred feet of public street frontage.
    - ii. Location. Whenever practical, signs shall be located within ten feet of a public street right-of-way and positioned in a manner to best inform the motoring public without creating a safety hazard.
    - iii. Size and Content. All public notice signs shall be of adequate size and design to be clearly visible and legible to the motoring public. At a minimum, a public notice sign shall specify the time, date and location of the scheduled community meeting and of the council meeting at which the lease is scheduled to be considered by the council on second reading, the general nature of the community meeting, and a phone number for additional information.
3. The council member in whose district the property is located shall coordinate the scheduling of the community meeting required by this section. The meeting shall be held either at a metropolitan government-owned facility, or at a facility selected by the district councilmember. The community meeting may also be held virtually using an online meeting platform if necessary to comply with applicable health orders. A representative from the metropolitan department, board, agency, or commission to whom the property is assigned shall attend the community meeting. If the district council seat is vacant, or if the district councilmember elects not to schedule or is otherwise unable to coordinate the scheduling of the community meeting within 90 days of being requested by the prospective lessor in writing to do so, the vice-mayor shall assign these responsibilities to an at-large council member.
- ~~“4. If a public hearing that includes public comment has been held by a metropolitan government department, board, agency, or commission and the district council member is unable or unwilling to coordinate the scheduling of the community meeting in accordance with subsection A.3. of this section on a date that will permit three readings of an ordinance seeking approval of a lease to~~

~~occur at regularly scheduled Council meetings prior to the expiration of a Council term or that does not unreasonably delay the Council's consideration of the lease, the Metropolitan Council, with a 2/3 affirmative vote of those present and voting, may set a public hearing before the Council in lieu of holding a community meeting otherwise required by this section. Upon adoption of such public hearing motion, notice of the public hearing shall be posted on the nashville.gov website and shall be advertised daily on the Metro Nashville Network or the equivalent thereof. Further, written notice of the public hearing shall be mailed to all property owners within one thousand feet of the property to be leased at least ten days prior to the public hearing."~~

SPONSORED BY:

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Kathleen Murphy  
Zach Young  
Members of Council

AMENDMENT NO.   2    
TO  
ORDINANCE NO. BL2023-1992

Mr. President –

I move to amend Section 1 of Ordinance No. BL2023-1992 as follows:

Section 2.24.230 of the Metropolitan Code of Laws is hereby amended adding the following new subsection A.4. after subsection A.3:

“4. If a public hearing that includes public comment has been held by a metropolitan government department, board, agency, or commission and the Vice Mayor declares that the district council member is unable or unwilling to coordinate the scheduling of the community meeting in accordance with subsection A.3., the legislation seeking approval of the lease shall be set on the agenda of the next regularly scheduled Council meeting. ~~of this section on a date that will permit three readings of an ordinance seeking approval of a lease to occur at regularly scheduled Council meetings prior to the expiration of a Council term or that does not unreasonably delay the Council's consideration of the lease,~~ At such meeting, the Metropolitan Council, with a 2/3 affirmative vote of those present and voting, may set a public hearing before the Council in lieu of ~~holding a~~ the community meeting otherwise required by this section. The legislation seeking approval of the lease shall be not be eligible for final approval by the Council unless the Council has held a public hearing or the community meeting has occurred as required in this section. Upon adoption of such public hearing motion, notice of the public hearing shall be posted on the nashville.gov website and shall be advertised daily on the Metro Nashville Network or the equivalent thereof. Further, written notice of the public hearing shall be mailed to all property owners within one thousand feet of the property to be leased at least ten days prior to the public hearing.”

SPONSORED BY:

\_\_\_\_\_  
Bob Mendes  
Member of Council

AMENDMENT NO. 3  
TO  
ORDINANCE NO. BL2023-1992

Mr. President –

I move to amend Section 1 of Ordinance No. BL2023-1992 as follows:

Delete the last sentence and replace it as follows:

Further, written notice and signage of the public hearing shall be provided as required in subsections A.1. and A.2. of this section~~mailed to all property owners within one thousand feet of the property to be leased at least ten days prior to the public hearing.~~

SPONSORED BY:

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Bob Mendes  
Member of Council

AMENDMENT NO. 4  
TO  
ORDINANCE NO. BL2023-1992

Mr. President –

I move to amend Section 2 of Ordinance No. BL2023-1992 as follows:

A public hearing held by the Council prior to the effective date of this ordinance is deemed to satisfy the community meeting requirements of Metropolitan Code of Laws § 2.24.230 with respect to a lease that is the subject of that public hearing if conducted in accordance with such section as amended in this ordinance and prior to third reading of an ordinance seeking approval of the lease.

SPONSORED BY:

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Bob Mendes  
Member of Council

AMENDMENT NO. 5  
TO  
ORDINANCE NO. BL2023-1992

Mr. President –

I move to amend Ordinance No. BL2023-1992 as follows:

Section 1. Section 2.24.230 of the Metropolitan Code of Laws is hereby amended by adding the following ~~new subsection A.4. after~~ sentence at the end of subsection A.3:

If the district council seat is vacant, or if the district councilmember elects not to schedule or is otherwise unable to coordinate the scheduling of the community meeting within 90 days of being requested by the prospective lessor in writing to do so, the vice-mayor shall assign these responsibilities to an at-large council member.

SPONSORED BY:

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Burkley Allen  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-1993

Mr. President –

I hereby move to amend Section 3 of Ordinance No. BL2023-1993 by amending 10.20.605.A.1 as follows:

1. Complies with all federal, state, and local laws and regulations, including any permit requirements, and expressly including any applicable requirements of section 68-211-701, et seq. of the Tennessee Code Annotated;

INTRODUCED BY:

\_\_\_\_\_  
Burkley Allen  
Member of Council



SUBSTITUTE ORDINANCE NO. BL2023-2106

An ordinance amending Metropolitan code of Laws, section 9.20.010, ~~to clarify that all types of amplified music, including live music, must be limited to certain decibels~~ to limit amplified noise and enhance enforcement in order to ensure adequate public health and safety.

WHEREAS, the Metropolitan Government of Nashville and Davidson County (“Metro”) celebrates the vibrant and dynamic soundscape of the Downtown area, which every day draws visitors from across the world; and

WHEREAS, Metro also wishes to encourage the enjoyment of music in the Downtown area in the safest manner possible; and

WHEREAS, the Metro Nashville Police Department (MNPd) is charged with maintaining safe streets and guaranteeing public safety in the Downtown area; and

WHEREAS, high levels of amplified sounds, including music, emanating from various establishments in the Downtown area often make it difficult for MNPd officers and employees to communicate with each other and the public, leading to situations where the public safety and health are endangered; and

~~WHEREAS, Metro desires to amend its noise ordinances in order to clarified that all amplified music, including live music, must comply with Metro’s noise limits.~~

WHEREAS, Metro desires to amend its noise ordinances in order to require that speakers not be oriented toward open exterior windows and doors; and

WHEREAS, Metro also wishes to extend enforcement of private property commercial noise and residential noise ordinances to the Department of Codes and Building Safety so as to address Downtown noise and noise from short term rental properties; and

WHEREAS, Metro also wishes to extend enforcement of right-of-way noise ordinances to the Nashville Department of Transportation;

NOW, THEREFORE, BE IT ENACTED BY THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Metropolitan Code of Laws section 9.20.010(B)(2) shall be amended by as follows:

2. In all cases, interior speakers within ten (10) feet of an open exterior door or window shall not be oriented toward any such open exterior door or window. ~~In all cases, interior speakers shall be oriented toward and focused at the center of an establishment.~~ It shall be unlawful for interior speakers of an establishment during business operating hours regardless of speaker orientation to produce sounds registering more than 85 decibels (A weighted) (“Db(A)”), as measured at street level fifty linear feet from the outside wall of the structure within which the noise is produced. Other than during business operating hours, it shall be unlawful for any establishment to operate or allow the operation of interior speakers producing sounds registering more than 70 Db(A) at or on the boundary of the nearest public right-of-way or park. For purposes of this subsection, “business operating hours” means the hours during which an establishment is open to customers or patrons, or a musical act is tuning their instruments for the purposes of performing during business operating hours.

~~Section 2. That the Metropolitan Code of Laws section 9.20.010(B)(3) shall be deleted, renumbering the remaining sections as necessary.~~

~~Section 3. That the Metropolitan Code of Laws section 9.20.010(B)(5) shall be amended and the following added as a new section 9.20.010(B)(5)(d):~~

~~d. Speakers oriented towards musicians performing live music specifically (commonly referred to as “wedges” are exempt from any requirement to orient and focus to the middle of the room until July 1, 2024.~~

Section 4 ~~2~~. That the Metropolitan Code of Laws section 9.20.010(B) shall be amended to create a new section 9.20.010(B)(6):

6. The Director of Mayor’s Office of Nightlife shall convene an advisory committee to contemplate the impact of sustained exposure to loud music on local musicians, including “wedges,” and make recommendations that may be implemented through a pilot project.

Section 5 ~~3~~. That the Metropolitan Code of Laws section 9.20.060 shall be deleted and the following added as a new section 9.20.060:

The Metropolitan Nashville Police Department, the Nashville Department of Transportation, and the Department of Codes and Building Safety shall be responsible for the enforcement of violations of this chapter.

Section 4. Ninety days following implementation of this ordinance, the MNPD will provide an assessment to the Council and the Director of Mayor’s Office of Nightlife as to whether the amended noise policy has improved conditions.

Section 6. This Ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:

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Jeff Syracuse  
Member of Council

SUBSTITUTE ORDINANCE NO. BL2023-1879

An ordinance to amend Title 17 of the Metropolitan Code of Laws, the Zoning Ordinance of The Metropolitan Government of Nashville and Davidson County, by changing from CL to ~~IR~~ SP zoning for property located at 936 Firestone Parkway, at the western corner of Gould Boulevard and Firestone Parkway (1.74 acres), all of which is described herein (Proposal No. 2023Z-019PR-001).

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 17 of the Code of Laws of The Metropolitan Government of Nashville and Davidson County, is hereby amended by changing the Official Zoning Map for Metropolitan Nashville and Davidson County, which is made a part of Title 17 by reference, as follows:

By changing from CL to ~~IR~~ SP zoning for property located at 936 Firestone Parkway, at the western corner of Gould Boulevard and Firestone Parkway (1.74 acres), being Property Parcel No. 133 as designated on Map 183-00 of the Official Property Identification Maps of The Metropolitan Government of Nashville and Davidson County, all of which is described by lines, words and figures on the attached sketch, which is attached to and made a part of this ordinance as though copied herein.

Section 2. Be it further enacted, that the Metropolitan Clerk is hereby authorized and directed, upon the enactment and approval of this ordinance, to cause the change to be made on Map 183 of said Official Zoning Map for Metropolitan Nashville and Davidson County, as set out in Section 1 of this ordinance, and to make notation thereon of reference to the date of passage and approval of this amendatory ordinance.

Section 3. Be it further enacted, that the uses of this SP shall be limited to those permitted by the IR zoning district.

Section 4. Be it further enacted, that the following conditions shall be completed, bonded or satisfied as specifically required:

1. The development shall fully comply with the requirements of Metropolitan Code Section 16.24.360 – Rubbish and garbage.
2. There shall be a Type C bufferyard as defined by Section 17.24.240 of the Metropolitan Code along all sides of the property not visible from the public right-of-way.
3. There shall be a Type D bufferyard as defined by Section 17.24.240 of the Metropolitan Code along all sides of the property visible from the public right-of-way.
4. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.

Section 5. Be it further enacted, a corrected copy of the preliminary SP plan incorporating the conditions of approval by Metro Council shall be provided to the Planning Department prior to or with final site plan application.

Section 6. Be it further enacted, minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through

an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.

Section 7. Be it further enacted, if a development standard, not including permitted uses, is absent from the SP plan and/or Council approval, the property shall be subject to the standards, regulations and requirements of the IR zoning district as of the date of the applicable request or application. Uses are limited as described in the Council ordinance.

Section 3-8. The Metropolitan Clerk is directed to publish a notice announcing such change in a newspaper of general circulation within five days following final passage.

Section 4-9. This Ordinance shall take effect upon publication of above said notice announcing such change in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

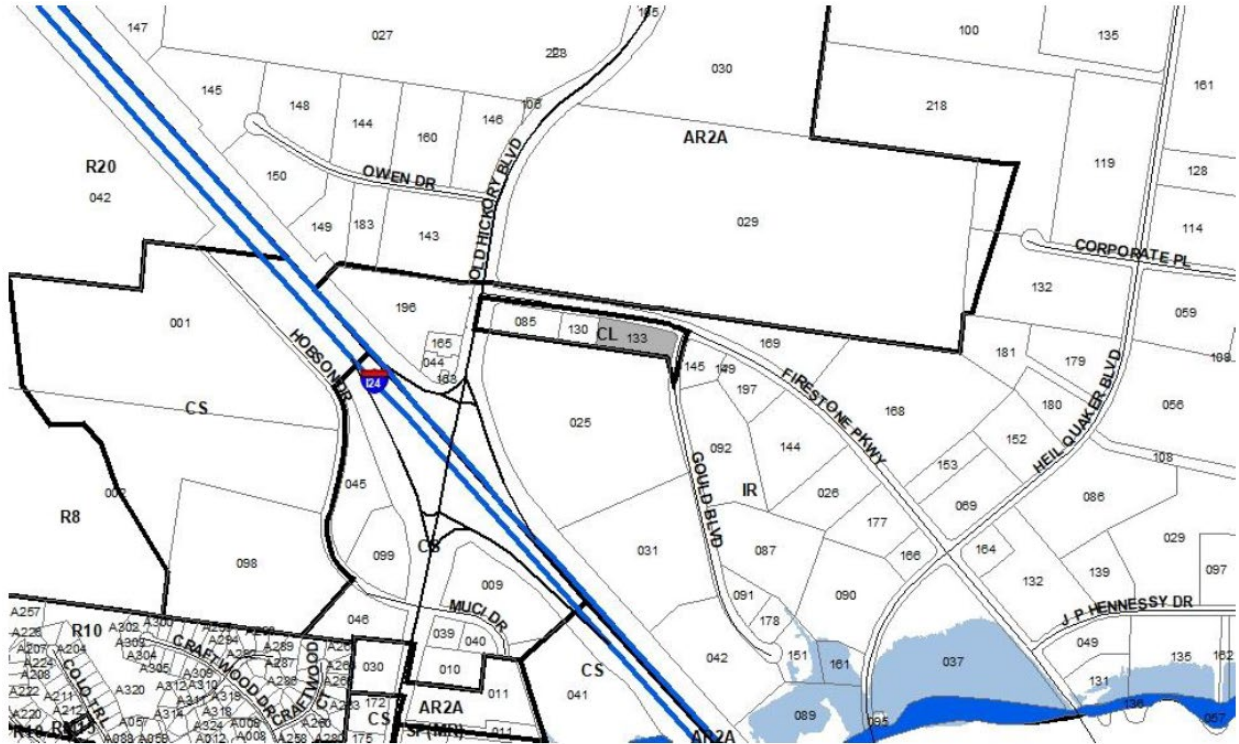
INTRODUCED BY:

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Antionette Lee  
Member of Council

2023Z-019PR-001  
Map 183, Parcel(s) 133  
Subarea 13, Antioch - Priest Lake  
District 33 (Antoinette Lee)  
Application fee paid by: T. Michael or Judy Hayes

A request to rezone from CL to IR SP zoning for property located at 936 Firestone Parkway, at the western corner of Gould Boulevard and Firestone Parkway (1.74 acres), requested by T. Michael Hayes, applicant; T. Michael Hayes and Judy Hayes, owners.



AMENDMENT NO. 1  
TO  
ORDINANCE NO. BL2023-1882

Mr. President,

I move to amend Ordinance No. BL2023-1882, as amended as follows:

- I. By amending the fourth recital as follows:

WHEREAS, the continuing development of the built infrastructure provides an opportunity for extending and improving the walkability and bikeability of Nashville with more and better bike lanes, bikeways, sidewalks, and greenways; and

- II. By amending Section 2.153.020 A. as follows:

- A. The bicycle and pedestrian advisory commission shall be composed of thirteen voting members. Eleven members shall be appointed by the mayor with one member representing Greenways for Nashville, one member representing Walk Bike Nashville, and with special consideration given to the following categories for ~~committee~~ membership: non-profit community groups advocating for biking and walking; students or faculty members from a local high schools or universities; local organizations that represent disabled persons; transportation planning, policy, or design professionals; senior citizen advocacy organizations such as the AARP and Fifty-Forward; local bicycle clubs; walking, running, or hiking clubs; urban planning or multi-modal transportation support organizations; parks or greenways friends groups; and individuals who are interested in biking and walking. One member shall be appointed by the vice-mayor. One member shall be elected by the council. All appointments must be confirmed by a majority of the membership to which the council is entitled. All members shall serve without compensation. The membership of the commission shall reflect the diversity of citizens of Nashville and Davidson County. The chair shall be appointed by the mayor from the voting membership. The chair shall serve for one year.

SPONSORED BY:

\_\_\_\_\_  
Burkley Allen  
Member of Council

AMENDMENT NO. 2  
TO  
ORDINANCE NO. BL2023-1882

Mr. President,

I move to amend Ordinance No. BL2023-1882, as amended as follows:

- I. By amending Section 1, proposed MCL Section 2.153.030(4) as follows:
  4. Promotion of the integration of bicycling, shared mobility devices, and walking in the metropolitan government's planning process and implementation of community plans; ~~including feedback on specific plan zoning requests as they relate to walking and biking.~~

SPONSORED BY:

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Freddie O'Connell  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-1884

Mr. President –

I hereby move to amend Ordinance No. 2023-1884 by amending Section 1, proposed Metropolitan Code of Laws section 6.28.030(B)(2)(d), as follows:

d. Minimum distance requirements:

i. No new STRP permit shall be issued to an applicant whose location is less than one hundred feet from a religious institution, a school or its playground, a park, or a licensed day care center or its playground. Distance shall be measured in a straight line from the closest point of the parcel line of the property for which a STRP is sought to the closest point of the parcel line of the property on which the religious institution, school or its playground, park, or licensed daycare center or its playground is located.

ii. Notwithstanding subsection (d)(i) of this section, a STRP permit applicant may be exempt from the minimum distance requirements set forth herein upon the adoption of a resolution, after a public hearing, by the metropolitan council receiving 21 affirmative votes approving the exemption of the STRP unit from said minimum distance requirements. The department of codes administration shall notify the councilmember for the district in which the applicant unit is located in writing within five business days from the date the application is filed requesting the waiver of distance requirements. The public hearing required by this subsection shall be conducted by the council at a regular meeting of the council. Public notification of the hearing shall be conducted pursuant to the public notice requirements for amendments to the official zoning map in accordance with Article XV of Chapter 17.40 of the metropolitan code, provided that notice by mail shall be sent to all property owners within 600 feet of the unit seeking the exemption from the minimum distance requirements not later than 14 days prior to the scheduled public hearing on the resolution. Further, a public notice sign meeting the general requirements of Section 17.40.730 of the metropolitan code shall be posted on the property of the applicant seeking the exemption from the minimum distance requirements at least 14 days prior to the scheduled public hearing. The costs for the public notification requirements shall be paid by the applicant. The applicant shall coordinate the scheduling of the public hearing with the metropolitan clerk's office prior to the filing of the resolution for purposes of including the date and time of the public hearing in the public notice to be mailed.



iii. Otherwise qualifying properties under active development in 2020, either with a valid master permit on file with the department of codes administration on or before September 1, 2020, or who completed at least fifty percent construction on a new unit as of September 1, 2020, are not subject to the provisions of this subsection d, ~~provided that any qualifying unit for which a prior non-owner occupied STRP permit lapsed will be subject to the provisions of this subsection d.~~

Sponsored by:

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Colby Sledge  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-1916

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-1916 as follows:

I. By amending Section 3 as follows:

Section 3. Be it further enacted, that the uses of this SP shall be limited to a maximum of 5,000,000 square feet of development. Permitted land uses are specified in the Specific Plan document. The short term rental – not owner occupied use shall be limited to no more than 125 dwelling units per parcel as identified on the preliminary SP plan.

II. By amending Section 4 to add the following condition:

8. Based on the findings of the Regional Transportation Assessment, the developer shall make a financial contribution to NDOT for more detailed transportation/infrastructure studies and/or capital infrastructure improvements. These improvements may include the widening of existing roadways, intersection improvements, transit enhancements, sidewalk & bikeway construction, traffic signal modifications, and the possible construction of a new bridge. The contribution amount, as driven by the impact of the development, and the timing of the contribution shall be determined with subsequent development phases beyond Phase 1.
9. The infrastructure required to serve each phase of the development as determined by NDOT must be funded or constructed as determined by NDOT prior to the commencement of construction of that phase.
10. The developer shall work with NDOT to identify and install traffic calming measures throughout the development at the developers expense.
11. The developer shall work with the Metropolitan Historical Commission to identify and install historical markers that are relevant to the surrounding community.

INTRODUCED BY:

\_\_\_\_\_  
Kyonzte Toombs  
Member of Council

AMENDMENT NO. \_\_\_\_  
TO  
ORDINANCE NO. BL2023-1940

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-1940 by amending Section 4 to add the following condition:

8. Building height shall be limited to 35 feet. The height of each residential unit shall not exceed a ratio of 1.0 horizontal to 1.5 vertical.

INTRODUCED BY:

\_\_\_\_\_  
Kyonzte Toombs  
Member of Council

SUBSTITUTE ORDINANCE NO. BL2023-1961

An ordinance to amend Title 17 of the Metropolitan Code of Laws, the Zoning Ordinance of The Metropolitan Government of Nashville and Davidson County, by changing from CL and R8 to ~~MUL-A~~ SP zoning for properties located at 2605 and 2611 Old Buena Vista Road, and 1001 A & B W. Trinity Lane, at the northwest corner of Old Buena Vista Road and W. Trinity Lane (1.08 acres), all of which is described herein (Proposal No. 2023Z-073PR-001).

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 17 of the Code of Laws of The Metropolitan Government of Nashville and Davidson County, is hereby amended by changing the Official Zoning Map for Metropolitan Nashville and Davidson County, which is made a part of Title 17 by reference, as follows:

By changing from CL and R8 to ~~MUL-A~~ SP zoning for properties located at 2605 and 2611 Old Buena Vista Road, and 1001 A & B W. Trinity Lane, at the northwest corner of Old Buena Vista Road and W. Trinity Lane (1.08 acres), being Property Parcel Nos. 002, 003, 004, 005 as designated on Map 070-07 of the Official Property Identification Maps of The Metropolitan Government of Nashville and Davidson County, all of which is described by lines, words and figures on the attached sketch, which is attached to and made a part of this ordinance as though copied herein.

Section 2. Be it further enacted, that the Metropolitan Clerk is hereby authorized and directed, upon the enactment and approval of this ordinance, to cause the change to be made on Map 070 of said Official Zoning Map for Metropolitan Nashville and Davidson County, as set out in Section 1 of this ordinance, and to make notation thereon of reference to the date of passage and approval of this amendatory ordinance.

Section 3. Be it further enacted, that the uses of this SP shall be limited to those permitted by the MUL-A zoning district.

Section 4. Be it further enacted, that the following conditions shall be completed, bonded or satisfied as specifically required:

5. The developer of parcel 07007000200 (2611 Old Buena Vista Road) shall construct a sidewalk along Old Buena Vista Road along the frontage of their property and extending southeast to the intersection of Old Buena Vista Road and West Trinity Lane. Such sidewalk shall conform to the Major & Collector Street Plan (MCSP) along parcel 07007000200. On parcels 07007000300 (2605 Old Buena Vista Road) and 07007000400 (1001A West Trinity Lane) shall be fully constructed within the existing right-of-way; at the time those parcels develop, the respective developers shall improve the sidewalk to meet MCSP standards and dedicate any needed right-of-way.
6. The developer of parcel 07007000200 (2611 Old Buena Vista Road) shall work with the Nashville Department of Transportation and Multimodal Infrastructure (NDOT) to identify traffic calming initiatives on Old Buena Vista Road near 2611 Old Buena Vista Road. In working with NDOT, the developer shall construct the agreed upon traffic calming improvements or shall contribute funds to NDOT's traffic calming program at a cost not to exceed \$10,000.
7. The developers of parcels 07007000500 (1001B West Trinity Lane) and 07007000400 (1001A West Trinity Lane) shall improve the sidewalk along their West Trinity Lane frontage to meet MCSP standards and dedicate any needed right-of-way.

8. Planning and NDOT will evaluate the need for the collector as shown on the MCSP with the submittal of a final site plan for parcel 07007000200 (2611 Old Buena Vista Road). If needed, dedication or reservation of right-of-way may be required.
9. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.

Section 5. Be it further enacted, a corrected copy of the preliminary SP plan incorporating the conditions of approval by Metro Council shall be provided to the Planning Department prior to or with final site plan application.

Section 6. Be it further enacted, minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.

Section 7. Be it further enacted, if a development standard, not including permitted uses, is absent from the SP plan and/or Council approval, the property shall be subject to the standards, regulations and requirements of the MUL-A zoning district as of the date of the applicable request or application. Uses are limited as described in the Council ordinance.

Section 3 ~~8~~. The Metropolitan Clerk is directed to publish a notice announcing such change in a newspaper of general circulation within five days following final passage.

Section 4 ~~9~~. This Ordinance shall take effect upon publication of above said notice announcing such change in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

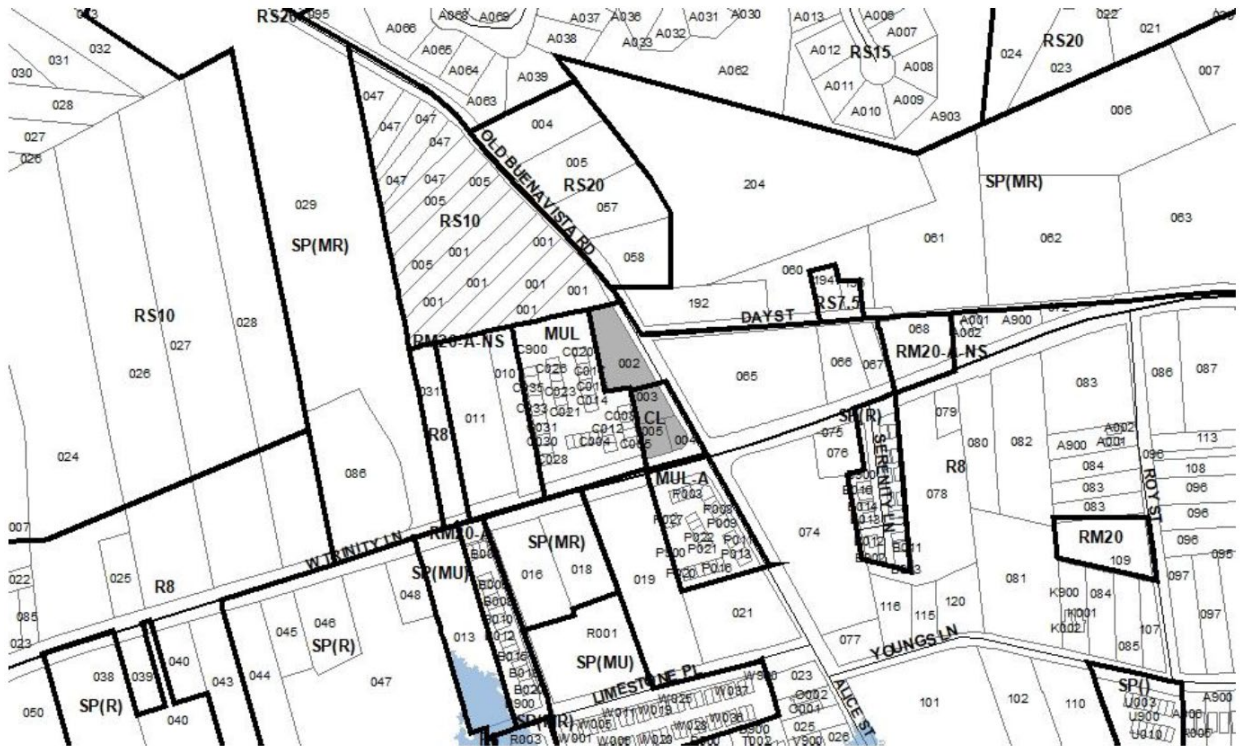
INTRODUCED BY:

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Kyonzté Toombs  
Member of Council

2023Z-073PR-001  
Map 070-07, Parcel(s) 002-005  
Subarea 03, Bordeaux - Whites Creek - Haynes Trinity  
District 02 (Kyonzté Toombs)  
Application fee paid by: Fee waived by Council

A request to rezone from CL and R8 to MUL-A SP zoning for properties located at 2605 and 2611 Old Buena Vista Road, and 1001 A & B W. Trinity Lane, at the northwest corner of Old Buena Vista Road and W. Trinity Lane (1.08 acres), requested by Councilmember Kyonzté Toombs, applicant; Carla Brown, Janie Ganaway, Pasifica Investment, LLC and Ahmad Salem, owners.



AMENDMENT NO. 1  
TO  
ORDINANCE NO. BL2023-1994

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-1994 by amending Section 1 as follows:

Section 1. That Metropolitan Code Section 16.08.012 is hereby amended by creating new subsection G as follows and renumber the existing subsection G and subsequent subsections accordingly:

G. Section 602 of the 2018 Edition of the International Building Code is hereby amended by adding a new Section 602.1.2 as follows:

602.1.2 Alternative provisions for mass timber construction.

As an alternative to construction types defined in Sections 602.2 through 602.5, buildings and structures erected or to be erected, altered, or extended in height or area may be classified as construction Type IV-A, IV-B or IV-C in accordance with Chapter 6 of the 2021 International Building Code (IBC). Buildings and structures classified as Type IV-A, IV-B or IV-C shall comply with all provisions of the 2021 International Building Code and 2021 International Fire Code (IFC) specific to mass timber and the construction type of the building or structure, as well as all other applicable provisions of this code including IFC Appendix J, including provisions for buildings of Type IV construction, with the exception that Appendix J of the 2021 IFC shall be deleted and replaced with the following:

**Appendix J**  
**Building Information Sign**  
**Section J101**  
**General**

J101.1 Scope. New buildings shall have a building information sign(s) that shall comply with Sections J101.1.1 through J101.7. Existing buildings shall be brought into compliance with Sections J101.1 through J101.9 when one of the following occurs:

1. The fire department conducts an annual inspection intended to verify compliance with this section, or any required inspection.
2. A change in use or occupancy has occurred.

**Exceptions:**

1. Group U occupancies.
2. One- and two-family dwellings.

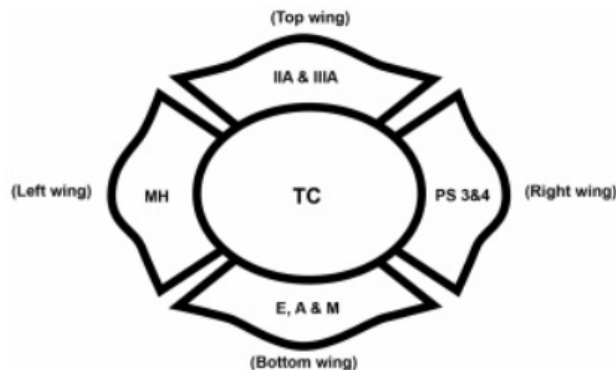
J101.1.1 Sign location. The building information sign shall be placed at one of the following locations:

1. Upon the entry door or sidelight at a minimum height of 42 inches (1067 mm) above the walking surface on the address side of the building or structure.
2. Upon the exterior surface of the building or structure on either side of the entry door, not more than 3 feet (914 mm) from the entrance door, at a minimum height of 42 inches (1067 mm) above the walking surface on the address side of the building or structure.
3. Conspicuously placed inside an enclosed entrance lobby, on any vertical surface within 10 feet (3048 mm) of the entrance door at a minimum height of 42 inches (1067 mm) above the walking surface.
4. Inside the building's fire command center.
5. On the exterior of the fire alarm control unit or on the wall immediately adjacent to the fire alarm control unit door where the alarm panel is located in the enclosed main lobby.

J101.1.2 Sign Features. The building information sign shall consist of all of the following:

1. White reflective background with red letters.
2. Durable Material.
3. Numerals shall be Roman or Latin numerals, as required, or alphabet letters.
4. Permanently affixed to the building or structure in an approved manner.

J101.1.3 Sign Shape. The building information sign shall be a Maltese cross as shown in Figure J101.1.3.



**FIGURE J101.1.3 EXAMPLE OF COMPLETED BUILDING INFORMATION SIGN**

J101.1.4 Sign size and lettering. The minimum size of the building information sign and lettering shall be in accordance with the following:

1. The width and height shall be 6 inches by 6 inches (152 mm by 152 mm).
2. The height or width of each Maltese cross wing area shall be 1 1/8 inches (29 mm) and have a stroke width of 1/2 inch (12.7 mm).
3. The center of the Maltese cross, a circle or oval, shall be 3 inches (76 mm) in diameter and have a stroke width of 1/2 inch (12.7 mm).



4. All Roman numerals and alphabetic designations, shall be 1 1/4 inch (32 mm) in height and have a stroke width of 1/4 inch (6.4 mm).

J101.2 Sign Designations. Designations shall be made based on the construction type, content, hazard, fire protection systems, life safety and occupancy. Where multiple designations occur within a classification category, the designation used shall be based on the greatest potential risk.

J101.3 Construction Type (Top Wing). The construction types shall be designated by assigning the appropriate Roman numeral, and letter, placed inside the top wing of the Maltese cross. The hourly rating provided is for the structural framing in accordance with Table 601 of the International Building Code.

<u>Construction Type</u>	<u>Fire-Resistance Rating</u>
<u>IA – Noncombustible</u>	<u>3 Hours</u>
<u>IB – Noncombustible</u>	<u>2 Hours</u>
<u>IIA – Noncombustible</u>	<u>1 Hours</u>
<u>IIB – Noncombustible</u>	<u>0 Hours</u>
<u>IVA – Heavy timber (HT)</u>	<u>3 Hours</u>
<u>IVB – Heavy timber (HT)</u>	<u>2 Hours</u>
<u>IVC – Heavy timber (HT)</u>	<u>2 Hours</u>
<u>IVHT – Heavy timber (HT)</u>	<u>HT</u>
<u>VA – Combustible</u>	<u>1 Hours</u>
<u>VB – Combustible</u>	<u>0 Hours</u>

J101.4 Fire Protection Systems (Right Wing). The fire protection system shall be designated by determining its level of protection and assigning the appropriate designation to the right wing of the Maltese cross. Where multiple systems are provided, all shall be listed:

<u>AS</u>	<u>Automatic sprinkler system installed throughout</u>
<u>DS</u>	<u>Dry sprinkler system and designated areas</u>
<u>FA</u>	<u>Fire alarm system</u>
<u>FP</u>	<u>Fire pump</u>

<u>FW</u>	<u>Fire wall and designated areas</u>
<u>PAS</u>	<u>Pre-action sprinkler system and designated floor</u>
<u>PS</u>	<u>Partial automatic sprinkler system, and designated floor</u>
<u>CES</u>	<u>Chemical extinguishing system and designated area</u>
<u>CS</u>	<u>Combination sprinkler and standpipe system</u>
<u>S</u>	<u>Standpipe system</u>
<u>NS</u>	<u>No system installed</u>

J101.5 Occupancy Type (Bottom Wing). The occupancy of a building or structure shall be designated in accordance with the occupancy classification found in Section 302.1 of the International Building Code and the corresponding designation shall be placed in the bottom wing of the Maltese cross. Where a building or structure contains a mixture of uses and occupancies, all uses and occupancies shall be identified.

<u>A</u>	<u>Assembly</u>
<u>B</u>	<u>Business</u>
<u>E</u>	<u>Educational</u>
<u>F</u>	<u>Factory or Industrial</u>
<u>H</u>	<u>High Hazard</u>
<u>I</u>	<u>Institutional</u>
<u>M</u>	<u>Mercantile</u>
<u>R</u>	<u>Residential</u>

J101.6 Hazards of Content (Left Wing). The hazards of building contents shall be designated by one of the following classifications as defined in NFPA 13 and the appropriate designation shall be placed inside the left wing of the Maltese cross:

<u>LH</u>	<u>Light hazard</u>
<u>MH</u>	<u>Moderate hazard</u>

<u>HH</u>	<u>High hazard</u>
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J101.7 Tactical Considerations (Center Circle). The center circle shall include the name of the local fire service and, where required, the letters "TC" for "tactical considerations." Where fire fighters conduct preplan operations, a unique situation(s) for tactical considerations shall be identified and the information provided to the fire dispatch communications center to further assist fire fighters in identifying that there is special consideration(s) for this occupancy. Special consideration designations include, but are not limited to:

1. Impact-resistant drywall.
2. Impact-resistant glazing, such as blast or hurricane-type glass.
3. All types of roof and floor structural members including but not limited to post-tension concrete, bar joists, solid wood joists, rafters, trusses, cold-formed galvanized steel, I-joists and I-beams; green roof with vegetation, soil and plants.
4. Hazardous materials (such as explosives, chemicals, plastics).
5. Solar panels and DC electrical energy.
6. HVAC system; and smoke management system for pressurization and exhaust methods.
7. Other unique characteristic(s) within the building that are ranked according to a potential risk to occupants and fire fighters.

J101.8 Sign Classification Maintenance, Building Information. Sign maintenance shall comply with each of the following:

1. Fire departments in the jurisdiction shall define the designations to be placed within the sign.
2. Fire departments in the jurisdiction shall conduct annual inspections to verify compliance with this section of the code and shall notify the owner, or the owner's agent, of any required updates to the sign in accordance with fire department designations and the owner, or the owner's agent, shall comply within 30 days.
3. The owner of a building shall be responsible for the maintenance and updates to the sign in accordance with fire department designations.

J101.9 Training. Jurisdictions shall train fire department personnel on Sections J101.1 through J101.8.

## **Section J102**

### **Referenced Standards**

J102.1 General. See Table J102.1 for standards that are referenced in various sections of this appendix. Standards are listed by the standard identification with the effective date, standard title, and the section or sections of this appendix that reference the standard.

Table J102.1 Referenced Standards

<b><u>Standard Acronym</u></b>	<b><u>Standard Name</u></b>	<b><u>Sections Herein Referenced</u></b>
<u>IBC--21</u>	<u>International Building Code</u>	<u>J101.3, J101.5</u>

<u>NFPA 13--19</u>	<u><i>Installation of Sprinkler Systems</i></u>	<u>J101.6</u>
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INTRODUCED BY:

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Sean Parker  
Member of Council

AMENDMENT NO.   2    
TO  
ORDINANCE NO. BL2023-1994

Mr. President –

I hereby move to amend Substitute Ordinance No. BL2023-1994 by amending Section 1 as follows:

Section 1. That Metropolitan Code Section 16.08.012 is hereby amended by creating new subsection G as follows and renumber the existing subsection G and subsequent subsections accordingly:

G. Section 602 of the 2018 Edition of the International Building Code is hereby amended by adding a new Section 602.1.2 as follows:

602.1.2 Alternative provisions for mass timber construction.

As an alternative to construction types defined in Sections 602.2 through 602.5, buildings and structures erected or to be erected, altered, or extended in height or area may be classified as construction Type IV-A, IV-B or IV-C in accordance with Chapter 6 of the 2021 International Building Code (IBC). Buildings and structures classified as Type IV-A, IV-B or IV-C shall comply with all provisions of the 2021 International Building Code and 2021 International Fire Code (IFC) specific to mass timber and the construction type of the building or structure, as well as all other applicable provisions of this code including IFC Appendix J, including provisions for buildings of Type IV construction, with the exception that J101.3 in Appendix J of the 2021 IBC/IFC shall be deleted and replaced with the following:

J101.3 Construction Type (Top Wing). The construction types shall be designated by assigning the appropriate Roman numeral, and letter, placed inside the top wing of the Maltese cross. The hourly rating provided is for the structural framing in accordance with Table 601 of the International Building Code.

<b><u>Construction Type</u></b>	<b><u>Fire-Resistance Rating</u></b>
<u>IA – Noncombustible</u>	<u>3 Hours</u>
<u>IB – Noncombustible</u>	<u>2 Hours</u>
<u>IIA – Noncombustible</u>	<u>1 Hours</u>
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<u>IVA – Heavy timber (HT)</u>	<u>3 Hours</u>

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<u>IVC – Heavy timber (HT)</u>	<u>2 Hours</u>
<u>IVHT – Heavy timber (HT)</u>	<u>HT</u>
<u>VA – Combustible</u>	<u>1 Hours</u>
<u>VB – Combustible</u>	<u>0 Hours</u>

INTRODUCED BY:

\_\_\_\_\_  
Sean Parker  
Member of Council