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ENTERED
Office of Proceedings
April 19, 2024
Part of
Public Record

April 19, 2024

Ms. Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: STB FD 36447, *Lake Providence Port Commission—Feeder Line
Application-Line of Delta Southern R.R. Located in East Carroll
And Madison Parishes, LA.*

Dear Ms. Brown:

On April 10, 2014, Lake Providence Port Commission (“LPPC”), Southeast Arkansas Economic Development District (“SEAEDD”) and North Louisiana and Arkansas Railroad, Inc. (“NLA”), by and through their counsel of record, filed a Joint Request for Leave to Respond. For the convenience of the Board and the ALJ, notes 2 and 13, the statement is made that true copies of the cited letters were attached. True copies are attached hereto to cure that inadvertent omission. Consistent with the Board’s decision of November 20, 2023, this letter and the copies of the cited letter are being served simultaneously on the Board and ALJ McCarthy, as well as the other “parties of record” on the Service List.

Respectfully submitted,

Richard H. Streeter

Michael F. McBride

/s/ Richard H. Streeter

/s/ Michael F. McBride

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ENTERED

February 18, 2021

Ms. Cynthia Brown, Section Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Office of Proceedings
February 18, 2021
Part of
Public Record

Re: FD 36447, Lake Providence Port Commission—Feeder Line Application—
Line of Delta Southern Railroad Located in East Carroll and Madison
Parishes, Louisiana (**Expedited Handling is Requested**)

Dear Ms. Brown:

On February 5, 2021, Delta Southern Railroad filed its First Set of Interrogatories on Lake Providence Port Commission (LPPC) and Southeast Arkansas Economic Development District (SEAEDD), which are parties to the proceeding. It also filed the same Interrogatories on North Louisiana & Arkansas Railroad (NLA), which is not a party. Filed herewith are several documents. LPPC and SEAEDD, whose offices are closed due to harsh weather conditions in Arkansas and Louisiana are nevertheless expediting their responses and production of documents to DSR and hope to complete them prior to February 25.

(1) NLA's Motion for Protective Order. In its Motion, NLA requests the Board to grant it relief through a protective order against Interrogatories that seek the release of highly confidential and propriety information that is not conceivably relevant to the issues involved in this proceeding. NLA has agreed to waive its objection to specified Interrogatories that would otherwise be barred on the grounds that while 49 C.F.R. § 1114.26 states that any "party may serve upon any other party written interrogatories," 49 C.F.R. § 1101.2(d) states that the term "Party" "will not include persons merely signing certificates of support." NLA requests the Board to expeditiously rule on its stated objections to multiple Interrogatories. The motion is filed at this time in order not to delay the proceeding for which LPPC and SEAEDD have sought expedited handling.

(2) Letter to Cynthia T. Brown from U.S. Senator Bill Cassidy, M.D., dated October 13, 2020, in support of LPPC's feeder application. Through inadvertence, this letter was not filed with LPPC's application on November 12, 2020.

A copy of the executed Grant Agreement dated January 14, 2021 between U.S. Department of Transportation/Federal Railroad Administration and SEAEDD. This document was given to DSR's counsel on February 16, 2021.

I certify that a true copy of the foregoing documents have been served on this date on Thomas J. Healey, counsel of record for DSR via email at THealey@fletcher-sippel.com. If you have any questions, please give me a call.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Counsel for
North Louisiana & Arkansas Railroad
Lake Providence Port Commission
Southeast Arkansas Economic
Development District

RHS:rs

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36447

LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN
EAST CARROLL AND MADISON PARISHES, LA.

MOTION SEEKING ENTRY OF PROTECTIVE ORDER REQUESTED BY
NORTH LOUISIANA & ARKANSAS RAILROAD

North Louisiana & Arkansas Railroad (NLA), by and through counsel, requests the Board, pursuant to 49 C.F.R. § 1114.21, to provide relief through a protective order that will protect NLA, which is a witness and not a party, from further “annoyance, embarrassment, oppression, or undue burden or expense, [and] prevent the raising of issues untimely or inappropriate” to the above- entitled proceeding. Such matters are addressed in the objections to Interrogatories Nos. 1 through 6, 11, 24 and 27.

On February 5, 2021, Delta Southern Railroad (DSR), pursuant to 49 C.F.R. § 1114.26, served its First Set of Interrogatories on the Lake Providence Port Commission (LPPC), the Southeast Arkansas Economic Development District (SEAEDD) and NLA. As herein relevant, section 1114.26 states that “any party may serve upon any other party written interrogatories to be answered by the party service.”

Although NLA's Vice President filed a Verified Statement in support of LPPC's Feeder Line Application, NLA is *not* a party to the proceeding. As stated at 49 C.F.R. § 1101.2(d), the term "Party" "will *not* include persons merely signing certificates of support or witnesses at oral hearings..." (emphasis added). The relief requested is reasonable and should be granted because NLA is aware that if DSR is not able to use Interrogatories as its weapon with which to harass NLA, it will likely use other discovery tactics to continue its unwarranted, burdensome harassment.

GENERAL OBJECTIONS

The following general objections are made with respect to DSR's First Set of Interrogatories.

1. NLA objects to DSR's Interrogatory Requests (hereinafter "Requests") on the grounds that NLA is *not* a party to the proceeding. As stated at 49 C.F.R. 1114.26, "any party may serve upon any other party written interrogatories to the answered by the party served." As defined at 49 C.F.R. § 1101.2(d), the term "Party" "will *not* include persons merely signing certificates of support or witnesses at oral hearings..." (emphasis added). Hence, although NLA's Vice President filed a Verified Statement in support of LPPC's Feeder Line Application, that filing did not cause NLA to be a party.

2. NLA objects to DSR's Requests to the extent they seek disclosure of documents that are protected by the attorney-client privilege, work product doctrine, and/or any other appropriate privilege or doctrine. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claim of privilege or other protection.

3. NLA objects to DSR's Requests to the extent they seek information that is already in DSR's possession, including information regarding all rail traffic that has previously moved over the Segment, which has been in DSR's control since it acquired the Segment from the prior owner pursuant a transaction outside of the Board's jurisdiction in 2015.

4. NLA objects to DSR's Requests to the extent that information that is sought is of a most confidential nature, commercially sensitive, or proprietary, including sensitive nonpublic information relating to third parties that, if produced, could result in the violation of any contractual obligation to third parties or could violate 49 U.S.C. § 11904.

5. NLA objects to DSR's Requests on grounds that they are overly broad and unduly burdensome. DSR's Requests are excessive and repetitive and in many cases seek information that is outside the scope of this proceeding and is not relevant.

6. NLA objects to DSR's Requests to the extent that they seek production of or information covering the 6-year time period from January 1, 2015 to the present time regarding "all Communications," "all movements of rail freight cars," "all projections or assumption of revenue," "all efforts," and "without limitation" relating to matters described in particular requests on grounds that those requests are overly broad and unduly burdensome in light of the nature of this proceeding. NLA will conduct a search for responsive information as indicated in its response to specific requests that is commensurate with the nature and expedited schedule of this proceeding.

7. NLA further objects to DSR's Requests to the extent that they seek production of or information regarding Communications between the Project Partners, namely SEAEDD, DSR, LPPC, and NLA, that were simultaneously exchanged between all Project Partners and, therefore, are in DSR's possession. Relevant documents will be produced by the Respondents.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

NLA objects to the "Instructions" and "Definitions" sections (hereinafter collectively referred to as "the Improper Burdens") included in DSR'S First Set of Interrogatories ("DSR's Discovery Requests") as overly broad, unduly burdensome, vague, ambiguous, and beyond the scope of discovery as defined in 49 C.F.R. §1114.21(a). The Improper Burdens

create obligations that are beyond those required by both the spirit and the letter of the Rules governing discovery and burden NLA with excessive, unnecessary and unreasonable time and expense in responding to DSR's Discovery Requests.

In particular, NLA objects to discovery that seeks information about customers of NLA that is of a most confidential nature and is not relevant or is inappropriate to the issue in contention. In this regard, NLA requests the Board to provide relief that a protective order that discovery not be had regarding the following requests:

INTERROGATORY NO. 1:

Identify all On-Line Customers, and for each such On-Line Customer, Identify its name, its location (by milepost and/or street address), a general description of the commodities it handles, and any information regarding its rail shipping history (including but not limited to commodities shipped, origin or destination for rail shipments, and date or year of shipment).

INTERROGATORY NO. 2:

For each On-Line Customer identified in response to Interrogatory No. 1, Identify all Communications with such On-Line Customer by one or more of the Respondents or MPP.

INTERROGATORY NO. 3:

For each On-Line Customer identified in response to Interrogatory No. 1, Identify any commitment or estimate (on a weekly, monthly, or annual basis) made by or on behalf of such On-Line Customer of rail shipments to be made to or from its facility over the Segment at any point in the future.

As the foregoing Interrogatories make crystal clear, information that is sought from NLA relates to information about "On-Line Customers", which is defined to "mean all rail shippers, or potential rail

shippers, that own or operate facilities that are located adjacent to the Segment that own or operate facilities that are located adjacent to the Segment and that have an existing or retired track from the Segment onto the facility's property." The term "Segment" is defined as meaning "that 20-mile portion of the Corridor extending from milepost 471.0 to milepost 491." The "Segment" is the portion of the rail corridor that LPPC seeks to acquire from DSR.

As the owner of the Segment, DSR already has all of the information that it seeks from NLA. There is no need for DSR to obtain duplicate information from NLA. Second, much of the information regarding Customers is protected from disclosure by 49 U.S.C. § 11904.

Third, because the requests cover the time period from January 1, 2015, the burden associated with production cannot be overstated, especially when the information sought has no relevance to the primary issues involved in the Feeder Line Application. Those issues primarily concern (i) DSR's refusals to interchange traffic with NLA at MP 471 that began in 2017; and (ii) DSR's refusal in August of 2020 to commit to the rehabilitation of the Segment consistent with the express intent of the Public Private Partnership and the terms of the FRA's INFRA Grant. If the Segment is not rehabilitated along with the rest of the Corridor, the goals of the INFRA Grant, cannot be realized.

Fourth, the ultimate goal of the INFRA Grant is to rebuild the *entire* rail corridor between McGehee, Arkansas and Tallulah, Louisiana. The INFRA Grant has recognized that the infrastructure along the entire corridor is inadequate and that the failure to address each section is self-defeating. Hence, information regarding NLA's customers' traffic that moved over the past six years transportation, is not relevant.

Similar arguments apply to the information that is requested in Interrogatories No. 4 through No. 6, which read as follows:

INTERROGATORY NO. 4:

Identify all Non-On-Line Customers that have expressed an interest in routing traffic over the Segment, and for each such Non-On-Line Customer, Identify its name, its location (by milepost and/or street address), a general description of the commodities it handles, and any information regarding its rail shipping history (including but not limited to commodities shipped, origin or destination for rail shipments, and date or year of shipment).

INTERROGATORY NO. 5:

For each Non-On-Line Customer identified in response to Interrogatory No. 4, Identify all Communications with such Non-On-Line Customer by one or more of the Respondents or MPP.

INTERROGATORY NO. 6:

For each Non-On-Line Customer identified in response to Interrogatory No. 4, Identify any commitment or estimate (on a weekly, monthly, or annual basis) made by or on behalf of such Non-On-Line Customer of rail shipments to be made to or from its facility over the Segment at any point in the future.

“Non-On-Line Customers” are defined as meaning “all rail shippers, or potential rail shippers, that own or operate facilities that are not located adjacent to the Segment, whether or not located adjacent to any track operated by NLA.” The information that DSR seeks is of a most

confidential nature and, with respect to movements from the Corridor that have not in the past and will not in the future move over the Segment, are not relevant to the issues involved in this proceeding. As both the Feeder Line Application and the INFRA Grant reflect, there are multiple potential shippers that currently ship by truck that would use rail transportation when the entire Corridor is reopened. The information sought will neither prove or disprove the evidence in the Grant Application regarding potential new rail customers. Furthermore, because DSR has been an active member of the Public Private Partnership since September 2016, it has had access to the information that it now seeks to obtain from NLA in a matter of 20 days after waiting to begin discovery for nearly three months from the date the Feeder Line Application was filed.

INTERROGATORY 11:

Identify (including origin, destination, date(s) and commodity) all movements of rail freight cars (loaded or empty) over the LPPC Segment.

NLA objects to DSR's Requests on grounds that they are overly broad and unduly burdensome. NLA notes that "[u]nless otherwise specified, these Interrogatories cover the time period January 1, 2015 to present." Because movements over the LPPC Segment between MP 471 and 454.8, which is located at the Louisiana/Arkansas Boarder has no impact whatsoever on any issue involved herein, such information is

neither relevant nor likely to lead to the discovery of admissible evidence related to the issues in this proceeding.

INTERROGATORY NO. 24:

Identify all Communications between Respondents or MPP, on the one hand, and “HDR” on the other, regarding the Grant, the Corridor, the Segment, or the Application, as identified on p. 9 of the Application.

NLA’s Response: NLA objects to this Request on the grounds that it is unduly burdensome. Further the information sought is not relevant to any issue involved in this case, which concerns DSR’s refusal within a reasonable time to make the necessary efforts to provide adequate service to shippers who wish to receive rail service over the Segment. The INFRA Grant Application that HDR helped to prepare has not been challenged by DSR and is not at issue in the instant proceeding. And as an active participant in assembling the information, DSR would likely have been a party to most of the Communications.

INTERROGATORY NO. 27:

Identify all versions of the “Consortium Agreement,” as referenced on p. 11 of the Application.

NLA’s Response: Because the Consortium Agreement was prepared and circulated by SEAEDD, NLA must leave it to SEAEDD to respond to this Interrogatory.

NLA’S PARTIAL WAIVER OF OBJECTIONS TO INTERROGATORIES

Consistent with LPPC’s and SEAEDD’s Petition Seeking Expedited Consideration of Feeder Line Application, NLA will waive its objections to Interrogatories Nos. 7 through 10, 12 through 23, 25 through 26, and 28

through 31, and provide information relevant to such Interrogatories subject to stated objections expressed in particular Interrogatories on or before February 25, 2021. In all instances NLA objects to the “time period” from January 1, 2015, which is inherently burdensome and unreasonable, as the Feeder Line Application is focused on events that transpired after January 1, 2017.

INTERROGATORY NO. 7:

Identify all agreements, understandings or customs between NLA and DSR regarding the interchange of freight traffic between them.

INTERROGATORY NO. 8:

Identify all agreements, understandings or customs between NLA and DSR regarding the pricing of freight traffic to be interchanged between them.

DSR is knowledgeable and aware of all the information it seeks in Interrogatories Nos. 7 and 8. The information sought is not conceivably relevant to the instant proceeding which involves DSR’s refusal to commit to the rehabilitation of its tracks that are located in the Segment and its continuous blockage of the tracks with stored cars.

Nevertheless, with respect to Interrogatory No. 7, NLA states that there are no written agreements between NLA and DSR. By custom, DSR (through Craig Huff) and NLA have agreed to leave the interchange cars between the switches at the Lake Providence Port siding.

With respect to Interrogatory No. 8, NLA respectfully submits that DSR is fully informed with respect to any agreements, understandings or customs between NLA and DSR regarding the pricing of freight traffic to

be interchanged between them. NLA priced traffic on its system and DSR priced traffic on its own system.

INTERROGATORY NO. 9:

For each Non-On-Line Customer served directly by NLA with which one or more Respondents or MPP has had Communications regarding the movement of freight traffic by rail over the Segment, Identify the off-line origin or destination to which such freight movement moved or was intended to move. For each such origin or destination, Identify the shortest rail routing such traffic could access to reach the origin or destination if it did not move over the Segment, the mileage difference between effecting such a movement over the Segment as compared to not moving over the Segment, and the carloads of such rail movements to or from such origins or destinations made annually for the Non-On-Line Customer by NLA.

As disclosed in the FY19-20 INFRA Grant application at Figure A-8 through A-10, NLA experienced a major derailment on February 4, 2019 4 miles north of Lake Village (a segment of track that will be rehabilitated with INFRA Grant funds). In June 2019, NLA attempted to arrange the movement of 43 cars of cotton seed from Lake Village to the interchange point with DSR at Lake Providence for delivery to KCS at Tallulah, Louisiana. KCS would have subsequently interchanged the cars with BNSF for ultimate delivery to points in the Pacific Northwest. DSR refused to interchange with NLA at Lake Providence because of its track conditions and because it had approximately 200 cars in storage on its main line. Due to DSR's refusal of service, cottonseed from Lake Village, AR to the Pacific Northwest did not move by rail and had to be trucked to other facilities in Arkansas and Mississippi.

Complex Chemical traffic inbound from the Union Pacific had to be re-routed due to DSR's refusal of service via Union Pacific from McGhee AR to Monroe, LA, or Shreveport LA and then to Kansas City Southern to Tallulah, LA and then DSR. A direct route is 60 miles on NLA to DSR. The shortest route for the re-routed traffic is approximately 92 miles longer to the customer than the direct route. The forced re-routing also involves payments to another Class 1 carrier.

INTERROGATORY NO. 10:

Identify all Communications between one or more Respondents and/or MPP, on the one hand, and any entity currently or formerly using the Segment for rail freight car storage on the other, regarding any aspect of that entity's relationship with DSR, including but not limited to charges for car storage, the term of its car storage agreements(s) with DSR, and alternatives to storing cars on DSR.

NLA's Response: Daniel and Tim Robbins state that NLA has no knowledge, information, or awareness of any such Communications.

INTERROGATORY NO. 12:

Identify all existing or expired embargoes, OPSL Notes, Documents, or other Communications Relating to NLA's ability or willingness to move rail traffic over the LPPC Segment.

NLA's Response: Daniel Robbins states that there are no existing or expired embargoes, OPSL Notes, Documents, or other Communications Relating to NLA's ability or willingness to move rail traffic over the LPPC Segment, which is defined as "that portion of the Corridor between milepost 454.8 and 471.0."

INTERROGATORY NO. 13:

Identify by milepost all segments of rail that have been removed (whether by NLA, LPPC, or otherwise) from the LPPC Segment and not immediately

replaced. For each such segment of rail, Identify the approximately time period between when the rail was removed and when it was replaced, why the segment of rail was removed, by whom it was removed, and by whom it was replaced.

NLA's Response: Daniel and Tim Robbins state that NLA has not removed any segment of rail at any time from the LPPC Segment. NLA is aware that in early March a couple of rails were temporarily removed, without prior notice to NLA, by State of Louisiana authorities that were involved with flood control measures, including the construction of a concrete culvert beneath the Line at milepost 469.65. The tracks were replaced the following day so that NLA could deliver rail traffic to the Lake Providence Port and to pick up cars moving to the north. After the culvert was constructed, the rails were permanently replaced within days.

INTERROGATORY NO. 14:

Identify by milepost all segments of the LPPC Segment that have deemed by any Respondent or FRA as "out of service" pursuant to 49 C.F.R. § 213 et seq., and for each such segment, identify the time period in which the segment was deemed out of service.

NLA's Response: Daniel Robbins states that NLA is unaware of any segment of the LPPC Segment that has been deemed "out of service" by FRA, SEAEDD, or LPPC.

INTERROGATORY NO. 15:

Identify all Communications that any Respondent or MPP has had with each of the entities described below Relating to any aspect of the Application.

NLA's Response: NLA objects to DSR's Requests on grounds that such requests are overly broad and unduly burdensome and that they

seek information that is not maintained by NLA in the normal course of business in any form.

a. On-Line Customers.

NLA's Response: None

b. Non-On-Line Customers.

NLA's Response: After LPPC's decision to file the Feeder Line Application had become public knowledge, I, Daniel Robins, contracted Sam E. Angel, the Vice President of Epstein Gin Company, which NLA has serviced for the past few years to discuss the situation. In response to an inquiry regarding how long it would take the Board to reach a decision and how soon funds would be released so that rehabilitation could begin, I had to advise him that I had no idea but hoped it could be resolved quickly so that we could fully address the issues that NLA has encountered with regard to the need to rehabilitate its own tracks as well as the tracks in the 20-mile Segment that LPPC is seeking to acquire. Sam E. Angel indicated that Epstein Gin would support the Feeder Line Application and hoped it would get the Grant funding moved forward as they needed to be able to ship via rail to reach destinations served by both KCS and UP.

c. the State of Louisiana Department of Transportation and Development.

NLA's Response: None.

d. the USDOT.

NLA's Response: None other than through SEAEDD, which was the contact person with USDOT for NLA and the other members of the Project Partners.

e. East Carroll Parish, Louisiana

NLA's Response: None.

f. Madison Parish, Louisiana.

NLA's Response: None.

INTERROGATORY NO. 16:

Identify all Communications between any Respondent or MPP, on the one hand, and USDOT on the other, regarding the need to spend any portion of the Grant proceeds on the Segment.

NLA's Response: Daniel and Tim Robbins state that NLA has not had any private Communications with USDOT regarding the need to

spend any portion of the Grant proceeds on the Segment or any other matter. NLA has participated in conference calls organized by FRA and SEAEDD to discuss the overall project and the distribution of INFRA Grant funds. Because DSR had recently upgraded its tracks between MP 500 and MP 491, the participants in the calls, which included DSR representatives, focused on the need to use \$8,605,382 of the \$10,516,259 INFRA Grant funds to reconstruct the 82 miles of track, including the 20-mile Segment, that are in most need of funding. At that time, SEAEDD sent a letter to FRA, dated March 17, 2020 that detailed the consensus reached by the Project Partners.

INTERROGATORY NO. 17:

Identify all Communications between any Respondent or MPP, on the one hand, and USDOT on the other, regarding the need to spend any portion of the Grant proceeds to assure that the Corridor provides a contiguous route for the through movement of rail freight.

NLA's Response: NLA objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and not relevant in that the USDOT has determined that Grant proceeds are to be spent on the Segment to assure that the Corridor provides a contiguous route for the through movement of rail freight over the entire Corridor. Daniel and Tim Robbins state that NLA has not had any Communications with USDOT other than through SEAEDD regarding the need to spend a portion of the Grant proceeds to assure that the Corridor provides a contiguous route for the through movement of rail freight. NLA is aware that the INFRA Grant Agreement FRA in its Statement of Work has identified the projects

that have been approved for the expenditure of Grant Funds. Such expenditures along with contributions from the public parties will assure that the entire Corridor provides a contiguous route for the through movement of rail freight.

INTERROGATORY NO. 18:

Identify (i) all time deadlines currently imposed on any Respondent for Expenditure of the Grant, and (ii) any other timelines currently in effect under the Grant.

NLA's Response: Time deadlines are found in the governing Statement of Work prepared by FRA, a copy of which has been provided to counsel for DSR.

INTERROGATORY NO. 19:

Identify all Communications between DSR, on the one hand, and a Respondent or MPP on the other, that any Respondent believes was a commitment by DSR to expend any portion of the Grant on the Segment.

NLA's Response: Daniel and Tim Robbins state that at no time until August 21, 2020 was NLA made aware that DSR was not committed to the expenditure of Grant funds on the Segment.

INTERROGATORY NO. 20:

Identify all Communications or Documents wherein DSR stated that it is or was "incapable" of funding the rehabilitation of the Segment, as alleged on p. 4 of the Application.

NLA's Response: On September 21, 2017, Matt Prince, Director of Operations sent me, Daniel Robbins, an email in response to a spreadsheet that I had forwarded to him in which he stated that "We bowed out of the grant application for the time being as we simply cannot afford to spend the cash right now." At the time, DSR refused to pay any

amount to hire an engineering firm to help prepare the initial INFRA Grant application. Its share of that cost would have been less than \$20,000.00.

INTERROGATORY NO. 21:

Identify the formal operating plan, as referenced on p. 5 of the Application.

NLA's Response: A true copy of the unredacted formal operating plan was filed by LPPC with the Board on December 28, 2020. A redacted Public Version had been earlier filed on December 22, 2020.

INTERROGATORY NO. 22:

Identify all projections or assumptions of loaded railcars to be moved by NLA over the Segment (on a weekly, monthly, or annual basis) if the Application is granted.

NLA's Response: Tim and Daniel Robbins state that NLA has made no projections regarding the number of loaded railcars to be moved over the Segment. Based on past requests for rail service over the Segment that had to be rerouted when DSR refused to interchange with NLA; the support given by potential rail shippers to SEADD and the Project Partners when they applied for the FY 19-20 INFRA Grant, NLA assumes that a need for current and expanded future rail service currently exists and that such need will expand as traffic is diverted from trucking and as new industries locate in the Ports due to the existence of reliable rail service over the entire corridor.

INTERROGATORY NO. 23:

Identify all projections or assumptions of revenue to be earned by NLA for the movement of rail traffic over the Segment (on a weekly, monthly, or annual basis) if the Application is granted.

NLA's Response: As of this date, Tim and Daniel Robbins state that NLA has made no projections regarding the revenue to be earned for the movement of rail traffic over the Segment. Based on past requests for rail service over the Segment that had to be rerouted when DSR refused to interchange with NLA; the support given by potential rail shippers when Project Partners when they applied for the FY 19-20 INFRA Grant, NLA assumes that a need for current and expanded future rail service exists and that such need will expand as traffic is diverted from trucking and as new industries locate in the Ports due to the existence of reliable rail service over the entire corridor so that sufficient revenues will be earned to cover operating expenses.

INTERROGATORY NO. 25:

Identify all Communications or Documents Relating to the efforts of any of the Respondents to purchase the Segment from DSR through negotiation.

NLA's Response: Daniel and Tim Robbins state that NLA has made no attempt to purchase the segment from DSR.

INTERROGATORY NO. 26:

Explain all reasons why DSR was not permitted to participate in the meeting in Washington, D.C. with USDOT regarding the Grant on in Spring, 2020.

NLA's Response: Daniel and Tim Robbins state that NLA has no knowledge of any meeting in Washington, D.C. with USDOT regarding the Grant in Spring, 2020. They are aware that a conference call was initiated by FRA in February, 2020, and that Jon Ryan and John Marino were invited to participate in the call.

INTERROGATORY NO. 28:

Identify the "letter from FRA approving of the requested changes to the scope of work," as referenced on p. 11 of the Application.

NLA's Response: It is NLA's understanding that the June 1, 2020 letter was addressed to Ms. Patrecia Hargrove, who is the Authorized Grantee Official for SEAEDD, which is the Grantee. She serves as the Grantee's point of contact for grant administration and oversees compliance with the terms and conditions in the Grant Agreement.

INTERROGATORY NO. 29:

Identify all efforts, undertaken by any person or entity, to effect "reallocation of the \$3.2 million plus Engineering," as referenced on p. 16 of the Application, including, but not limited to, Communications with USDOT regarding that subject, or Documents reflecting that subject.

NLA's Response: Daniel and Tim Robbins state that NLA has no knowledge or information of such efforts.

INTERROGATORY NO. 30:

Identify the "time restraints on SEAEDD" imposed by the Grant, as referenced on p. 4 of LPPC's and SEAEDD's "Petition Seeking Expedited Consideration."

NLA's Response: NLA has no independent information that is responsive to the question except that which is in the Statement of Work.

INTERROGATORY NO. 31:

Identify each Person providing Documents, information and/or other assistance in responding to these Interrogatories, and for each such Person, Identify the Interrogatory(ies) to which such Person provided Documents, information and/or assistance.

NLA's Response: The following Persons, with the assistance of counsel, are providing documents and other information in response to the Interrogatories: Daniel B. Robbins, Vice President of NLA; Timothy K. Robbins, President of NLA. The Responses indicate the Sources of the Responses if other than Daniel B. Robbins. Copies will be forwarded to counsel for DSR on or before February 25, 2021.

Conclusion

For all of the above stated reasons, the Board should grant NLA's Motion for a Protective Order. The Board is requested to give this request expedited consideration. In seeking expedited consideration, it is duly noted that DSR waited nearly three full months after LPPC's Feeder Application was filed and nearly two full months after the Board found that the Application was substantially complete and conditionally accepted the Application to serve its Interrogatories.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
202-363-2011
rhstreeter@gmail.com

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 18th day of February 2021, I served at true copy of the foregoing on Thomas J. Healey, counsel for Delta Southern Railroad, at THealey@fletcher-sippel.com.

/s/ Richard H. Streeter

BILL CASSIDY, M.D.
LOUISIANA

WASHINGTON, DC OFFICE:
SUITE SH-520
HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5824

United States Senate

COMMITTEES:
FINANCE
HEALTH, EDUCATION, LABOR,
AND PENSIONS
ENERGY AND NATURAL
RESOURCES
VETERANS' AFFAIRS
JOINT ECONOMIC COMMITTEE

October 13, 2020

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Washington, DC 20423

Dear Ms. Brown:

I am writing in support of the application filed by the Lake Providence Port Commission (LPPC) that would enable the Commission to acquire a segment of the McGehee-Tallulah Railroad Corridor between Mile Post 471.0 and Mile Post 491.0 in East Carroll and Madison Parishes, Louisiana. This acquisition is critically needed to ensure that the line of railroad between the subject mileposts, which is currently impassable at points and has not been used to provide rail service since 2017, will be properly reconstructed. Our office has actively championed the efforts of the Southeast Arkansas Economic Development District as we have previously succeeded in securing federal INFRA grant funding for the Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project and I am hopeful that LPPC's Feeder Line application will be similarly approved.

The decision of the U.S. Department of Transportation to provide financial support for this project is notable as it serves as an acknowledgement that the rehabilitation of this Railroad Corridor is of National Significance. The need to rehabilitate this entire Southeast Arkansas/Northeast Louisiana Railroad Corridor as expeditiously as possible is imperative and the approval of LPPC's feeder application is needed to supplement the significant federal investment that has already committed to.

This project, when completed, will improve the reliability and safety of rail service over the entire Railroad Corridor, as well as provide open access to both the United Pacific and Kansas City Southern railroads. This acquisition is critically important to all stakeholders who are reliant upon rail service in this impoverished region of the country and I urge the Board to approve this application.

Sincerely,



Bill Cassidy, M.D.
United States Senator

3800 JACKSON STREET
SUITE 115A
ALEXANDRIA, LA 71301
(318) 448-7176

5555 HILTON AVENUE
SUITE 100
BATON ROUGE, LA 70808
(225) 929-7711

101 LA RUE FRANCE
SUITE 505
LAFAYETTE, LA 70508
(337) 261-1400

1 LAKESHORE DRIVE
SUITE 1155
LAKE CHARLES, LA 70629
(337) 261-1400

3421 N. CAUSEWAY BOULEVARD
SUITE 204
METairie, LA 70002
(504) 838-0130

1651 LOUISVILLE AVENUE
SUITE 123
MONROE, LA 70201
(318) 324-2111

6425 YOURRE DRIVE
SUITE 415
SHREVEPORT, LA 71105
(318) 798-3215



U.S Department of Transportation

Federal Railroad Administration

Grant Agreement

1. RECIPIENT NAME AND ADDRESS
Southeast Arkansas Economic Development District, Inc.
721 S Walnut St
Pine Bluff, AR 71601-4950

2. AGREEMENT NUMBER: 69A36521402520INFAR

3. AMENDMENT NO. 0

4. PROJECT PERFORMANCE PERIOD: FROM TO 09/30/2025

5. FEDERAL FUNDING PERIOD: FROM TO 09/30/2025

1A. IRS/VENDOR NO. 710397601

1B. DUNS NO. 010328060

6. ACTION New

7. CFDA#: 20.314

TITLE

FEDERAL

NON-FEDERAL

TOTAL

8. PROJECT TITLE
Southeast Arkansas and Northeast Louisiana Multimodal Freight
Corridor Improvement Project

9. PREVIOUS AGREEMENTS

0.00

0.00

0.00

10. THIS AGREEMENT

10,516,259.00

10,861,267.00

21,377,526.00

11. TOTAL AGREEMENT

10,516,259.00

10,861,267.00

21,377,526.00

12. INCORPORATED ATTACHMENTS

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

INFRA Terms and Conditions, Attachment 1; Statement of Work, Attachment 2; Deliverables and Approved Project Schedule, Attachment 3; Approved Project Budget, Attachment 4; Applicable Federal Laws and Regulations, Attachment 5

13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT

Nationally Significant Freight and Highway Projects - 23 U.S.C. 117

14. REMARKS

GRANTEE ACCEPTANCE

AGENCY APPROVAL

15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL

Ms. Patrecia Hargrove
Executive Director

17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL

Jamie Rennert
Director, Office of Railroad Policy & Development

16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL

Electronically Signed

16A. DATE

01/15/2021

18. SIGNATURE OF AUTHORIZED FRA OFFICIAL

Electronically Signed

18A. DATE

01/15/2021

AGENCY USE ONLY

19. OBJECT CLASS CODE: 41010

20. ORGANIZATION CODE: 9000000000

21. ACCOUNTING CLASSIFICATION CODES

DOCUMENT NUMBER

FUND

BY

BPAC

AMOUNT

FR-INF-0009-21-01-00

27X8083000

2021

3120190002

10,516,259.00

AWARD ATTACHMENTS

Southeast Arkansas Economic Development District, Inc.

69A36521402520INFAR

1. INFRA Terms and Conditions, Attachment 1
2. Statement of Work, Attachment 2
3. Deliverables and Approved Project Schedule, Attachment 3
4. Approved Project Budget, Attachment 4
5. Applicable Federal Laws and Regulations, Attachment 5

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

Grant Agreement – Attachment 1

INFRA TERMS AND CONDITIONS

December 2020

PART I. ATTACHMENT OVERVIEW AND DEFINITIONS

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

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

Agreement as shown in section 5 of the Agreement cover sheet.

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

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

PART II. GENERAL TERMS AND CONDITIONS

1. Grant Agreement:

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

2. FRA Role:

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

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

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

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

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

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

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

3. Applicability of Title 23, United States Code:

This grant provides funds authorized under 23 U.S.C. § 117; as such Grantee agrees to comply with the requirements in Title 23, United States Code including those in Attachment 5, Applicable Federal Law and Regulations. The Federal Highway Administration will assist FRA in providing technical assistance and in its oversight and administration of this grant, including through participation in monitoring/project delivery meetings with the Grantee as applicable.

4. Grantee Responsibility and Authority:

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

5. Project Scope, Schedule, and Budget:

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

applicable laws, regulations, and published policies.

- a. Scope. The Grantee will furnish all personnel, facilities, equipment, and other materials and services, except as otherwise specified herein, that are necessary to complete the approved Project, in accordance with the representations, certifications and assurances set forth in the Grantee's Applications(s) as applicable, and any amendments thereto, incorporated herein by reference and made a part hereof.
- b. Schedule. The Grantee will complete this Project, as documented in the Statement of Work, within the Project Performance Period. Schedule and Project Performance Period extension requests may be permitted, at the discretion of the FRA, subject to applicable law. The Grantee should request such an extension no later than 90 days prior to the Project Performance Period end date.
- c. Budget. The Grantee will complete the Project within the funding limits and parameters specified on the Agreement cover sheet and the Statement of Work.
 - 1) Project Costs and Funding Contributions. The Federal Contribution, Non-Federal Contribution and total estimated Project costs toward this Project are documented in sections 9, 10 and 11 of the Agreement cover sheet and may not be changed without a written request and justification from the Grantee, written approval from FRA, and an amendment or closeout to the Agreement. FRA will fund the Project at the lesser of the Federal Contribution and the difference between the total actual Project cost and the Non-Federal Contribution. If the actual Project costs are less than the total estimated Project costs, then the Grantee may either:
 - (a) submit for approval a written proposal to use the difference between total estimated Project costs and the actual Project costs, for additional activities that are within the scope of this award, or if such proposal is not submitted or approved,
 - (b) submit for approval the reduced cost in their final reports documenting the reduction to the Federal Contribution by the difference between the total estimated Project costs and the actual Project costs, and refund any amounts owed to FRA as a result.

Notwithstanding the above, funds authorized under 23 U.S.C. § 117 may not exceed 60% of the total Project costs, and Total Federal Assistance may not exceed 80% of the total Project cost, consistent with 23 U.S.C. § 117(j).

 - 2) Non-Federal Contribution. The Grantee is responsible for completing the Project, including providing the Non-Federal Contribution, consistent with the Approved Project Budget and 23 U.S.C. § 117(j), and any other funds necessary for completing the Project. The Grantee affirms that it will complete all actions necessary to provide the Non-Federal Contribution at or before the time that such funds are needed to meet Project expenses. The Grantee also affirms that it has

sufficient funds available to assure operation and maintenance of items funded under this Agreement that it will own or control.

- 3) Use of Limited Non-Highway Funds. The Grantee acknowledges that the DOT selected the Project for award with the expectation that no more than the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in the Approved Project Budget would be subject to the limitation at 23 U.S.C. 117(d)(2). The Grantee will not request reimbursements that are subject to the limitation at 23 U.S.C. 117(d)(2) and, in aggregate, exceed the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” that is listed in the Approved Project Budget.
- 4) Project Budget Detail. The Grantee agrees to carry out the Project according to the Approved Project Budget. The Grantee agrees to obtain the prior written approval from FRA for any revisions to this Approved Project Budget that equal or cumulatively exceed 10 percent of any budget task line item (or pertain to a cost category involving contingency or miscellaneous costs).

e. Property and Equipment.

- 1) The Grantee will operate the property and equipment funded with this Agreement for the originally authorized purpose.
- 2) If the Grantee is not the entity operating the property and/or equipment funded with this Agreement, then the Grantee represents that it will ensure the property and equipment funded with this Agreement will be used for the originally authorized purpose, if necessary, through appropriate arrangements with:
 - i. The entity or entities operating the property and/or equipment funded with this Agreement; and
 - ii. If applicable, the owner of right-of-way used by the property and/or equipment funded with this Agreement.

- f. Pre-Agreement Costs. Grantee may request approval of Pre-Agreement costs incurred after the date DOT notifies the Grantee of its proposed selection for award. Such a request must demonstrate the purpose and amount of the costs, and whether such costs serve as cost-sharing or matching funds. If FRA approves Pre-Agreement Costs, within the constraints described in the Approved Project Budget, the Grantee may seek reimbursement for these costs on or after the start of the Federal Funding Period specified on the Agreement cover sheet. Such costs are allowable for reimbursement only to the extent that they are otherwise allowable under the terms of this Agreement, and are consistent with 2 C.F.R. § 200.458 and 23 C.F.R. 1.9(b).

6. Grant Amendments:

- a. Other than close-out, modifications to this Agreement may be made only in writing, signed by an Authorized Representative for FRA and the Grantee, and specifically referred to as an amendment to this Agreement.
- b. Required modifications include, but are not limited to, the following:
 - 1) the Project's activities differ from those described in the Statement of Work;
 - 2) changes to the Project Performance Period or the Federal Funding Period;
 - 3) the Project's "Other Federal Funds" increases from the amount listed in the Approved Project Budget;
 - 4) the Project's "State Funds," "Local Funds," or "Other Funds" decrease from the dollar amounts listed in the Approved Project Budget regardless of whether the Non-Federal Contribution remains the same; or
 - 5) the "INFRA Grant Amount subject to 23 U.S.C. 117(d)(2)" changes from the amount listed in the Approved Project Budget.
- c. FRA may accept or reject proposals from the Grantee under section 5(c) and this section, and in doing so may elect to consider only the interests of the DOT.

7. Flow Down Provisions:

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

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

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

8. Successors and Assigns:

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

9. Execution:

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

10. Changed Conditions of Performance (Including Litigation):

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

11. Severability:

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

12. Right of FRA to Terminate:

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

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

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

13. Term:

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

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

PART III. GRANT MANAGEMENT TERMS AND CONDITIONS

Performance and Reporting Provisions

14. Deliverables and Products:

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

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

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

15. Quarterly Progress Reports:

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

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

16. Quarterly Federal Financial Reports:

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

17. Interim and Final Performance Reports:

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

If the Grantee proposed Project-Specific Performance or Accountability Measures in response to section A.2.d of the Notice of Funding Opportunity, 83 FR 65789 (December 21, 2018), for funds provided under this Agreement, then FRA will list those measures in an Attachment 6 to this Agreement, and the Grantee agrees to comply with those measures.

18. Project Completion and Closeout:

a. Final Documentation. As soon as the funded Project(s) are complete, the Grantee will

submit a final SF-425, a final Progress Report, a final Performance Report, and a final payment request. Closeout activities by Grantee, including submission of the referenced documents, must be completed no later than 120 days after the end of the Project Performance Period for this Agreement or the FRA termination date.

- b. Excess Payments. If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee will promptly remit that excess and interest as may be required by section 21(f) of this Attachment.
- c. Closeout. Grantees should begin closeout procedures when their Project(s) is complete. The Project closeout period is complete when all of the following is complete: 1) the required Project work is complete; 2) all administrative procedures described in 2 C.F.R. Part 200 (all sections), as applicable, have been completed; and 3) when FRA either notifies the Grantee of closeout or when FRA acknowledges the Grantee's remittance of a proper refund. Project closeout will not invalidate any continuing obligations imposed on the Grantee by this Agreement, including 2 C.F.R. § 200.345, or by the FRA's final notification or acknowledgment.

19. Transparency Act Requirements—Reporting Subawards and Executive Compensation:

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

20. Recipient Integrity and Performance Matters:

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

Submit the information required about each proceeding that:

- 1) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the federal government;

- 2) Reached its final disposition during the most recent five-year period; and
- 3) Is one of the following:
 - A criminal proceeding that resulted in a conviction, as defined in subsection (e) of this section;
 - A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - An administrative proceeding, as defined in subsection (e) of this section, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - Any other criminal, civil, or administrative proceeding if:
 - It could have led to an outcome described in subsection (b)(3) of this section;
 - It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Grantee's part; and
 - The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.
- c. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in section (b) of this section. The Grantee does not need to submit the same information a second time under assistance awards that the Grantee received if the Grantee already provided the information through SAM because the Grantee was required to do so under federal procurement contracts that the Grantee was awarded.
- d. Reporting Frequency. During any period of time when the Grantee is subject to the requirement in subsection (a) of this section, the Grantee must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the Grantee has not reported previously or affirm that there is no new information to report. Recipients that have federal contract, grant and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.
- e. Definitions. For purposes of this section:

- 1) Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- 2) Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- 3) Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - Only the federal share of the funding under any federal award with a Grantee; and
 - The value of all expected funding increments under a federal award and options, even if not yet exercised.

Financial Management Provisions

21. Payments:

- a. Request by the Grantee for Payment. The Grantee's request for payment of the Federal Contribution of allowable costs will be made to FRA and will be acted upon by FRA as set forth in this section. For states, payments are governed by Treasury/State CMIA agreements, and default procedures codified at 31 C.F.R. Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies. Non-states must comply with the provisions of 2 C.F.R. §200.305(b). To receive a Federal Contribution payment, the Grantee must:
 - 1) Demonstrate or certify that it has made a binding commitment of the Non-Federal Contribution, if applicable, adequate when combined with the Federal Contribution, to cover all costs to be incurred under the Project as of the date of the request. The Grantee agrees:
 - i. to refrain from requesting reimbursements subject to the limitation at 23 U.S.C. 117(d)(2) that, in aggregate, exceed the “INFRA Grant Amount Subject to 23 U.S.C. 117(d)(2)” listed in the Approved Project Budget by source;

- ii. to refrain from requesting or obtaining any Federal Contribution that is more than the amount justified by the Non-Federal Contribution that has been provided; and
 - iii. to refrain from taking any action that would cause the proportion of the Federal Contribution at any time to exceed the percentages authorized under this Agreement and 23 U.S.C. §117(j). The phasing or expenditure rate of the Non-Federal Contribution may be temporarily adjusted only to the extent expressly provided in writing by an Authorized Representative of FRA.
 - 2) Submit to FRA all financial and progress reports required to date under this Agreement; and
 - 3) Identify the funding source(s) provided under this Project, if applicable, from which the payment is to be derived.
- b. Reimbursement Payment by FRA. Unless otherwise approved by FRA, FRA will disburse funds to the Grantee on a reimbursable basis, whereby the Grantee will be reimbursed for actual expenses incurred and paid, after the submission of complete and accurate invoices and payment records. The Grantee's request for payment will be made to FRA through the Department of Transportation's Delphi eInvoicing System and will be acted upon as set forth in this section.
- 1) Delphi eInvoicing System first-time users must obtain access to the System by contacting the Financial Analyst. Additional information on the System can be found at www.dot.gov/cfo/delphi-einvoicing-system.html.
 - 2) Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FRA will authorize payment by direct deposit, provided the Grantee: (i) is complying with its obligations under this Agreement; (ii) has satisfied FRA that it needs the requested Federal Contribution for the period covered by the payment request (as identified on the Standard Form 270 Request for Advance or Reimbursement (SF-270)); and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FRA may reimburse allowable costs incurred by the Grantee up to the maximum amount of the Federal Contribution.

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

If the Grantee fails to adhere to the foregoing "Reimbursement Payment by

FRA” requirements of this Agreement, FRA may withhold funding disbursements.

c. Allowable Costs. FRA will reimburse the Grantee's expenditures, within the Federal Funding Period, only if they meet all of these requirements:

- 1) Conform to the Project description, the Statement of Work, the Approved Project Budget, and all other terms of this Agreement;
- 2) Be necessary in order to accomplish the Project;
- 3) Be reasonable for the goods or services purchased;
- 4) Be actual net costs to the Grantee (i.e., the price paid minus any applicable credits, refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);
- 5) Be incurred (and be for work performed) within the Project Performance Period, unless specific authorization from FRA to the contrary is received in writing;
- 6) Unless permitted otherwise by federal statutes or regulation, conform to federal guidelines or regulations and federal cost principles, as set forth in 2 C.F.R. Subpart E § 200.400 – 200.476.
- 7) Be satisfactorily documented; and
- 8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the Grantee, and those approved or prescribed by the Grantee for its subrecipients and contractors.

d. Disallowed Costs. Disallowed costs include the following:

- 1) Any Project costs incurred, activities undertaken, or work performed outside of the Project Performance Period, unless specifically authorized by FRA in writing, allowed by this Agreement, or otherwise permitted by federal law or regulation;
- 2) Any costs incurred by the Grantee that are not included in the latest Approved Project Budget; and
- 3) Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FRA.

The Grantee agrees that reimbursement of any cost under this section does not constitute a final FRA decision about the allowability of that cost and does not constitute a waiver of any violation by the Grantee of the terms of this

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

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

22. Accounting Procedures:

- a. Project Accounts. The Grantee will establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 2 C.F.R. §§ 200.302, 200.303, and 200.305.
- b. Funds Received or Made Available for the Project. Grantees other than states will follow the provisions of 2 C.F.R. § 200.305(b) with respect to the use of banks and other institutions as depositories of any advance payments that may be received under this Agreement. States will follow the provisions of 2 C.F.R. § 200.305(a).
- c. Documentation of Project Costs and program income. All costs charged to the Project, including any approved services contributed by the Grantee or others, will be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee will also maintain accurate records of all program income derived from Project implementation.
- d. Checks, Orders, and Vouchers. The Grantee will ensure that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project are clearly identified with a Grant Agreement

number, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

23. Program Income:

The Grantee is encouraged to earn income to defray Project costs, where appropriate, and should work with the assigned FRA Grant Manager to determine how this income may be applied to the grant, in accordance with 2 C.F.R. § 200.307 and 2 C.F.R. § 1201.80. Program income not deducted from total allowable costs may be used only for the purposes and under the terms and conditions established in this Agreement. Records of program income should be maintained consistent with subsection 22(c) of this Attachment.

Project Management Provisions

24. Environmental Protection:

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

conducted to support Project construction and operation (e.g., any commitments included in a Memorandum of Agreement executed pursuant to Section 106 of the NHPA).

- d. Revisions to Minimization, Avoidance or Mitigation Measures. The Grantee must provide FRA with written notice if it has not, or cannot, implement any of the minimization, avoidance or mitigation measures identified in subsection (c). Upon receiving such notice, FRA will provide the Grantee direction in writing, which may include substitute mitigation measures. FRA may also revise its categorical exclusion, Finding of No Significant Impact, or Record of Decision.

25. Property, Equipment and Supplies:

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

- a. General Federal Requirements. The Grantee will comply with the property standards of 2 C.F.R. §§ 200.310 through 200.316, including any amendments thereto, and other applicable guidelines or regulations. Exceptions to the requirements must be specifically approved by FRA in writing. The Grantee will use Project real property, as defined in 2 C.F.R. § 200.1, in accordance with the Property Standards of 2 C.F.R. § 200.311. Notwithstanding 2 C.F.R. § 200.313, subrecipients of states will comply with 2 C.F.R. § 1201.313 with respect to the use, management and disposal of equipment acquired under this Agreement.
- b. Maintenance. The Grantee agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- c. Records. The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section.
- d. Transfer of Project Property, Equipment or Supplies. The Grantee agrees that FRA may require the Grantee to transfer title to, or direct the disposition of, any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as required by 2 C.F.R. §§ 200.311 – 200.316.
- e. Withdrawn Property, Equipment or Supplies. If any Project property, equipment, or supplies are not used for the Project for the duration of their useful lives, as determined by FRA, whether by planned withdrawal, misuse or casualty loss, the Grantee agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies will be in accordance with 2 C.F.R. §§ 200.311 – 200.316.
- f. Encumbrance of Project Property or Equipment. Unless expressly authorized in writing by FRA, the Grantee agrees not to:

- 1) Execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would dispose of or encumber the Grantee's title or other interest in any Project property or equipment; or
- 2) Obligate itself in any manner to any third party with respect to Project property or equipment. The Grantee will refrain from taking any action or acting in a manner that would adversely affect FRA's interest or impair the Grantee's continuing control over the use of Project property or equipment.

26. Relocation and Land Acquisition:

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

27. Flood Hazards:

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

28. Procurement:

- a. Federal Standards. The Grantee may acquire property, goods or services in connection the Project. If the Grantee is a state, then it will use its own procurement procedures that reflect applicable state laws and regulations in compliance with 2 C.F.R. § 200.317. A subrecipient of a state will follow such policies and procedures allowed by that state when procuring property and services under this award consistent with 2 C.F.R. § 1201.317, notwithstanding 2 C.F.R. § 200.317. An entity that is not a state or a subrecipient of a state will comply with 2 C.F.R. §§ 200.318 – 200.327, and applicable supplementary U.S. DOT or FRA directives and regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.
- b. Cargo Preference -- Grantee will comply with the U.S. DOT Maritime Administration regulations, 46 C.F.R. Part 381 as follows:

- 1) Use of United States-flag vessels:
 - Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this Agreement, and which may be transported by ocean vessel, will be transported on privately owned United States-flag commercial vessels, if available.
 - Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section will be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- 2) The Grantee will insert the following clauses in contracts let by the Grantee in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project.

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

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

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

or more, the Grantee agrees to:

- 1) specify in any announcement of the awarding of the contract for such goods or services the amount of Federal Contribution that will be used to finance the acquisition; and
 - 2) express said amount as a percentage of the total costs of the planned acquisition.
- d. Debarment and Suspension; and Drug-Free Work Place. The Grantee agrees to obtain certifications on debarment and suspension from its third-party contractors and subrecipients and otherwise comply with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. Part 1200, and Government-wide Requirements for Drug-Free Workplace (Grants), 49 C.F.R. Part 32.
- e. Reserved.

29. Rights in Intangible Property:

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

Federal purposes.

- d. Research Data. For any research data (as defined in 2 C.F.R. § 200.315(e)(3)) acquired under a grant or contract, FRA has the right to:
 - 1) Obtain, reproduce, publish, or otherwise use the research data produced under this Agreement; and
 - 2) Authorize others to receive reproduce, publish, or otherwise use such data.
- e. Freedom of Information Act (FOIA). Responding to a FOIA request under this Agreement will be handled in accordance with the provisions of 2 C.F.R. § 200.315(e), including any definitional provisions set forth therein. The “Federal awarding agency” is FRA, and the “non-Federal entity” is the Grantee for purposes of this clause.

30. Acknowledgment of Support and Disclaimer:

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

31. Reprints of Publications:

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

Documentation and Oversight Provisions

32. Record Retention:

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

33. Audit and Inspection.

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

34. Fraud, Waste or Abuse:

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

35. Site Visits:

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

36. Safety Compliance:

- a. To the extent applicable, the Grantee agrees to comply with any Federal regulations,

laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety in general, and in the performance of this Agreement, in particular.

- b. U.S. DOT has determined that Section F.2.a of the NOFO does not apply to this Project because it is for improvements on or for a railroad.

37. Electronic and Information Technology:

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

Other Legislative and Regulatory Provisions

38. Domestic Preferences for Procurements:

Under 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, the Grantee should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Grantee will include the requirements of 2 C.F.R. § 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

39. Ethics:

- a. Standards of Conduct. The Grantee will maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by the Federal Contribution provided through this Agreement. The code or standards will provide that the Grantee’s officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subrecipients or contractors. The Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by state or local law or regulations, such code or standards will provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee’s officers, employees, board members, or agents, or by subrecipients or their agents.
- 1) Personal Conflict of Interest. The Grantee’s code or standards must provide that no employee, officer, board member, or agent of the Grantee may participate in the selection, award, or administration of a contract supported by the Federal Contribution if a real or apparent conflict of interest would be

involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

- 2) Organizational Conflicts of Interest. The Grantee's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.
- b. Existing Codes or Standards. This section does not require the Grantee to implement a new code or standards of conduct where a state statute, or written code or standards of conduct, already effectively covers all of the elements of Section 39(a) of this Attachment.

40. Civil Rights:

The Grantee agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives. These include, but are not limited to, the following:

(a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, 42 U.S.C. § 2000d *et seq.*, the DOT Title VI regulations at 49 C.F.R. part 21, which prohibits discrimination on the basis of race, color or national origin; (b) the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the DOT ADA regulations at 49 C.F.R. parts 37-38, section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and the DOT regulations at 49 C.F.R. part 27, which prohibits discrimination on the basis of disability; (c) the Age Discrimination in Employment Act, as amended (42 U.S.C. §§ 621 – 634), and the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (d) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex; (e) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (f) any nondiscrimination regulation implemented relating to the above stated statutes; (g) any nondiscrimination Executive Order implemented relating to the above stated statutes; (h) any U.S. DOT Order implemented relating to nondiscrimination, and (i) any other applicable federal laws, regulations, requirements, and guidance prohibiting discrimination.

41. SAM Registration and DUNS Number:

The Grantee is responsible for maintaining an active SAM Registration and Data Universal Numbering System (DUNS) Number and ensuring that all SAM/DUNS information is current throughout the lifecycle of this Agreement, in accordance with

2 C.F.R. § 25.200(b)(2). If SAM/DUNS information becomes inactive, expired, or incorrect, the Grantee will not be able to do any grant-related business with FRA, including the obligation and/or payment of Federal grant funds, and FRA may take appropriate action to terminate this Agreement, in accordance with the terms of this Agreement.

42. Freedom of Information Act:

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

43. Text Messaging While Driving:

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

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

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

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

44. Trafficking in Persons:

- a. Provisions applicable to a recipient that is a private entity.

- 1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 - 2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - a) Associated with performance under this award; or
 - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- 1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - a) Associated with performance under this award; or
 - b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on

Governmentwide Debarment and Suspension (Nonprocurement),”
as implemented by our agency at 2 C.F.R. part 1200.

c. Provisions applicable to any recipient.

- 1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- 2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
- 3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

- 1) “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 3) “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.
 - ii. Includes:
 - (a) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
 - (b) A for-profit organization.

- 4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).
- 5) “Recipient” and “subrecipient” include for-profit entities for the purpose of this award term only.

PART IV. GOVERNING LAWS AND REGULATIONS

45. Governing Laws and Regulations:

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Grantee acknowledges and agrees that its performance will be governed by and in compliance with this Agreement, 2 C.F.R. §§ 200.1 – 200.521, including Appendices I – XII, and DOT’s implementing regulations at 2 C.F.R. Part 1201.
- b. Application of Federal, State, and Local Laws and Regulations.
 - 1) Federal Laws and Regulations. The Grantee understands that Federal laws, regulations, policies, and related administrative practices in place on the date this Agreement was executed may be modified from time to time. The Grantee agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing federal requirements, the Grantee agrees to include in all subawards and contracts financed with all or part of the Federal Contribution or Non-Federal Contribution under this Agreement, specific notice that Federal requirements may change and the changed requirements will apply to the Project, as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
 - 2) State, Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts state, territorial, or local law, nothing in this Agreement will require the Grantee to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable state, territorial, or local law; however, if any of the provisions of this Agreement violate any applicable state, territorial, or local law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable state, territorial, or local law, the Grantee agrees to notify the FRA immediately in writing in order that FRA and the Grantee may

make appropriate arrangements to proceed with the Project.

- 3) The Grantee is required to comply with all applicable Federal laws, regulations, executive orders, policies, guidance, and requirements as they relate to the application, acceptance, and/or use of funds under this Agreement which may include, but are not limited to those referenced in this Agreement. The Grantee shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- c. Environmental Protection. In addition to complying with other environmental protection requirements described in this Attachment, the Grantee will ensure that all work conducted under this Agreement complies with all applicable laws, regulations, executive orders, and policies related to environmental protection and historic preservation, including, but not limited to: Section 114 of the Clean Air Act (42 U.S.C. § 7414); and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318).
 - d. Fixing America's Surface Transportation Act, section 1105 (23 U.S.C. § 117).

Attachment 2

STATEMENT OF WORK

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

Nationally Significant Freight and Highway Projects (INFRA) Program, Fiscal Year 2019

I. AUTHORITY

Authorization	23 U.S.C. § 117(c)(1)(E) and (d)(1)(A)(iii)
Funding Authority/Appropriation	Contract authority in FAST Act Sec. 1101(a)(5), Pub. L. 114-94 (December 4, 2015)
Notice of Funding Opportunity	Nationally Significant Freight and Highway Projects (Infrastructure for Rebuilding America (INFRA) Grants) for Fiscal Year 2019; 83 FR 65789; Dec. 21, 2018

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

II. BACKGROUND

This Agreement between the Federal Railroad Administration (FRA) and the Southeast Arkansas Economic Development District (“SEAEDD” or “Grantee”) provides \$10,516,259 (“Federal Contribution” or “INFRA grant”), which, when combined with \$10,861,267 in matching funds, will fund the partial redevelopment of a multimodal freight corridor, through a mixture of rail rehabilitation, railroad bridge upgrades, and new rail infrastructure improvements (together and as further described herein and in the tasks below, the “Project”), which is located along a 91.3-mile continuous short line railroad corridor known as the McGehee-Tallulah Railroad Corridor, that parallels the Mississippi River, between the city of McGehee in rural southeast Arkansas on the northern end and the city of Tallulah in rural northeast Louisiana on the southern end (the “Corridor”).

The Project is a unique public-private partnership between the Grantee, which is a state economic development agency, two public ports (Lake Providence Port, Madison Parish Port), and two private short line railroads (North Louisiana & Arkansas Railroad (NLA) and Delta Southern Railroad¹ (DSR)) (collectively “Project Partners”). The McGehee-Tallulah Railroad Corridor was developed in the early 1900s. It connects to two Class I railroads with regional and national connections: The Union Pacific Railroad (UP) in McGehee, AR, and the Kansas City Southern Railway (KCS) in Tallulah, LA. At points within the Corridor, the rail line is connected to local short line railroad Arkansas Midland Railroad in McGehee, AR; and the NLA and DSR connect with each other in Lake Providence, LA.

Much of the Corridor had been closed or underutilized for approximately 15 years, which is consistent with the overall economic decline of the region. During this period, there was a decrease in demand for freight rail service. Eventually, rail service ceased due to difficulties operating over substandard rail infrastructure, and DSR filed to abandon the majority of the rail corridor from Lake Providence Port northward to McGehee due to unprofitability.

In an effort to save the corridor from abandonment, the Grantee, NLA, DSR and the Lake Providence Port Commission (owner of Lake Providence Port) acquired various segments of the Corridor from UP between 1989 and 2011. Their goal was to preserve rail service to spur economic development and to provide transportation connectivity with the Class I railroads. Portions of the rail line were partially rehabilitated by the Grantee and its partners and placed back into continuous service in 2016. Although partially rehabilitated, some of the track on the main line is comprised of the original lightweight rail of 85 pounds (lb.) and is classified as FRA “Excepted” Track limiting train operations to less than 10 miles per hour (mph). Other portions include 115 lb. rail updated to Class 1 Track (max. speed is 10 mph) and Class 2 Track (max. speed is 25 mph). Furthermore, some of the railroad bridges have a load rating of 263,000 lb. gross weight and cannot support 286,000 lb. gross weight railcars. These conditions and constraints of the existing legacy tracks and railroad bridges provide impediments to accommodating loaded freight cars with a maximum allowable gross weight of 286,000 lbs. along the entire Corridor.

III. OBJECTIVE

The objective of the Project is to upgrade the Corridor and its connecting branch lines to two ports to improve rail operations, and leverage recent rehabilitation investments and construction of new infrastructure to benefit a rural region and help catalyze greater opportunities for economic development. This will be accomplished through the rehabilitation of track and railroad bridges, and the construction of new track in certain areas.

Project benefits include:

- Enhanced railroad transportation operating capacity, efficiency, and safety
- Improved rail access/connectivity and capacity
- Enhanced economic development through additional rail business opportunity throughout the entire corridor

¹ As of the date of this Agreement, Delta Southern Railroad is negotiating the sale of its portion of the railroad mainline to be improved under this Agreement.

IV. PROJECT LOCATION

The Project limits are milepost (MP) 408.9 on the north end (McGehee, AR) to MP 500.2 in Tallulah, LA (MP 454.8 is the Arkansas-Louisiana State Line). The Project is located in Desha and Chicot Counties in Arkansas, and in East Carroll and Madison Parishes in Louisiana.

The Grantee organized the Corridor into the following four segments: Segment A (MP 408.9 to MP 433.0); Segment B (MP 433.0 to MP 454.8); Segment C (MP 454.8 to MP 471.0); and Segment D (MP 471.0 to MP 500.2).

V. DESCRIPTION OF WORK

Task 1: Project Administration

Project Administration includes such work that is necessary for the Grantee to oversee the management of this Project, including grant administration activities.

The Grantee will prepare a Detailed Project Work Plan, Budget, and Schedule for the following tasks, which may result in amendments to this Agreement. The Detailed Project Budget will be consistent with the Approved Project Budget but will provide a greater level of detail. The Detailed Project Work Plan will describe, in detail, the activities and steps necessary to complete the tasks outlined in the Statement of Work. The Detailed Project Work Plan will also include information about the project management approach (including team organization, team decision-making, roles and responsibilities and interaction with FRA), as well as address quality assurance and quality control procedures. In addition, the Detailed Project Work Plan will include the Project Schedule (with Grantee and agency review durations), a detailed Project Budget, and the anticipated National Environmental Policy Act (NEPA) class of action. The Grantee will also submit a copy of its executed Project agreements governing the Project delivery roles and responsibilities between the Grantee and the Project Partners. The Detailed Project Work Plan, Budget, and Schedule will be reviewed and approved by the FRA.

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

The Grantee will complete reports described in Attachment 1 and perform the close-out process for the Project. The closeout process includes making the final checks on contractor work, if applicable, collecting and checking final documentation, making final payment, and submitting a final performance report, along with other final reports as required under this Agreement, to the FRA within 90 days of the Project Performance Period end date. The Final Performance Report will describe the cumulative activities of the project, including a complete description of the Grantee's achievements with respect to the project objectives and milestones, overall budget/financial status, benefits obtained from the grant, and service outcomes.

Task 1 Deliverables:

- Detailed Project Work Plan, Budget, and Schedule
- SEAEDD - Project Partners project agreement
- Final Performance Report

Task 2: Environmental Review

The Grantee will complete, and submit to FRA for approval, the documentation FRA determines is necessary to comply with the NEPA and related environmental laws (collectively, “environmental documentation”). Upon request from FRA, the Grantee will submit a Project description, appropriate Project maps, or any other relevant background information, which will later be incorporated into the NEPA documentation. This information may be submitted with the Detailed Project Work Plan described in Task 1 above. FRA will use this documentation to provide the Grantee with additional direction regarding the required environmental documentation. The Grantee will submit an environmental review schedule for the completion of the environmental documentation. Once FRA accepts the environmental schedule, the Grantee will complete all required environmental documentation that covers all Project components in Segments A - D.

Task 2 Deliverables:

- Environmental review schedule
- Draft NEPA documentation
- Final NEPA documentation
- Environmental Permits, if applicable

Task 3: Engineering Design

- Subtask 3a: Track chart package for tie installation
The Grantee will prepare the Detailed Project Work Plan, track charts, maps, or tables that identify the limits of work where the tie replacement will be done; and track standards that show the railroad’s typical tie spacing and spiking patterns. The Grantee will update the Detailed Project Work Plan with the as-built information post-installation, as necessary.
- Subtask 3b: Track chart package for rail replacement
The Grantee will prepare the Detailed Project Work Plan, track charts, maps, or tables that identify the limits of work where the rail replacement will be done; and track standards that show the railroad’s typical tie spacing and spiking patterns. The Grantee will update the Detailed Project Work Plan with the as-built information post-installation, as necessary.

- Subtask 3c: Final Design Package for rehabilitation of railroad bridges
Since the proposed railroad bridge improvements will be in-kind² repairs, the Grantee will submit the Final Design Package for rehabilitation of railroad bridges which will consist of the scope (or statement of work) component and specifications of the Request(s) for Bid that provides bidders the necessary information to develop a cost estimate and schedule.

For each bridge, the Grantee will submit the bridge load rating report that was done as a preliminary assessment of the structural rehabilitation improvements required to upgrade the bridges to support 286,000 lb. gross weight railcar loading.

- Subtask 3d: Preliminary Engineering Design for new tracks

The Grantee will complete the following for FRA approval:

- Provide scaled maps or scaled aerial photography of existing conditions at a scale of one inch = 100 to 500 feet depending on complexity of location.
- Prepare 30% preliminary engineering design plan drawings overlaid on maps/photography showing, as applicable, existing right-of-way limits along with railroad ownership; topography; design criteria and specifications; proposed track changes including removals and installations; track centers, track speeds, turnout sizes curve and spiral data; vertical profiles and grades of existing and proposed construction; typical cross sections to scale showing the proposed work to existing conditions for each change in track configuration and at other locations requiring retaining walls or right-of-way acquisitions; and public and private at-grade crossings with signal locations, if applicable.
- Prepare a Basis of Design Report (BOD) that describes the technical approach planned for the project as well as the design parameters to be used. The BOD includes: the applicable government laws and regulations; process specifications; owner's standard specifications and details; industry codes and standards; and contractor specifications, which are listed in the order of precedence in case of conflict in requirements. Prepare project specifications that contain the written instructions for constructing all of the project work, outlining in detail a description of the work, materials, construction methods, method of measurement, basis of payment, and the pay item for each item of work involved in the contract. The Project specifications should include: standard specifications, supplemental specifications, developmental specifications, special specifications and reference specifications.

² In-kind repairs mean that new materials used in repairs or replacements match the material being replaced in composition, design, color, texture, and other visual and material properties. Substitute materials should be used only on a limited basis and only when they will match the appearance and general properties of the historic material and will not damage the historic property.

- Ensure that design submittals include a title sheet and/or transmittal letter identified with a drawing revision number or date; an index identifying various plan sheets comprising the drawing set; a legend of symbols or abbreviations.
 - Obtain signature approval of the engineering plans cover sheet by all appropriate stakeholders (Madison Parish Port, Port of Lake Providence, DSR, and NLA, as appropriate) impacted by the proposed track configuration plan. And, the cover sheet should be stamped by a professionally licensed engineer in the state of Louisiana.
 - Preliminary Engineering Package submitted to FRA should include design plans (30% design level), design specifications, BOD report, and the engineer's cost estimate and construction schedule.
- Subtask 3e: 100% Final Design for new tracks
The Grantee will advance the 30% PE design to 100% Final Design and submit to FRA for acceptance. The deliverable for this task will be 100% Final Design Package for New Track which will include design plans, updated BOD report, as appropriate, updated engineer's cost estimate and construction schedule.

The engineering plans cover sheet will include signatures from all appropriate stakeholders (Madison Parish Port Commission, Port of Lake Providence, DSR, as appropriate) impacted by the proposed track configuration plan. And, the cover sheet should be stamped by a professionally licensed engineer in the state of Louisiana.

Task 3 Deliverables:

- Final Design Package for rehabilitation of railroad bridges
- Bridge load rating report for rehabilitation of railroad bridge
- Preliminary Engineering Package for new tracks
- Final Design Package for new tracks

Task 4: Construction

The Grantee will complete the construction activities, as described in the Detailed Project Work Plan and in Subtasks 4a and 4b, within the Corridor.

Subtask 4a: Track Construction

- Segment A (MP 408.9 to MP 433.0):
 - Rehabilitate approximately 24 miles of track which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast and other track materials (OTM) (spikes, plates, track anchors etc.), as needed
 - Rehabilitate a siding in Lake Village, AR and a siding at the Macon Lake rail station

- Segment B (MP 433.0 to MP 454.8):
 - Rehabilitate approximately 22 miles of track which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast, and OTM as needed
- Segment C (MP 454.8 to MP 471.0):
 - Rehabilitate approximately 16 miles of track which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast, and OTM as needed
 - Install approximately 6,600 ft. of new track for the proposed NLA-DSR interchange
 - Install approximately 1,550 ft. of new track to the Consolidated Grain and Barge Co. facility in Lake Providence Port
 - Rehabilitate approximately 700 ft. of track and install approximately 1,000 ft. of new track to Shelburn Grain west of U.S. 65;
 - Install approximately 350 ft. of lead track to the John Deere facility in Lake Providence Port
 - Install approximately 1,500 ft. extension of the siding track at the Lake Providence Pass
 - Rehabilitate approximately 700 ft. of track and install approximately 1,000 ft. of new track to the Lansing Grain in Lake Providence Port
- Segment D (MP 471.0 to MP 500.2):
 - Rehabilitate approximately 20 miles of track within this Segment which includes upgrading the existing Excepted track to Class 2 track by replacing rail, ties, ballast, and OTM as needed.
 - Install new second track (approximately 12,000 feet) of the lead track to facilitate port-rail connectivity and ease congestion between the DSR mainline and the Madison Parish Port.

Subtask 4b: Railroad Bridge Construction

The Grantee will complete in-kind² repairs, as described in the Detailed Project Work Plan, on two railroad bridges in Segment A and two railroad bridges in Segment B to accommodate 286,000 lb. gross weight railcars.

Following the completion of the Subtask, the Grantee will obtain a post-rehabilitation bridge load rating for each bridge, prepared by a licensed engineer, that indicates the bridges are rated for 286,000 lb. gross weight railcar loading.

Task 4 Deliverables:

- Post-rehabilitation load rating report for each bridge

VI. ENVIRONMENTAL COMPLIANCE

FRA has evaluated the actions covered in this grant in accordance with NEPA (NEPA; 42 U.S.C. 4321 et seq.), other environmental statutes, related regulatory requirements, and FRA's NEPA implementing regulations (23 CFR part 771, Environmental Impact and Related Procedures). FRA has determined that the actions funded under this grant for the preliminary engineering and compliance with NEPA and related laws and regulations are categorically excluded from detailed environmental review pursuant to 23 CFR 771.116 (c) (1), (3), and (4). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

In analyzing the applicability of a CE, FRA also considered whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. In accordance with 23 CFR 771.116 (a) and (b), FRA has further concluded that no unusual circumstances exist with respect to development of preliminary engineering/NEPA documentation funded under this grant that might trigger the need for a more detailed environmental review.

The obligation of the funds for final design and construction does not predetermine or prejudice the outcome of the NEPA process. The Grantee may not commence any final design or construction activities until FRA has issued a written notice to proceed that will be informed by the final NEPA document. As appropriate, FRA may require an amendment to this Agreement for consistency with the final NEPA decision.

In addition, any final design and/or construction activities must be supported by, and be consistent with, a final FRA NEPA document (i.e., CE determination, Finding of No Significant Impact, or Record of Decision). If the Project leads to work outside of that considered by FRA in making its NEPA determination that may affect the environment, the Grantee agrees that it will not allow the work to begin until it has informed FRA of such work, and received a written notice to proceed. Before providing such notice to proceed to Grantee, FRA will determine what, if any, additional environmental review is required.

VII. PROJECT COORDINATION

The Grantee shall perform all tasks required for the Project through a coordinated process, which will involve affected railroad and right-of-way owners, operators, and funding partners.

VIII. PROJECT MANAGEMENT

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

- Participate in a project kickoff meeting with FRA
- Complete necessary steps to hire a qualified consultant/contractor to perform required Project work
- Hold regularly scheduled Project meetings with FRA
- Inspect and approve work as it is completed
- Review and approve invoices as appropriate for completed work
- Perform Project close-out audit to ensure contractual compliance and issue close-out report
- Submit to FRA all required Project deliverables and documentation on-time and according to schedule, including periodic receipts and invoices
- Comply with all FRA Project reporting requirements, including, but not limited to providing the following information in the quarterly progress reports, which will also satisfy performance measurement reporting:
 - a. Status of project by task breakdown and percent complete
 - b. Changes and reason for changes in and updated versions of Detailed Project Work Plan, Budget, and Schedule
 - c. Description of unanticipated problems and any resolution since the immediately preceding progress report
 - d. Summary of work scheduled for the next progress period
- Read and understand the Terms and Conditions of this Agreement (Attachment 1)
- Notify FRA of changes to this Agreement that require written approval or modification to the Agreement

Attachment 3

DELIVERABLES AND APPROVED PROJECT SCHEDULE

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

The Project Performance Period will be as stated in section 4 on the cover sheet of this Agreement (page 1). Unless otherwise approved, requests for extensions of the Project Performance Period must be submitted not later than 90 days before the end of the Project Performance Period, consistent with Attachment 1.

Approved Project Schedule

Task #	Subtask #	Task Name	Estimated Start Date	Estimated Completion Date
1		Project Administration	Continuous throughout duration of Agreement	
2		Environmental Review	1/01/2021	7/31/2021
3		Engineering	1/01/2021	4/30/2022
4		Construction		
	4a	Track Construction	12/01/2021	4/30/2024
	4b	Railroad Bridge Construction	12/01/2021	4/30/2024

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

Task #	Deliverable Description	Estimated Due Date
1	Detailed Project Work Plan (including budget and schedule)	Within 30 days of Agreement date
1	Project Agreement	Within 30 days of Agreement date
1	Final Performance Report	Within the 120-days of the Project performance period end date
2	Environmental review schedule	Within 30 days of Agreement date
2	Draft NEPA documentation	3/31/2021
2	Final NEPA documentation	5/31/2021
2	Environmental Permits, if applicable	6/30/2021
3	Final Design Package for rehabilitation of railroad bridges	8/31/2021
3	Bridge load rating report	8/31/2021
3	Preliminary Engineering Package for new tracks	6/30/2021
3	Final Design Package for new tracks	10/01/2021
4	Post-rehabilitation bridge load rating report	7/31/2024

Attachment 4

APPROVED PROJECT BUDGET

Southeast Arkansas Economic Development District, Inc.

Southeast Arkansas and Northeast Louisiana Multimodal Freight Corridor Improvement Project

I. APPROVED PROJECT BUDGET

The total estimated cost of the Project is \$21,377,526, for which the FRA grant will contribute funds consistent with Section 5(c) of Attachment 1 to this Agreement. Any additional expense required beyond that provided in this grant to complete the Project will be borne by the Grantee.

Use of Limited Freight Funds. The Grantee acknowledges that the Government selected the Project for award with the expectation that no more than \$10,516,259 of the award would be subject to the limitation at 23 U.S.C. § 117(d)(2). The Grantee will not request reimbursements that are subject to the limitation at 23 U.S.C. § 117(d)(2) and, in aggregate, exceed \$10,516,259.

Project Budget by Task

Task #	Task Name	Federal Contribution	Non-Federal Contribution	Total Cost
1	Project Administration	\$180,000	\$0	\$180,000
2	Environmental Review	\$40,000	\$0	\$40,000
3	Engineering Design	\$1,690,877	\$6,000	\$1,696,877
4	Construction	\$8,605,382	\$10,855,267	\$19,460,649
Total Project Cost		\$10,516,259	\$10,861,267	\$21,377,526

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

Project Budget by Source

Funding Source		Project Contribution Amount	Percentage of Total Project Cost
Federal Contribution (INFRA Grant)		\$10,516,259	49.19%
	<i>INFRA Grant Amount subject to 23 U.S.C. § 117(d)(2)</i>	<i>\$10,516,259</i>	<i>49.19%</i>
	<i>Amount of INFRA Grant not subject to 23 U.S.C. § 117(d)(2)</i>	<i>\$0</i>	<i>0%</i>
Non-Federal Contribution (Combined amounts from different sources)		\$10,861,267	50.81%
	<i>State Funds (Louisiana Department of Transportation & Development's Port Construction and Development Priority Program grant)</i>	<i>\$10,561,267</i>	<i>49.41%</i>
	<i>Local Funds</i>	<i>\$0</i>	<i>0%</i>
	<i>Other Funds (NLA)</i>	<i>\$300,000</i>	<i>1.40%</i>
TOTAL PROJECT COST		\$21,377,526	100.00%

Costs for completing the Project in excess of the amounts set forth in this section are the responsibility of the Grantee.

Attachment 5

APPLICABLE FEDERAL LAWS AND REGULATIONS

The Grantee is required to comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to an application, acceptance, and use of funds under this grant which may include, but are not limited to, those in Attachment 1 and those listed below. In the event of a conflict between the provisions identified in this Attachment 5 and any clause in Attachment 1, the provisions of this Attachment 5 will govern.

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq., as applicable under 23 U.S.C. 113
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 – 54 U.S.C. 306108
- f. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501 et seq.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended 42 U.S.C 7401 et. seq.
- i. Section 404 of the Clean Water Act, as amended 33 U.S.C. §§ 1251, et seq.
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended.
- k. Coastal Zone Management Act, P.L. 92-583, as amended.
- l. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. § 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- p. 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.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2

Attachment 5

- r. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. §§ 1271, et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. §§ 1251-1376
- y. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. § 1681 through § 1683, and § 1685 through § 1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d *et seq.*
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101 -1104 541, et seq.
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ff. Freedom of Information Act - 5 U.S.C. § 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1855
- hh. Farmlands Protection Policy Act of 1981 – 7 § U.S.C. 4201
- ii. Noise Control Act of 1972 – 42 U.S.C. § 4901, et seq.
- jj. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661
- kk. Section 9 of the Rivers and Harbors Act and General Bridge Act of 1946 - 33 U.S.C. § 401
- ll. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138

Attachment 5

mm. Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. §§ 6901, et seq.

nn. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. §§ 9601-9657

oo. Safe Drinking Water Act -- 42 U.S.C. §§ 300F-300J-6

pp. Wilderness Act -- 16 U.S.C. §§ 1131-1136

qq. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 -- 42 U.S.C. § 6901, et seq.

rr. Migratory Bird Treaty Act 16 U.S.C. § 703, et seq.

ss. 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)

tt. Cargo Preference Act of 1954 – 46 U.S.C. § 55305

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 13788- Buy American and Hire American

Attachment 5

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Part 200
- 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

Attachment 5

p. Government wide 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. Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 C.F.R. Part 40

s. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 as applicable

Office of Management and Budget Circulars

a. 2 C.F.R. 1201

b. Any applicable OMB Circular

Highway Federal Legislation

a. Highways – Title 23, U.S.C.

b. Brooks Act (for FHWA projects, this incorporates Title IX of the Federal Property and Administrative Services Act of 1949 (formerly 40 U.S.C. § 541, et seq)) - 40 U.S.C. §§ 1101-1104; 23 U.S.C. § 112(b)(2)

c. Letting of Contracts – 23 U.S.C. § 112

d. Highway Design and Construction Standards, 23 U.S.C. § 109

e. Prevailing Rate of Wage, 23 U.S.C. 113

f. Planning, 23 U.S.C. §§ 134 and 135

g. Tolls, 23 U.S.C. § 301 (to the extent the recipient wishes to toll an existing free facility that has received Title 23 funds in the past)

h. Size, Weight, and Length Limitations - 23 U.S.C. § 127, 49 U.S.C. § 31101 et seq.

i. Buy America– 23 U.S.C. § 313 (see https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm)

j. Nondiscrimination – 23 U.S.C. § 140

Attachment 5

Highway Federal Regulations

- a. Highways – Title 23, C.F.R.
- b. Planning 23 C.F.R. Part 450
- c. National Highway System Design Standards – 23 C.F.R. Part 625
- d. Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655
- e. Preconstruction Procedures – 23 C.F.R. Part 630 Subparts A and B
- f. Construction and Maintenance – 23 C.F.R. Part 635
- g. Procedures for Abatement of Highway Traffic and Construction Noise -- 23 C.F.R. Part 772
- h. Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122
- i. Required Contract Provisions – 23. C.F.R. Part 633 (Form 1273)
- j. External Programs – 23 C.F.R. Part 230.

RICHARD H. STREETER
ATTORNEY AT LAW
5255 Partridge Lane, N.W.
Washington, D.C. 20016
tele: 202-363-2011 fax: 202-363-2012
rhstreeter@gmail.com

June 15, 2021

Ms. Cynthia Brown, Section Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

302527

ENTERED
Office of Proceedings
June 15, 2021
Part of
Public Record

Re: FD 36447, Lake Providence Port Commission—Feeder Line Application—
Line of Delta Southern Railroad Located in East Carroll and Madison
Parishes, Louisiana

Dear Ms. Brown:

On June 1, 2021, The Board served a decision that resolved certain discovery issues. In addition, the Board directed the parties to confer regarding any remaining discovery issues related to NLA's Motion Seeking Entry of a Protective Order filed February 18, 2021. In response, NLA has engaged in an additional review of its files in order to respond to various interrogatories, including Interrogatories Nos. 1 through 6, 11, and 24. NLA's further review also revealed relevant documents that correct and clarify prior responses to Interrogatories Nos. 7 and 13. In addition, NLA has adopted by reference certain documents that were previously submitted to DSR's counsel by LPPC and SEAEDD in their responses to Interrogatories Nos. 15, 16, 17, and 27. During the course of conferring with DSR's counsel, an agreement was reached that it would not be necessary to reproduce documents that have already been produced by LPPC and SEAEDD.

Copies of all newly produced documents are included in Attachments 1 through 6 to NLA's Verified Supplemental Responses to Interrogatories and Request for Production of Documents. A copy of which is being filed herewith. Because many of the documents that are being produced include confidential, commercially sensitive information provided by existing and potential shippers, it is NLA's position that the release of such information would violate the provisions of 49 U.S.C. § 11904(b). Such documents are being filed under seal consistent with the Board's statement at n.6 of its Decision, served June 1, 2021, that "NLA's concern about producing commercially sensitive information can be addressed by entry of a protective order under 49 C.F.R. § 1104.14 that limits the dissemination of such information and requires its filing under seal." Because much of the information is in DSR's possession, such information has

been designated as "Confidential," which will allow counsel to confer with DSR's employees while preventing disclosure to the general public.

In summary, NLA believes that it has thoroughly responded to DSR's Interrogatories and to its Request for Production of Documents. Counsel will note that the absence of written documents related to many of NLA's conversations with shippers and potential shippers is explained by the fact that no one ever anticipated that it would ever be necessary to produce documents that would memorialize casual conversations.

The Board has also required that the parties inform the Board whether they agree to participate in Board-sponsored mediation. Recognizing the unquestioned public interest that will be served by restoring the entire corridor, the Lake Providence Port Commission, the Southeast Arkansas Economic Development District, the Madison Parish Port Commission and NLA have spent nearly ten full years seeking public funds with the full support of the States of Louisiana and Arkansas to restore service over the entire corridor. In addition, they have spent nearly five full years attempting to work with DSR to restore safe, efficient and economical rail service. Given DSR's refusal to commit to the rehabilitation of the 20-mile Segment between MP 471 and MP 491 with INFRA funds, they do not wish to engage in mediation with DSR regarding the Feeder Application. Therefore, they respectfully decline the Board's invitation to participate in Board-sponsored mediation.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Attorney for Lake Providence Port
Commission, Southeast Arkansas
Economic Development District,
Madison Parish Port Commission; and
North Louisiana & Arkansas Railroad.

RHS:rs

cc: Thomas J. Healey, Counsel for Delta Southern Railroad
All other parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36447

LAKE PROVIDENCE PORT COMMISSION
--FEEDER LINE APPLICATION--
LINE OF DELTA SOUTHERN RAILROAD LOCATED IN
EAST CARROLL AND MADISON PARISHES, LA.

NORTH LOUISIANA & ARKANSAS RAILROAD'S VERIFIED
SUPPLEMENTAL RESPONSES TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS

North Louisiana & Arkansas Railroad, after conferring extensively with counsel for Delta Southern Railroad's (DSR) counsel, hereby submits its Verified Supplemental Responses to DSR's First Set of Interrogatories and Documents in response to DSR's First Set of Requests to Produce in the above-referenced proceeding. Consistent with the Board's Decision, served June 1, 2021, at p. 4, n.6, a Motion for Protective Order is submitted herewith with regard to specified commercially sensitive information that is being submitted herewith "Under Seal."

INTERROGATORY NO. 1:

Identify all On-Line Customers, and for each such On-Line Customer, Identify its name, its location (by milepost and/or street address), a general description of the commodities it handles, and any information regarding its rail shipping

history (including but not limited to commodities shipped, origin or destination for rail shipments, and date or year of shipment).

NLA's Supplemental Response: Given that "On-Line-Customers" is defined as meaning "all rail shippers, or potential rail shippers that own or operate facilities" that are located adjacent to the Segment between Milepost 491.0 and Milepost 471.0, whether or not located adjacent to any track operated by NLA, On-Line Customers include shippers located within the physical limits of the Lake Providence Port. Due to DSR's failure to maintain the mainline track to the south of MP 471.0 and its refusal to honor interchange requests, no On-Line Customer rail shipper has tendered any traffic over the Segment since it was reopened after extensive repairs in mid-2016.

NLA is aware that there are multiple potential On-Line rail shippers located within the Lake Providence Port. In addition to the existing lead track, the INFRA Grant anticipates a rail extension of 2,100 feet of new track. Facilities located within the Lake Providence Port include Stepan Company, which on February 3, 2021, announced its acquisition of the Fermentation Plant from Myriant Chemical, which is mentioned in the INFRA Grant Application at p. 7. Consolidated Grain & Barge (CGB), which now operates the facilities of Agspring's Big River Rice and Grain, is another potential rail shipper. CGB handles corn, soybeans, and rice. NLA is also aware that the former facility of Howard Gin, which is located at MP. 473 at Hollybrook to the south of LPP, was previously serviced by DSR. Because of the existing spur,

NLA views it as a potential location of a rail shipper. Commodities for Howard would be cottonseed and commodities for CGB would include rice, soybeans, and corn.

Other potential On-Line rail shippers that are currently located within the Lake Providence Port facility include Helena (liquid fertilizer), Nutrien (liquid fertilizer), CHS (dry fertilizer) and Epic Pipe (steel pipe). Despite its authority to access to Epic, the Muskogee Warehouses and the track onto the dock pursuant to the Trackage Rights Agreement with LPPC, dated May 26, 2011, DSR has not done so. Nor has DSR maintained the "Joint Trackage" between Milepost Nos. 471 and 472.25 consistent with the Trackage Rights Agreement. NLA is also aware that another potential rail customer, which is awaiting the resolution of this proceeding, is currently considering acquiring a facility within the Port. However, NLA is prevented from naming the potential customer by a Non-Disclosure Agreement.

INTERROGATORY NO. 2:

For each On-Line Customer identified in response to Interrogatory No. 1, Identify all Communications with such On-Line Customer by one or more of the Respondents or MPP.

NLA's Supplemental Response: Daniel Robbins has had multiple general conversations with all of the potential rail shippers and is aware of their desire for safe, efficient, and adequate rail service following the

rehabilitation of the track. Because of the general nature of such conversations, which preceded DSR's *unanticipated* announcement in August 2020 that it would not commit to the restoration of the Segment between MP 491 and MP 471, Mr. Robbins has no written documents pertaining to such communications.

INTERROGATORY NO. 3:

For each On-Line Customer identified in response to Interrogatory No. 1, Identify any commitment or estimate (on a weekly, monthly, or annual basis) made by or on behalf of such On-Line Customer of rail shipments to be made to or from its facility over the Segment at any point in the future.

NLA's Supplemental Response: No commitments or estimates have been made regarding potential future rail shipments due to the current situation related to DSR's refusal to honor interchange arrangements with NLA.

INTERROGATORY NO. 4:

Identify all Non-On-Line Customers that have expressed an interest in routing traffic over the Segment, and for each such Non-On-Line Customer, Identify its name, its location (by milepost and/or street address), a general description of the commodities it handles, and any information regarding its rail shipping history (including but not limited to commodities shipped, origin or destination for rail shipments, and date or year of shipment).

NLA's Supplemental Response: NLA incorporates by reference the Verified Information set forth at pages 2-4 of Supplemental Response to DSR's

First Set of Interrogatories Nos. 1 through 6, entered of Record on March 5, 2021.

Confidential Attachment 1 to NLA's Supplemental Response to

Interrogatories 4 through 6, which is being filed under seal, contains highly confidential information provided by multiple shippers regarding commercially sensitive, proprietary information describing the nature, kind, quantity, destination, consignee, consignor, and routing of commodities that potentially would be tendered or delivered by NLA and other railroads, including DSR.

Potential Non-On-Line customers include Clearwater Paper, Producers (Eudora); Agramerica, Livingston Pecan & Metals, Complex Chemical, Sulway, Scott Petroleum, Epstein Gin, Terrell River Services, PotlatchDeltic, Bayou Grain, Anderson Group (formerly Lansing), John Deere, and U. S. Commodities LLC. The documents also supplement NLA's prior Response to Interrogatory 15b as they support Mr. Robbins' Verified Statement that is attached to the Feeder Application.

See also **Confidential Attachment 2 to NLA's Supplemental Response to**

Interrogatories 4 through 6, which is being filed under seal because it contains highly confidential information provided by Complex Chemical regarding commercially sensitive, proprietary information describing the nature, kind, quantity, destination, consignee, consignor, and routing of commodities that were tendered or delivered by NLA and DSR. The information further illustrates operational problems associated with UP's EDI system that were encountered in 2016 and 2017 that caused Complex Chemical

temporarily to shift routings. As the string of emails reflect, UP's system was not providing EDI information on interchanges, locations, and cars enroute to either NLA or AKMD. Although the issue was largely resolved in early 2017, DSR unilateral closing of the interchange and its refusal to rehabilitate the track prevented Complex Chemical from reaching UP over the direct route to McGehee. However, after LPPC filed its Feeder Application, Complex Chemical provided NLA with information pertaining to movements that would move over NLA to connect with UP at McGehee. *See **Confidential Attachment 1 to NLA's Supplemental Response to Interrogatories 4 through 6***

INTERROGATORY NO. 5:

For each Non-On-Line Customer identified in response to Interrogatory No. 4, Identify all Communications with such Non-On-Line Customer by one or more of the Respondents or MPP.

NLA's Supplemental Response: *See **Confidential Attachment 2 to NLA's Supplemental Response to Interrogatories 4 through 6.***

INTERROGATORY NO. 6:

For each Non-On-Line Customer identified in response to Interrogatory No. 4, Identify any commitment or estimate (on a weekly, monthly, or annual basis) made by or on behalf of such Non-On-Line Customer of rail shipments to be made to or from its facility over the Segment at any point in the future.

NLA's Supplemental Response: *See Confidential Attachment 2 to NLA's Supplemental Response to Interrogatories 4 through 6.*

INTERROGATORY NO. 7:

Identify all agreements, understandings or customs between NLA and DSR regarding the interchange of freight traffic between them.

NLA'S Supplemental Response: In its initial response, NLA mistakenly stated that "there are no written agreements between NLA and DSR." As reflected in the documents in NLA's Supplemental Attachment No. 5, which is attached hereto, NLA and DSR are parties to a May 1, 2016, Junction Interchange Location Agreement. In addition, KCS and NLA are parties to an Interchange Agreement, dated October 3, 2016, that designates Track 700 at Lake Providence, LA as the point of interchange and identifies DSRR as KCS's agent. The "Junction Interchange Update form," dated October 4, 2016, reflects KCS as the Interchanging Carrier, and DSRR as the Reporting Carrier. *See also* Email from Dustin Frederickson, October 13, 2016, at 3:47 p.m. to Danny Robbins.

INTERROGATORY NO. 11:

Identify (including origin, destination, date(s) and commodity) all movements of rail freight cars (loaded or empty) over the LPPC Segment.

NLA's Supplemental Response: NLA is producing confidential documents under seal that reflect all movements that extended beyond MP 471 and involved interchange movements with DSR between 2016 and 2017 when DSR unilaterally closed interchange. NLA has no earlier documents involving

earlier movements. See Attachment 4, Confidential NLA Supplemental Response to Interrogatory No. 11.

Prior to 2016, there were no interchange or local movements over the LPPC Segment due to the deteriorated condition of the track at the time LPPC acquired it from DSR. Had there been any local movements, such movements would have had no impact whatsoever on any issue involved herein. Hence, information regarding local movements is neither relevant nor likely to lead to the discovery of admissible evidence related to the issues in this proceeding.

INTERROGATORY No. 13:

Identify by milepost all segments of rail that have been removed (whether by NLA, LPPC, or otherwise) from the LPPC Segment and not immediately replaced. For each such segment of rail, Identify the approximately time period between when the rail was removed and when it was replaced, why the segment of rail was removed, by whom it was removed, and by whom it was replaced.

NLA's Supplemental Response: To clarify the date of the temporary removal of track to accommodate the State of Louisiana's flood control project, a series of contemporaneous emails is submitted in Attachment 6 hereto.

INTERROGATORY NO. 24:

Identify all Communications between Respondents or MPP, on the one hand, and "HDR" on the other, regarding the Grant, the Corridor, the Segment, or the Application, as identified on p. 9 of the Application.

NLA's Supplemental Response: NLA renews its objection to this Request on the grounds that the information sought is not relevant to any issue involved in this case, which concerns DSR's refusal within a reasonable time to make the necessary efforts to provide adequate service to shippers who wish to receive rail service over the Segment. The validity of the INFRA Grant

Application that HDR helped to prepare has not been challenged by NLA or DSR and is not at issue in the instant proceeding. And as proved by the documents that are being produced, DSR was an active participant in assembling the information upon which HDR relied.

In further response, NLA adopts by reference the series of emails in response to Interrogatory No. 24 that reflect service on NLA, Danny Robbins and/or Tim Robbins that were previously forwarded by SEAEDD and LPPC to counsel for DSR on February 25, 2021. *See* Batch 2 through 7. Additional supplementary documents that relate to Interrogatory No. 24 are reproduced in NLA Attachment 3.

Interrogatories 15, 16, 17, and 27

NLA adopts by reference the series of emails previously forwarded by SEAEDD and LPPC to counsel for DSR on February 25, 2021, in response to Interrogatories 15, 16, 17 and 24 that either reflect service on NLA, Danny Robbins and/or Tim Robbins or authorship of Danny and/or Tim Robbins. *See* Batches 2 through 7. Pursuant to the understanding with counsel for DSR, NLA has adopted SEAEDD's and LPPC's response and production of documents regarding Interrogatory 27, which seeks versions of the Consortium Agreement referenced at p. 11 of the Application.

Respectfully submitted,

/s/Richard H. Streeter

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
(202) 363-2011
rhstreeter@gmail.com

Dated: June 15, 2021

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 15th day of June 2021, I served a true copy of the foregoing on Thomas J. Healey, counsel for Delta Southern at THealey@fletcher-sippel.com.

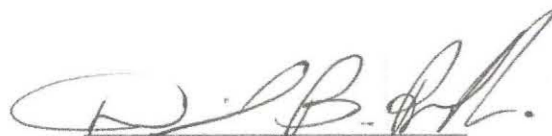
/s/Richard H. Streeter

AFFIDAVIT

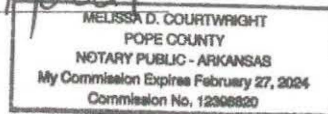
STATE OF ARKANSAS)
) ss:
COUNTY OF POPE)

Daniel B. Robbins, being duly sworn, states that he is the Vice President of North Louisiana & Arkansas Railroad (NLA), and that the Supplemental Responses to Interrogatories are known to him to be true and that the same are true as stated. He further states to the best of his knowledge and belief that after multiple searches of NLA's records that all documents in NLA's possession that relate to the Interrogatories have been provided to DSR's attorney or have been filed under seal subject to the grant of a Protective Order by the Board.

FURTHER SAYETH THE AFFIANT NOT.


Daniel B. Robbins

Subscribed and sworn to before me this 15th day of June, 2021.
Notary Public of
My Commission expires 02/27/2024



NLA Attachment 5
Supplemental Response to Interrogatory 7

Thank You,

Missy Courtwright
Office/Customer Service Manager
Arkansas Short Line Railroads, Inc.
479-968-6455 office|479-968-2634 fax|479-857-6104 cell

From: Missy Courtwright [<mailto:billing@dr railroad.com>]
Sent: Tuesday, February 09, 2016 3:16 PM
To: 'craig.huff@deltasouthernrr.com'
Subject: Junction Interchange Update Form

Mr. Huff,

If you could please complete the bottom portion of the form and either fax or email back to me.

Thank You,

Missy Courtwright
Office/Customer Service Manager
Arkansas Short Line Railroads, Inc.
479-968-6455 office|479-968-2634 fax|479-857-6104 cell

From: Craig Huff <Craig.Huff@deltasouthernrr.com>

Sent: Tuesday, February 09, 2016 5:02 PM

To: Missy Courtwright <billing@drailroad.com>

Subject: RE: Junction Interchange Update Form

Missy,

Attached you'll find a signed copy of the interchanged form.

Let me know if you need anything else.

Thanks,

FORM AD 103

JUNCTION INTERCHANGE UPDATE FORM

Junction Industry Reference File

FAX completed form to the
RAILINC at (919) 651-5191

JUNCTION - unique identification of the LOCATION of an INTERCHANGE

JUNCTION ABBREVIATION :

STANDARD POINT LOCATION CODE (SPLC) :

JUNCTION LOCATION NAME :

JUNCTION STATE / PROVINCE :

651130(000)

Lake Providence

LA

INTERCHANGE - description of ACTIVITIES between two transportation entities at a JUNCTION

ACTION REQUESTED : A (A = add, C = change, E = expire)

INTERCHANGE TYPE :

0

	INTERCHANGING CARRIER	REPORTING CARRIER	CSM STATION FSAC (when required)
MARK / SCAC 1	NLA	NLA	35
MARK / SCAC 2	DSRR	DSRR	35

DELIVERY ONLY FLAG : N (Y = yes, N = no)

INHIBIT JUNCTION ADVICES : N (Y = yes, N = no)

EFFECTIVE DATE OF ACTION : 2016-05-01 (CCYY-MM-DD)

AGREEMENT - signatures of transportation entity representatives (as required by Interchange TYPE)

	MARK / SCAC 1	MARK / SCAC 2
SIGNATURE	Missy Courtwright	Craig Huff
CONDITIONAL AGREEMENT?	N Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement	N Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement
NAME (please print)	Missy Courtwright	Craig Huff
COMPANY	North Louisiana & Arkansas	Delta Southern Railroad
PHONE NUMBER	479-968-6455	318-600-4489
FAX NUMBER	479-968-2634	318-537-9356

SUBMISSION - FAX completed form to RAILINC at (919) 651-5191 (or mail to address in the instructions)

Last modified: 9/27/06

From: Missy Courtwright [<mailto:billing@dr railroad.com>]
Sent: Tuesday, February 09, 2016 3:16 PM
To: Craig Huff <Craig.Huff@deltasouthernrr.com>
Subject: Junction Interchange Update Form

Mr. Huff,

If you could please complete the bottom portion of the form and either fax or email back to me.

Thank You,

Missy Courtwright
Office/Customer Service Manager
Arkansas Short Line Railroads, Inc.
479-968-6455 office|479-968-2634 fax|479-857-6104 cell

From: Craig Huff <Craig.Huff@deltasouthernrr.com>
Sent: Thursday, March 17, 2016 1:00 PM
To: Missy Courtwright <billing@dr railroad.com>
Subject: RE: Junction Interchange Update Form

They did and we filled it out over the phone. They have all the info.

Craig Huff
General Manager



Delta Southern Railroad
469 Port Road
Tallulah, LA. 71282
craig.huff@deltasouthernrr.com
Office: 318-600-4489
Mobile: 318-537-5720
Fax: 318-537-9356

From: Missy Courtwright [<mailto:billing@dr railroad.com>]
Sent: Thursday, March 17, 2016 11:04 AM
To: Craig Huff <Craig.Huff@deltasouthernrr.com>
Subject: FW: Junction Interchange Update Form

Mr. Huff,

I know you sent them this form signed back to me but did Railinc contact you in regards to DSRR filling out their own form?

INTERCHANGE AGREEMENT

THIS AGREEMENT, made and entered into this 3rd day of October, 2016, by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation, hereinafter referred to as "KCS", and NORTH LOUISIANA & ARKANSAS RAILROAD, INC., an Arkansas corporation, hereinafter referred to as "NLA."

WITNESSETH:

WHEREAS, KCS has entered into a certain Haulage Agreement (the "Haulage Agreement") with Delta Southern Railroad Company ("DSRR"), whereby DSRR acts as KCS's agent in the handling of KCS traffic to and from NLA in Lake Providence, Louisiana; and

WHEREAS, it is the desire and intention of KCS and NLA to effect interchange of cars, loaded and empty, between their respective companies at Lake Providence, Louisiana under the following terms and conditions.

NOW, THEREFORE, it is understood and agreed as follows:

1. The Term of this Agreement shall be effective as of the date first written above (the "Effective Date") and shall continue for one (1) year from the Effective Date. Thereafter this Agreement shall be automatically renewed for additional Term(s) of the same length. This Agreement may be terminated by either party, with or without cause, by giving the other party written notice of termination at least thirty (30) days prior to date of termination. The termination or expiration of this Agreement shall not impair the rights or obligations of either party arising under this Agreement prior to such termination or expiration.
2. The NLA-DSRR interchange-designated Track 700 at Lake Providence, LA shall be designated as the point of interchange for the cars to be interchanged between the parties hereto (the "Interchange Trackage"). DSRR will act as KCS's agent in the physical handling of interchange between KCS and NLA in both directions to and from the Interchange Trackage.
3. (a) KCS shall arrange for DSRR as agent for KCS (DSRR and KCS hereinafter collectively referred to as "KCS") to deliver cars to NLA on the Interchange Trackage and such cars shall be considered interchanged to NLA for all purposes at the time DSRR places such cars on the Interchange Trackage and DSRR's locomotive is disconnected therefrom, and said cars are accompanied or preceded by proper forwarding data via electronic data methods pursuant to and as defined by the Association of American Railroads ("AAR").

(b) NLA shall deliver cars to KCS on the Interchange Trackage and such cars shall be considered interchanged for all purposes at the time NLA places such cars on the Interchange Trackage and NLA's locomotive is disconnected therefrom, and said cars are accompanied or preceded by proper forwarding data via electronic data methods pursuant to and as defined by the AAR.

4. The rules of the AAR governing the interchange of cars between railroads shall govern the interchange of cars hereunder.

5. Each party to this Agreement undertakes and agrees, in respect to its use of tracks referred to herein and the operation of equipment and appliances thereon and thereover, to comply with all applicable Federal and State laws and regulations, and all applicable rules, regulations and orders promulgated by any Municipality, Board or Commission with respect to the protection of employees or other persons or parties. If any failure by a party to comply with such regulations, laws and rules shall result in any fine, penalty, cost or charge being assessed, imposed or charged against another party, the offending party agrees promptly to reimburse and indemnify the other party for, or on account of, such fine, penalty, cost or charge; and further agrees in the event of any action shall arise out of the failure to so comply, upon notice thereof being given by such other party, to defend such action free of cost, charge and expense to the other party.

In the event the use of the Interchange Trackage or other tracks shall be interrupted or traffic thereover be delayed at any time from any cause beyond the control of any party to this Agreement, no party shall have any claim against another for liability on account of loss or damage of any kind resulting from such interruption or delay.

6. During the term of this Agreement, NLA shall procure and maintain, at its expense, insurance policies with insurance companies that are authorized to issue policies in the State of Louisiana and are acceptable to KCS for the following coverages and minimum limits:

(a) Railroad Liability Insurance which includes Foreign Line Rolling Stock, Bill of Lading, Federal Employers Liability Act, Limited Seepage and Pollution Coverage; with the following limits: \$5,000,000 per occurrence, \$10,000,000 per Aggregate.

(b) NLA's deductible or self-insured retention with respect to this policy shall not exceed \$100,000.

(c) Where allowable by law, all policies (applying to coverage listed in this Section 7) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

(d) Insurance policies of NLA must, through policy endorsement, include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by KCS. The certificate of insurance must reflect that the above wording is including in evidenced policies.

(e) All policy (ies) required by this Section 7 shall include a severability of interest endorsement and KCS shall be named as additional insured with respect to work performed under this Agreement. Severability of interest and naming KCS as additional insured shall be indicated on the certificate of insurance.

(f) Prior to the initiation of operations under this Agreement, NLA shall furnish to KCS an acceptable certificate(s) of insurance including an original signature of the authorized representatives evidencing the required coverage, endorsements, and amendments and referencing the contract, as well as copies of all applicable insurance policies. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies)

to notify KCS in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving KCS arising out of this Agreement, NLA will make available any required policy covering such claim or lawsuit.

(g) Any insurance policy required under this Agreement shall be written by a reputable insurance company acceptable to KCS or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

(h) Any insurance (including, without limitation, self-insurance) obtained by NLA shall not be deemed to release or diminish the liability of NLA including, without limitation, liability under the indemnity provision of this Agreement. Damages recoverable by KCS shall not be limited by the amount of the required insurance coverage.

(i) Any agents, including, but not limited to, DSSR, utilized by NLA in performance of this Agreement must comply with all of the requirements set forth in this Section 7 prior to performing any service covered by this Agreement. If an agent does not comply with all of the requirements set forth in this Section 7, NLA must immediately require such agent to refrain from performing services under this Agreement until such agent has complied with all such requirements. NLA shall immediately notify KCS in writing at any time it or any agent of NLA is not in compliance with the provisions of this Agreement. If, at any time, KCS learns NLA or any agent of NLA is not in compliance with this Agreement, KCS may immediately terminate this Agreement.

(j) If, at any time, NLA, or any agent, fail to retain and maintain the insurance in effect as required by this Section 7, this Agreement shall immediately terminate.

7. NLA agrees to require its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against KCS for all claims and suits arising from the terms or conditions of this Agreement. The certificate of insurance must reflect the waiver of subrogation endorsement. NLA agrees to require its insurers to also waive any right of subrogation against KCS for loss of its owned or leased property or property under the care, custody or control of NLA or its agents.

8. This Agreement shall take effect upon execution by the authorized representative of each of the parties and shall continue in force and effect until terminated by one party serving upon the other parties hereto thirty (30) days' notice in writing to terminate the same. Upon the termination of this Agreement, both parties shall file any necessary supporting documentation with all appropriate agencies in order to effect such termination. No termination of this agreement shall release either party hereto from any liability or obligation that may have been incurred by or that may have accrued against it hereunder during the term of this agreement.

9. Nothing in this agreement shall act to prohibit any party from bringing suit against persons or companies not party hereto if acts of said persons or companies were the sole or partial cause of damages to any party.

10. NLA shall not transfer or assign, in whole or in part, any of its interests or obligations under this Assignment without the prior written consent of KCS. Any unpermitted or attempted unpermitted assignment, in whole or in part, may be terminated

by KCS. No permitted assignment, in whole or in part, shall relieve NLA of any obligations under this Agreement.

11. Any notices, modifications to Agreement, demands, requests, submissions or other communications which are required or permitted to be given pursuant to this Agreement shall be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to NLA:

North Louisiana & Arkansas Railroad, Inc.
4416 S. Arkansas Ave.
Russellville, AR 72802

If to KCS:

The Kansas City Southern Railway Company 427
West 12th Street
Kansas City, MO 64105

12. This Agreement shall be governed and construed in accordance with the laws of the State in Missouri without regard to any conflicts of laws provisions thereof. **FOR ANY PROPER PURPOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH OF THE PARTIES HERETO ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY AGREE TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN DALLAS, TEXAS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS.**

13. The indemnification obligations occurring under this Agreement prior to its expiration or termination shall survive such expiration or termination.

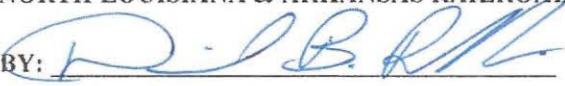
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day and year first above written.

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

BY: 

TITLE: VP Transportation

NORTH LOUISIANA & ARKANSAS RAILROAD, INC.

BY: 

TITLE: Vice President

FORM AD 103
JUNCTION INTERCHANGE UPDATE FORM
Junction Industry Reference File

FAX completed form to the
RAILINC at (919) 651-5191

JUNCTION—unique identification of the LOCATION of an INTERCHANGE

JUNCTION ABBREVIATION:
STANDARD POINT LOCATION CODE (SPLC): ()
JUNCTION LOCATION NAME: LAKE PROVIDENCE
JUNCTION STATE / PROVINCE:

INTERCHANGE—description of ACTIVITIES between two transportation entities at a JUNCTION

ACTION REQUESTED: (A = add, C = change, E = expire)
INTERCHANGE TYPE:

Double-Click for
form Instructions



	INTERCHANGING CARRIER				REPORTING CARRIER				CSM STATION FSAC (when required, 5-digit)				
MARK / SCAC 1:	K	E	S		D	S	R	R	0	1	1	6	2
MARK / SCAC 2:	N	L	A		N	L	A		0	0	0	3	5

DELIVERY ONLY FLAG: (Y = yes, N = no)
INHIBIT JUNCTION ADVICES: (Y = yes, N = no)
EFFECTIVE DATE OF ACTION: (CCYY-MM-DD)

AGREEMENT—signatures of transportation entity representatives (as required by Interchange TYPE)

	MARK / SCAC 1	MARK / SCAC 2
SIGNATURE:	<u>Mary Lynn Villanueva</u>	
CONDITIONAL AGREEMENT?:	☒ Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement	☐ Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement
NAME: (please print)	<u>MARY LYNN VILLANUEVA</u>	
COMPANY:	<u>THE KANSAS CITY SOUTHERN RAILWAY</u>	
E-MAIL:	<u>mvillanueva@kcsouthern.com</u>	
PHONE NUMBER:	(8 1 6) 9 8 3 - 1 5 3 5 () -	
FAX NUMBER:	(8 1 6) 9 8 3 - 1 2 2 7 () -	

SUBMISSION—FAX completed form to RAILINC at (919) 651-5191 (or email to AAR_PS@railinc.com)

Last modified: July 27, 2012

From: Danny Robbins [<mailto:dan@dr railroad.com>]
Sent: Friday, October 21, 2016 11:29 AM
To: 'Missy Courtwright'
Subject: FW: Interchange Agreement

We need to print this and sign it

From: Dustin Frederickson [<mailto:DFrederickson@KCSouthern.com>]
Sent: Thursday, October 20, 2016 11:08 AM
To: Danny Robbins (dan@dr railroad.com)
Subject: RE: Interchange Agreement

Have a chance to fill out and sign this form yet?

Dustin

From: Dustin Frederickson
Sent: Thursday, October 13, 2016 3:47 PM
To: 'Danny Robbins (dan@dr railroad.com)' <dan@dr railroad.com>
Subject: RE: Interchange Agreement

Danny,

Attached is the Junction Interchange Update form so the KCS LAKPR NLA (and reverse) route can be published. Please fill out the bottom section and email back to me. Our Joint Facilities team will send off to Railinc to publish.

Thank you,

Dustin Frederickson
Sales & Market Account Manager | Energy & Short Line Relations
Kansas City Southern Railway
T: (816) 983-2032 | C: (314) 681-2928
dfrederickson@kcsouthern.com | www.kcsouthern.com

From: Dustin Frederickson
Sent: Thursday, October 13, 2016 1:48 PM
To: Danny Robbins (dan@dr railroad.com)
Subject: Interchange Agreement

Danny,

Attached is fully executed KCS-NLA Interchange Agreement. I sent you an original copy in the mail today.

Thank you,

Dustin Frederickson

Sales & Market Account Manager | Energy & Short Line Relations

Kansas City Southern Railway

T: (816) 983-2032 | C: (314) 681-2928

dfrederickson@kcsouthern.com | www.kcsouthern.com

From: Danny Robbins [<mailto:dan@dr railroad.com>]
Sent: Monday, October 31, 2016 10:53 AM
To: 'Dustin Frederickson'
Subject: RE: NLA customers accessible by KCS

All of those are correct except that East Carroll Lumber is closing

From: Dustin Frederickson [<mailto:DFrederickson@KCSouthern.com>]
Sent: Monday, October 31, 2016 10:48 AM
To: Danny Robbins (dan@dr railroad.com)
Subject: NLA customers accessible by KCS

Danny,

I would like to distribute a list of NLA-served industries to my Sales & Marketing groups to let them know what customers KCS can now access on NLA. The below list is what we have published on our website for the NLA Short Line Profile. I believe you worked with Shana in our Market Research group to get to this list.

Is this list up to date? I only see a few of them published in SCRS.
Also could you provide station location, any known commodities handled, and if they ship rail today?

<http://www.kcsouthern.com/en-us/pdf/short-line/nla-north-louisiana-and-arkansas-railroad.pdf>



SGRS

DFERICKSON KCS | Launch Pad | Contacts | Help

Home | Query SGRS Records | Reports | Help

SGRS Query Results

Query Criteria
 Serving Carrier(SCAC):
 FSAC:
 Station Name:
 Switch Limits by Rule260:
 Switch Type Code:
 Reciprocal Switch Code:
 Carrier Interchanged with:
 Commodity Code:
 Record Type:
 Effective Date:
 Expiration Date:

NLA

 ACTIVE
 Equal
 Equal

Private Party SCAC:
 Switch Limits by SCAC/FSAC:
 State/Province:
 Type of Deal:
 Customer CF:
 Zone:
 Rule260 Junction Code:
 Condition Code:

Effective Date	Expiry Date	Private SCAC	FSAC	Station Name	State/Province	Zone	Rule260 Junction Code	Condition Code
09/15/2016	12/31/9999	000000000000	000000000000	LAKE VILLAGE SEED & TRE CO	AR	00020	LAKE VILLAGE	AR
09/15/2016	12/31/9999	01985169600000	01985169600000	MYRIANT CORP	LA	00035	LAKE PROVIDENCE	LA
07/07/2016	12/31/9999	00012169600013	00012169600013	TOP RAIL SOLUTIONS INC	AR	00005	MOOREHEAD	AR

3 Records Found
 Records Per Page: 100
 Page 1 of 1
 Next Last

Thank you,

Dustin Frederickson
 Sales & Market Account Manager | Energy & Short Line Relations
 Kansas City Southern Railway
 T: (816) 983-2032 | C: (314) 681-2928
dfrederickson@kcsouthern.com | www.kcsouthern.com

NLA Attachment 6
Supplemental Response to Interrogatory No. 13
and Production of Documents

**NLA Attachment 6
Supplemental Response to Interrogatory No. 13**

From: Clay Ratcliff [<mailto:cratcliff@complexchemical.com>]
Sent: Wednesday, March 1, 2017 8:58 AM
To: Johnson, Richard <Richard.Johnson@lubrizol.com>
Cc: Perry, Gaylin <Gaylin.Perry@lubrizol.com>
Subject: Empty cars
Importance: High

Richard/Gaylin,

We now have 2 more empty cars that are coming into Complex from UP at McGehee. UTLX 649695 and GATX 22576 Please advise if there are any more that will return on this route. The track is about to be closed and anymore will be stuck.

Please advise ASAP,

Clay Ratcliff

Complex Chemical Co, Inc.

177 Complex Chemical Road

Tallulah, LA 71282

Phone (318) 574-0382

Fax (318) 574-0816

From: Danny Robbins [<mailto:dan@dr railroad.com>]
Sent: Wednesday, March 08, 2017 1:50 PM
To: 'Charles Booth'; 'Clay Ratcliff'; 'Ryan Atkins'; 'Craig Huff (Craig.Huff@deltasouthernrr.com)'; 'Kathy McHand (kathy.mchand@deltasouthernrr.com)'
Cc: 'dan.b.robins@gmail.com'; 'billing@dr railroad.com'; 'Jerry Melton'; 'Gene Cox'; 'AKMD-CS'
Subject: RE: Empty cars

The 2 cars delivered on March 1 and March 3 are in Lake Providence and will be delivered to DSRR Monday. We are making a special light locomotive move to bring down GATX22576 for Monday as well. UTLX641993 is in Lake Providence at the Port and will be delivered Monday as well. After the delivery and pickup on 3-13 the NLA will be closed in Lake Providence for a few weeks to replace a concrete box culvert.