



93430

RESOLUTION NO. A-_____

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the Interlocal Agreement between the City of Lincoln, Lancaster County and Lincoln
3 Airport Authority to provide \$1,500,000.00 in Minimum Revenue Guarantees for additional flights
4 into Lincoln, a copy of which is attached hereto, marked as Attachment "A", and made a part
5 hereof by reference, is hereby approved, and the Mayor is authorized to execute said Interlocal
6 Agreement on behalf of the City.

7 The City Clerk is directed to return one fully executed copy of said Interlocal Agreement
8 to Chris Connolly, City Law Department, for transmittal to the parties.

Introduced by:

AYES: Bowers, Meginnis, Raybould, Shobe,
Washington; NAYS: None; ABSENT: Beckius,
Ward.

Approved as to Form & Legality:

City Attorney

Approved this 12th day of July, 2022:

Mayor

ADOPTED

JUL 11 2022

BY CITY COUNCIL

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between the City of Lincoln, Nebraska, hereinafter referred to as the “City,” the County of Lancaster, Nebraska, hereinafter referred to as the “County,” and the Lincoln Airport Authority, hereinafter referred to as “LAA.” Collectively the City, County, and LAA may be referred to as “the Parties,” and individually each may be referred to as a “Party.”

WHEREAS, the Parties are governmental and political subdivisions of the State of Nebraska, and are public agencies for purposes of the Interlocal Cooperation Act, Neb. Rev. Stat. §§13-801 through 13-827;

WHEREAS, the Interlocal Cooperation Act permits any two or more public agencies to enter into agreements with one another for joint or cooperative action;

WHEREAS, since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the pandemic has caused severe public health and economic crises. Locally, airlines serving the traveling public at the Lincoln Airport (the “Airport”) suffered negative economic impacts as a result of the pandemic as evidenced by a significant decrease in passengers traveling to and from the Airport on both commercial and chartered flights;

WHEREAS, on March 11, 2021, the United States Congress enacted the American Rescue Plan Act of 2021 (“ARPA”) to provide monetary relief to address the impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses. Among other things, ARPA established the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) to provide state, local, and Tribal governments with the resources needed to respond to the pandemic and its economic effects, including aid to impacted industries such as the travel industry. The City and the County are among the recipients of SLFRF funds and have determined that use of such funds for airline service incentives as contemplated under this Agreement constitutes an appropriate and eligible use of such funds.

WHEREAS, the City and the County are now agreeable to obligating and expending a portion of such funds to aid the negatively impacted local air travel and tourism industry by each granting to LAA the amount of \$1,500,000 (\$3,000,000 in the aggregate) to allow LAA, as a subrecipient, to offer financial incentives to airlines in the form of Minimum Revenue Guarantees for the public purpose of developing, or encouraging the development of, new or expanded regularly scheduled commercial passenger air service at the Airport.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the Parties as follows:

1. Recitals. The foregoing recitals set forth in this Agreement are made a part hereof by this reference.

2. Term. This Agreement shall be effective as of the last date a Party executes this Agreement, and shall continue through December 31, 2026, or until all federal reports have been

submitted and other requirements have been fulfilled, whichever is later, unless terminated pursuant to Paragraph 19 below. The Agreement may be extended as necessary to complete all obligations of the Parties, by mutual written agreement of all Parties.

3. Funding Sources. The City and the County each grant to LAA the amount of \$1,500,000.00 (\$3,000,000 in the aggregate) in SLFRF funds to be used by LAA as Minimum Revenue Guarantees. The funds will be maintained by the County in a segregated account designated for the purpose of this Agreement.

4. Interlocal Agreement Administrator. The Chief Administrative Officer for the County (“CAO”) shall be the Administrator for this Interlocal Agreement. The duties of the Administrator include, but are not limited to, the following:

- a. Be the primary contact for the Parties to this Interlocal except for MRG Contracts with Airlines;
- b. Be the primary contact for the public and news media outlets concerning this Agreement;
- c. Providing direction and advice to the County Budget and Fiscal Officer in the collection, transfer, investment, and payment of funds contributed by the City and County; and
- d. Consult with the City prior to approval of any disbursement of funds herein.
- e. Provide reasonable information relating to the administration of this Interlocal Agreement to the governing boards and representatives of the Parties hereto.

5. MRG Contracts with Airlines. LAA will have the exclusive right and obligation to negotiate and enter into contracts with third parties regarding the use of SLFRF funds as Minimum Revenue Guarantees. For purposes of this Agreement, “Minimum Revenue Guarantee” shall mean an air service incentive in the form of a contractual obligation under which LAA guarantees that an airline will generate a specified amount of revenue from sales associated with new or expanded regularly scheduled commercial passenger air service at the Airport and if the airline does not meet the target revenue, LAA will make a cash payment to the airline for the shortfall. “MRG Contract” shall mean a contract between LAA and an airline providing for a Minimum Revenue Guarantee.

6. MRG Contracts; Approval; Requirements. Upon approval of a MRG Contract between an airline and the LAA Board, LAA will submit the same to the CAO for review and approval in accordance with this Section 6. LAA shall submit a copy of the MRG Contract to the Mayor or Mayor’s representative for review and consultation with the CAO. The MRG Contract must:

- a. Provide for new or expanded regularly scheduled commercial passenger airline service at the Airport.
- b. When aggregated with obligations under other pending MRG Contracts, not obligate LAA for more than a total of \$3 million in Minimum Revenue Guarantees at any time during the term of this Agreement.
- c. Provide the formula by which the minimum target revenue has been calculated which includes a per one-way-trip cost not to exceed \$15,000 for each domestic one-way flight (not to exceed \$20,000 for each international one-way flight) out of or into LNK,

or a domestic per round trip cost not to exceed \$30,000 (not to exceed \$40,000 for each international round trip); and these amounts are exclusive of fuel costs.

- d. Specify the number of daily arrivals and departures being provided.
- e. Include any provisions under ARPA necessary to comply with all the federal terms and conditions of award.

If the MRG Contract as submitted conforms to the above requirements, the CAO shall approve it and so advise the Executive Director of LAA in writing, which approval shall not be unreasonably withheld, delayed or conditioned. If for any reason the CAO finds that the requirements are not met, he shall promptly contact the Executive Director to resolve the deficiency.

Upon approval of the MRG Contract, the CAO shall forward it to the County Budget and Fiscal Officer who shall, out of the funds deposited in the segregated account referenced in Paragraph 3 above, obligate an amount equal to the amount of the Minimum Revenue Guarantee set forth in the MRG Contract.

7. Draws Upon Funds; Invoices; Payment by County. When an airline that has entered into a MRG Contract advises LAA, pursuant to such contract, that the target revenue has not been met and makes demand upon LAA for a cash payment to cover the shortfall, then LAA shall submit an invoice to the County's Budget and Fiscal Officer with a copy sent to the City Finance Director for the amount necessary to cover such shortfall together with a copy of the demand from the airline and a certification that the demand from the airline is in conformance with all the requirements of the MRG Contract. The Budget and Fiscal Officer shall, within fourteen (14) days of receiving such invoice, issue a payment in the form of a wire transfer to LAA in the amount of the invoice.

8. Fees and Expenses. No Party to this Agreement shall be entitled to any fees or reimbursement of costs expended in implementing this Agreement except as set forth in Paragraph 19.

9. Duties of Executive Director of LAA. The Executive Director of LAA shall be responsible for:

- a. negotiating MRG Contracts with airlines on behalf of LAA,
- b. arranging for review and approval of MRG Contracts by the LAA Board,
- c. submitting the same to the CAO for review and approval as provided herein,
- d. forwarding all MRG Contracts to the County for further processing, with a copy provided to the City,
- e. submitting invoices to the County, with a copy to the City, for draws upon funds appropriated or designated for specific MRG Contracts as needed, and
- f. providing proof of payment and such other information to the County and the City as may be necessary to comply with all Federal obligations related to the use and expenditure of SLFRF funds.

10. Contract Compliance; LAA as Subrecipient; Records. The Parties, jointly and severally, will ensure that contracts entered into by LAA with third parties that are secured with

SLFRF funds as Minimum Revenue Guarantees comply with the U.S. Department of the Treasury's Award Terms and Conditions as set forth in Exhibit A, 31 C.F.R. 35, and section 603(c) of the Social Security Act. LAA, as a subrecipient of SLFRF funds, will maintain records and financial documents as directed by the County and the City sufficient to evidence compliance with section 603(c) of the Social Security Act, Treasury regulations implementing that section, and guidance issued by Treasury.

11. Inspection of Records. Upon reasonable advance notice, LAA shall permit the County or the City, or both, to inspect all work, materials, invoices, and other relevant data and records, and to audit the books, records, and accounts of LAA pertaining to the SLFRF funds provided pursuant to this Agreement. All records related to this Agreement shall be retained for five (5) years after all funds have been expended by LAA or returned to the Treasury, or the completion of any other obligations imposed by the Treasury, whichever is later.

12. Return of Funds; No Property to be Acquired. SLFRF funds maintained in the segregated account established pursuant to Paragraph 3 of this Agreement must be obligated by September 30, 2024. Any unobligated funds remaining in the segregated account on October 1, 2024, shall be removed from the segregated account, with half of such unobligated funds returned to the City and the other half of such unobligated funds returned to the County. The County and the City may utilize the returned SLFRF funds in any manner authorized by SLFRF and its rules and regulations

SLFRF funds obligated by the City and the County and maintained in the segregated account established pursuant to Paragraph 3 of this Agreement must be expended by LAA to satisfy its contractual obligations with third parties by September 30, 2026. Any unexpended SLFRF funds remaining in the segregated account on October 2, 2026, shall be removed from the segregated account, with half of such unexpended funds being returned to the City, and the other half of such unexpended funds being returned to the County. The County and the City may utilize the returned SLFRF funds in any manner authorized by SLFRF and its rules and regulations.

13. Assignment. No Party shall assign its rights or delegate its duties and responsibilities under this Agreement without the express written permission of the other Parties to this Agreement and must be fully compliant with applicable federal, state, and local laws, rules, and regulations. Any such assignment or delegation by a Party without prior written consent of the other Parties shall be absolutely void.

14. Indemnification. Each Party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other Parties and their officers, their elected officials, agents, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments, and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the elected officials, officers, or employees of the indemnifying Party in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim by a third party for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each Party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage

and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require any Party to indemnify or hold harmless the other Parties from liability for the negligent or wrongful acts or omissions of the other Parties or their officers, agents, or employees. No portion of this Agreement shall be construed to constitute a waiver of the sovereign immunity of any Party. This Paragraph survives any termination of this Agreement.

15. Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

16. Integration and Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be amended except by written agreement dated subsequent to the date of this Agreement and signed by all Parties.

17. Third Party Rights. This Agreement is not intended to, and does not, create any rights or benefits on behalf of any person, whether an individual or an entity, other than the Parties to this Agreement. The Parties shall not be obligated or liable hereunder to any person, whether an individual or an entity, other than each other.

18. No Separate Entity and No Tax Authority. This Agreement does not create a separate legal or administrative entity and does not authorize the levying or collecting of any tax. This Agreement does not contemplate the acquisition of any real or personal property to be used in this joint and cooperative undertaking.

19. Termination. Any Party may terminate this Agreement, by sending the other Parties a written notice of termination for any of the following reasons:

- a. In the event that any Party breaches any material term of this Agreement and, after thirty days' notice of such breach, fails to cure such breach.
- b. The Parties may terminate the Agreement for any reason by mutual consent of all three Parties.
- c. The Parties agree that City, County, or both, may terminate this Agreement in whole or in part immediately upon written notice to LAA if SLFRF becomes unavailable. The date that City, County, or both, sends written notice of termination shall be the date of termination.

In the event of termination pursuant to this Paragraph, LAA shall be compensated pursuant to the terms of this Agreement from SLFRF for obligations incurred by LAA prior to the date of termination according to the terms of this Agreement. LAA understands and agrees that the compensation to LAA provided for in this Agreement is based solely and exclusively upon funds from the SLFRF. LAA agrees that neither City nor County shall fund any obligations arising out of this Agreement from the Lancaster County General Fund, the City of Lincoln General Fund,

tax revenue, or any other source except for the SLFRF, and that the sole source of funding for the Agreement is the SLFRF. LAA has no reasonable expectation of payment of any kind or for any reason arising out of this Agreement from any other source except SLFRF. This Paragraph shall survive termination of this Agreement.

In Witness Whereof, the Parties have executed this Agreement as of the dates set forth below.

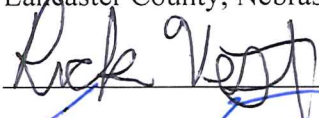
EXECUTED this 14 day of June, 2022, by Lancaster County.

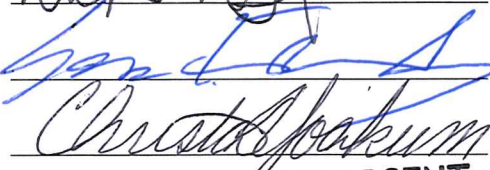
APPROVED
this 14th day of June, 2022.



Pat Condon, County Attorney
of County of Lancaster, Nebraska

By the Board of County Commissioners of
Lancaster County, Nebraska:





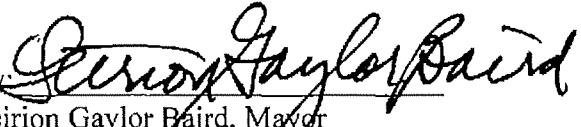
AMUNDSON ABSENT


SCHORR ABSENT

EXECUTED this 12th day of JULY, 2022, by the City of Lincoln.

By the City of Lincoln:

APPROVED
this 11th day of JULY, 2022.

By: 
Leirion Gaylor Baird, Mayor
of City of Lincoln, Nebraska

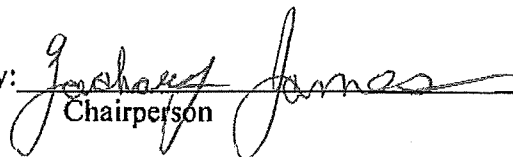

Yohance Christie, City Attorney
of City of Lincoln, Nebraska

EXECUTED this 27th day of JULY, 2022, by the Airport Authority of the City of Lincoln, Nebraska.

ATTEST:

AIRPORT AUTHORITY OF THE
CITY OF LINCOLN, NEBRASKA


Secretary

By: 
Chairperson

APPROVED AS TO FORM:

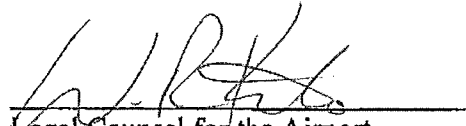

Legal Counsel for the Airport
Authority of the City of Lincoln, Nebraska

EXHIBIT A

AWARD TERMS AND CONDITIONS

EXHIBIT A

U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
 - x. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
 - a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3)

that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

- b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.