



U.S. Department
of Transportation
**Federal Railroad
Administration**

Grant/Cooperative Agreement

1. RECIPIENT NAME AND ADDRESS California High-Speed Rail Authority 925 L St Ste 1404 Sacramento, CA 95814-3704		2. AGREEMENT NUMBER: FR-HSR-0118-12-01-00	3. AMENDMENT NO. 0
1A. IRS/VENDOR NO. _____		4. PROJECT PERFORMANCE PERIOD: FROM 12/16/2009 TO 12/31/2018	5. FEDERAL FUNDING PERIOD: FROM 12/16/2009 TO 12/31/2018
1B. DUNS NO. _____		6. ACTION New	
7. CFDA#: [REDACTED]		9. TOTAL OF PREVIOUS AGREEMENT AND ALL AMENDMENTS 0.00	
8. PROJECT TITLE Initial Central Valley Section: Madera County to Bakersfield (Kern County) of the California High-Speed Train Program		10. AMOUNT OF THIS AGREEMENT OR AMENDMENT 928,620,000.00	
		11. TOTAL AGREEMENT AMOUNT 928,620,000.00	
12. INCORPORATED ATTACHMENTS THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF: Special Provisions, Attachment 1; PRIIA Clauses for Corridor Programs, Attachment 1A; General Provisions, Attachment 2 Award Attachments: Statement of Work, Attachment 3; Quarterly Progress Report for FRA, Attachment 4			
13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT Omnibus Appropriations Act, 2010, Public Law 111-117 (December 16, 2009)			
14. REMARKS			
GRANTEE ACCEPTANCE		AGENCY APPROVAL	
15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Mr. R. Van Ark CEO		17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL Ms. Gina Matrassi-ao	
16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL Electronically Signed	16A. DATE 11/18/2011	18. SIGNATURE OF AUTHORIZED FRA OFFICIAL Electronically Signed	18A. DATE 11/18/2011
AGENCY USE ONLY			
19. OBJECT CLASS CODE: 41010		20. ORGANIZATION CODE: 9013000000	
21. ACCOUNTING CLASSIFICATION CODES DOCUMENT NUMBER FUND BY BPAC AMOUNT FR-HSR-0118-12-01-00 2012 928,620,000.00			

Special Provisions, Attachment 1

1. Identification of Awarding Agency and Grantee:

The California High-Speed Rail Authority (CHSRA or Grantee) and the Administrator of the Federal Railroad Administration (FRA), acting by delegation from the Secretary of Transportation, have entered into this Cooperative Agreement ("Agreement") to conduct and fund this project, as more specifically set forth in the Statement of Work, Attachment 3, attached hereto and made a part hereof and any supplements thereto. As used in this Agreement, the term "Project" refers to the overall effort identified in Section 8 of the Grant/Cooperative Agreement and as that term is defined in Subsection 1(h) of Attachment 2. As used herein, the term "individual work efforts" refers to the individual tasks and subtasks set forth in the Statement of Work (Attachment 3) and any future supplements or amendments thereto. Unless otherwise provided, reporting requirements in this Agreement may be aggregated with respect to the individual work efforts. However, progress reporting (Section 9 of Attachment 1), and budgeting and payment processing (Sections 1 and 7 of Attachment 2) may not be aggregated, and must be accounted for on the basis of the individual work efforts involved.

2. Scope:

The Grantee shall furnish all personnel, facilities, and equipment, and other materials and services (except as otherwise specified herein) necessary to perform the Project, as set forth in the Statement of Work (Attachment 3), and any supplements thereto, which the Parties agree is pursuant to the representations, certifications, and assurances set forth in the Grantee's application(s), and any amendments thereto ("Application"), incorporated herein by reference and made a part hereof.

3. Awarding Agency Participation:

The FRA will provide, on an "as available" basis, one professional staff person, to be designated as the Grant Manager, to review work or work products in progress, and arrange for the review of the Project results upon completion. 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 in Project activities.

4. Term:

Unless sooner terminated in accordance with its terms, this Agreement shall be valid for the period described in Section 4 of the Grant/Cooperative Agreement. This time frame includes the period for both completion of the Project, and completion and submission of a final report on Project results, as described in Section 11 and/or other deliverables as agreed to between the parties.

5. Project Cost, Cost-Sharing Responsibility, and Funding:

a. The total estimated cost of the Tasks funded under this Cooperative Agreement is \$1,288,425,000 and is to be apportioned as set forth in subsections (b)-(f). The costs for completing the Tasks required in Attachment 3 in the funding percentages identified in subsections (c) and (e) and all costs in excess of those provided by FRA as identified in this section will be the responsibility of the Grantee.

b. For \$715,000,000 of the funds obligated by this Agreement (the December 2010 award), FRA's funding assistance is limited to 70% of the combined FRA financial assistance and the Grantee's

financial assistance described in subparagraph (c), totaling \$1,021,400,000. FRA’s contribution shall not be more than \$715,000,000.

c. For the \$715,000,000 of the funds obligated by this Agreement as a result of the December 2010 award, the Grantee’s funding assistance shall be not less than 30% of the combined FRA financial assistance described in subparagraph (b) and the Grantee’s financial assistance, totaling \$1,021,400,000. The Grantee’s contribution shall not be less than \$306,400,000.

d. For \$213,620,000 of the funds obligated by this Agreement (the May 2011 award), FRA’s funding assistance is limited to 80% of the combined FRA financial assistance and the Grantee’s financial assistance described in subparagraph (e) totaling \$267,025,000. FRA’s contribution shall not be more than \$213,620,000.

e. For the \$213,620,000 of the funds obligated by this Agreement as a result of the May 2011, the Grantee’s funding assistance shall be not less than 20% of the combined FRA financial assistance described in subparagraph (d) and the Grantee’s financial assistance totaling \$267,025,000. The Grantee’s contribution shall not be less than \$53,405,000.

f. Of the amount specified in subparagraph (a) of this section, the total Grantee funding contribution (both subparagraphs (c) and (e) of this section) shall not be less than \$359,805,000.

g. When requesting payment, the Grantee must identify: (1) the total amount of costs; (2) Grantee funding assistance applied to the Project; and (3) the balance of Federal assistance dollars requested for each payment. Payment requests must include a designation of the individual work effort involved. The Grantee may provide its funding assistance under this subsection from permissible non-Grantee sources.

h. Funding responsibility for the Project under this Agreement is recapped as follows:

	FRA Funding Assistance	+	Grantee Cash Contribution	+	Grantee In-Kind Contribution Total	=	Total Project Funding
\$ December 2010 Award	\$715,000,000.00	+	\$306,400,000.00	+	\$0.00	=	\$1,021,400,000.00
\$ May 2011 Award	\$213,620,000.00	+	\$53,405,000.00	+	\$0.00	=	\$267,025,000.00
\$ Total Amount	\$928,620,000.00	+	\$359,805,000.00	+	\$0.00	=	\$1,288,425,000.00

i. In accordance with Attachment 2, Sections 7(c)(5) and (d)(1) herein, FRA hereby authorizes the incurrence of pre-agreement costs by the Grantee on or after December 16, 2009, in anticipation of Agreement award, but such costs are allowable only to the extent that they are otherwise allowable under the terms of this Agreement.

j. FRA recognizes that, except to the extent preempted by Federal law, the payment obligations and Project funding assistance contribution of the Grantee under this Agreement (including those to FRA directly) are subject to the availability of appropriations by the California State Legislature, and

in the case of Proposition 1A bond funds, certain other legal requirements set forth therein that must be satisfied prior to Proposition 1A bond funding for certain purposes. The Grantee applied for and has been awarded Federal funds through FRA's competitive discretionary High-Speed Intercity Passenger Rail (HSIPR) grant program with the understanding that it will provide funding assistance for the Project as set forth herein. The Grantee has entered into this Agreement with the firm intention of completing all of the tasks described herein, including providing the Grantee contribution of funding assistance for those tasks. The Grantee will seek and diligently pursue any needed appropriations from the California State Legislature and diligently seek to satisfy such other requirements in Proposition 1A in a timely and appropriate manner as necessary to meet the payment obligations and project funding assistance contribution it has agreed to assume under this Agreement.

6. Program Income:

- a. The Grantee is encouraged to earn income to defray Project costs. Unless prohibited by 49 C.F.R. Part 18.25 or 49 C.F.R. Part 19.24, as applicable, or otherwise agreed to in writing to by FRA and the Grantee, any program income derived from the Project shall be committed under this Agreement to further eligible objectives of the Project.
- b. Program income shall be proportionally deducted from Project outlays, which shall include both the Federal and non-Federal shares of Project costs, as applicable.

7. Payment Method:

Payment of FRA funding through FRA's Office of Financial Services, shall be made on a reimbursable basis whereby the Grantee will be reimbursed, after the submission of proper invoices, for actual expenses incurred.

The Grantee will use the Automated Clearing House (ACH) Electronic Vendor Payment method for transfer of reimbursed funds and submit an SF 270 form.

Unless directed otherwise, requests for payment shall be made via email to 9-AMC-AMZ-FRA-INVOICES@FAA.GOV or by mail to:

MMAC/DOT/FRA
AMZ-150, Accounts Payable
P.O. Box 268943
Oklahoma City, OK 73126

Or via Federal Express to:

MMAC/DOT/FRA
AMZ-150, Accounts Payable
HQ Bldg, Rm 272-F
6500 S MacArthur Blvd
Oklahoma City, OK 73169

8. Reports, Presentations and Other Deliverables:

Whether for technical examination, administrative review, or publication, all submittals shall be of a professional quality and suitable for their intended purpose.

9. Progress Reports:

Four quarterly progress reports following the form of Attachment 4 shall be submitted for periods: January 1- March 31, April 1-June 30, July 1-September 30, and October 1-December 31. The Grantee shall furnish one (1) copy to the Grant Manager on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. Each report shall set forth concise statements concerning activities relevant to the Project, and shall include, but not be limited to, the following:

- a) Relate the state of completion of items in the Statement of Work to expenditures of the relevant budget elements.
- b) An account of significant progress (findings, events, trends, etc.) made during the reporting period.
- c) A description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the Agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered.
- d) An outline of work and activities planned for the next reporting period.

10. Quarterly Federal Financial Report:

The Grantee shall furnish one (1) copy of a quarterly financial status report to the Grant Manager, and one (1) copy to the Administrative Officer, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. The Grantee shall use SF-425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

11. Interim and/or Final Report(s):

If required, interim reports will be due at intervals specified in the Statement of Work. Within 90 days of the Project completion date or termination by FRA, the Grantee shall furnish one (1) hard copy and one (1) reproducible master original to the Grant Manager, and one (1) hard copy to the FRA Administrative Officer of a Summary Project Report. A final version of this report, detailing the results and benefits of the Grantee's improvement efforts, shall be furnished by the expiration date of this Agreement.

12. Administrative Responsibility:

Jennifer Capps, Office of Financial Management, is designated as FRA's Administrative Officer for this Project. All FRA administrative duties under this Agreement are to be performed by the Administrative Officer, unless otherwise specified.

13. Grant Manager:

- a. John Winkle, Office of Railroad Policy and Development, is designated as FRA's Grant Manager. The Grant Manager will oversee the technical administration of this Agreement and act as technical liaison with the Grantee. The Grant Manager is not authorized to change the Statement of Work or

specifications as stated in this Agreement, to make any commitments or otherwise obligate the FRA, or authorize any changes which affect this Agreement's monetary amount, the delivery schedule, period of performance or other terms or conditions.

b. The FRA official authorized to sign this Agreement is the only individual who can legally commit or obligate FRA for the expenditure of public funds. The technical administration of this Agreement shall not be construed to authorize the revision of the terms and conditions of this Agreement.

14. Delivery/Mailing Addresses:

Unless directed otherwise, all deliverables and copies of reports required to be delivered to the Grant Manager under this Agreement shall be delivered F.O.B. destination, under transmittal letter, to:

Federal Railroad Administration
 Office of Railroad Policy and Development
 1200 New Jersey Avenue, SE (Mail Stop 20)
 Washington, DC 20590
 ATTN: John Winkle

Unless directed otherwise, all deliverables and copies of reports required to be delivered to the Administrative Officer under this Agreement shall be delivered F.O.B. destination, under transmittal letter, to:

Federal Railroad Administration
 Office of Financial Management
 1200 New Jersey Avenue, SE (Mail Stop 45)
 Washington, DC 20590
 ATTN: Jennifer Capps

15. Governing Regulations:

The Grantee acknowledges that its performance shall be governed by and in compliance with the following Administrative and Cost Principles:

For State, Local and/or Tribal Governmental Entities:

- 49 C.F.R. Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
- OMB Circular A-87, "Cost Principles for State and Local Governments," as amended.

For non-profit and for-profit:

- 49 C.F.R. Part 19, "Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (applies to non-profit and for-profit organizations)
- OMB Circular A- 21, "Cost Principles for Educational Institutions" (applies to educational institutions)
- OMB Circular A-122, "Cost Principles for Nonprofit Organizations" (applies to private non-profit organizations)
- Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" (applies to for-profit organizations).

These identified circulars and regulations are hereby incorporated into this Agreement by reference as if fully set out herein.

16. Buy America:

The Grantee shall comply with the Buy America provisions set forth in 49 U.S.C. §24405(a) for the Project requiring the use of steel, iron, and manufactured goods produced in the United States, in accordance with the conditions therein set forth.

PRIIA Clauses for Corridor Programs, Attachment 1A

1. Section 1. Railroad Agreements.

The Grantee represents that it has entered into and will abide by, or will enter into and abide by, a written agreement, in form and content satisfactory to FRA, with any railroad owning property on which the Project is to be undertaken, in accordance with 49 U.S.C. 24405(c)(1) and the relevant section(s) of the High-Speed Intercity Passenger Rail (HSIPR) Program Interim Guidance/Notice of Funding Availability (NOFA) through which this Project was selected for funding (see, e.g., Appendix 3.4.3 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900)).

Such agreement shall provide for compensation for use, assurance regarding the adequacy of infrastructure capacity, a commitment to keeping railroad collective bargaining agreements in full force and effect, and compliance with liability requirements consistent with 49 U.S.C. 28103. The Grantee shall not enter into or agree to any substantive changes to the FRA approved written agreement with the railroad on which the Project is undertaken without FRA's prior written consent. The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of the final design and/or construction for the Project, or any component of the Project, without receiving FRA's prior written approval of the executed railroad agreement satisfying the requirements of this section.

Section 2. Service Outcome Agreements with Infrastructure Owners and Operators.

a. The Grantee represents that it has or will have satisfactory continuing control over the use of Project improvements and the capability and ability to maintain the Project improvements for the useful life of the Project, in accordance with 49 U.S.C. 24402(b)(1) and (c)(1)(B). Satisfactory continuing control may be established by either the direct ownership of Project improvements or through a written agreement(s) in form and content satisfactory to FRA with the owners of infrastructure on which the Project is to be undertaken and the proposed service operator of any rail passenger service that benefits from the Project, which agreement(s) shall authorize construction of, access to, and/or use of Project improvements for a minimum of twenty years from the date the Project improvements are placed in service. Such agreements may be combined, if appropriate.

b. The written agreement(s) shall include the following minimum terms and conditions tailored to the Project: (1) specific identification of Project benefits in terms relevant to the Project being implemented, including, as appropriate, additional frequencies, improved reliability, future availability of developed capacity, and improved schedules, (2) a firm commitment on the part of the infrastructure owner and operator to achieving the Project benefits included in the Grantee's application and reflected in the Statement(s) of Work attached to this Agreement, and (3) reasonable and appropriate enforcement mechanisms that provide for prompt resolution of disputes and the ability of the Grantee to obtain the Project benefits funded through this Agreement in an expeditious and reasonable manner.

- c. The Grantee shall not enter into or agree to any substantive changes in the FRA-approved written agreement(s) with the infrastructure owner and service operator without FRA's prior written consent.
- d. The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a fully executed agreement(s) satisfying the requirements of this section.
- e. The agreement required by this section 2 is supplemental to any agreement that may be required by section 1 of Attachment 1A, however, the requirements of sections 1 and 2 may be satisfied in one agreement, where appropriate.

Section 3. Project Management Plan.

The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a project management plan that complies with the requirements of 49 U.S.C. §24403(a) and the relevant section(s) of the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding (see, e.g., section 2.2 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900)). The project management plan should document assumptions and decisions regarding communications, management processes, execution and overall project control.

Section 4. Financial Plans.

The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a financial plan that complies with the requirements of section 2.2 of the High Speed Intercity Passenger Rail (HSIPR) Program interim guidance published in the Federal Register on June 23, 2009 (74 FR 29900) and that is consistent with the requirements described in Attachment 3 Task 5.

Section 5. Environmental Assessment.

Prior to initiating final design, or commencing construction for the Project or any component of the Project, the Grantee shall submit all necessary environmental documentation, in accordance with Attachment 2, section 21(d) of this Agreement, and receive FRA's written confirmation that relevant Project environmental reviews have been completed for the overall Project or for an individual component of the Project that the Grantee proposes to advance to final design or construction (see also the relevant section(s) of the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding (e.g., section 1.5 and Appendix 3.2.9 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900)). The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving such written confirmation from FRA.

Section 6. Final Design and Engineering.

Prior to commencing final design activities for the Project or any individual component of the Project,

the Grantee shall submit to FRA a complete set of Preliminary Engineering documents, prepared by or on behalf of the Grantee in accordance with the provisions of the relevant section(s) of the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding (see, e.g., Appendix 2.2 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900)), and in accordance with the Statement(s) of Work incorporated into this Agreement. Except in unusual circumstances and where approved in advance by FRA, the submitted Preliminary Engineering documents shall include evidence of concurrence by infrastructure owners and operators of rail service whose operations would be affected by the Project improvements. The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or final engineering of the Project, or commence any part of final design and/or final engineering for the Project or any component of the Project, without receiving FRA's prior written approval of the Preliminary Engineering documents.

Section 7. Construction.

Prior to commencing construction activities for the Project or any individual component of the Project, the Grantee shall submit to FRA a complete set of Final Design documents, completed by or on behalf of the Grantee in accordance with the provisions of the relevant section(s) of the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding (see, e.g., section 2.2 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900)), and in accordance with the Statement(s) of Work incorporated into this Agreement. In unusual circumstances where the Preliminary Engineering documents approved by FRA did not contain evidence of concurrence by infrastructure owners and operators of rail service whose operations would be affected by Project improvement, then the submitted Final Design documents shall include evidence of concurrence by such infrastructure owners and operators. The Grantee may not obligate or expend any funds (federal, state or private) for construction of the Project, as defined in the Statement(s) of Work, or commence any part of construction for the Project or any component of the Project, without receiving FRA's prior written approval of the Final Design documents.

Section 8. Design/Build Program Plan.

Project components being implemented by the Grantee through a design/build implementation Process shall, with FRA's concurrence, comply with this section 8 in lieu of sections 6 and 7. Prior to commencing any design activities that follow preliminary engineering/design, and expressly including the preparation of final construction plans and detailed specifications for the performance of construction work for the Project or any individual component of the Project, the Grantee shall submit to FRA a comprehensive Design/Build Program Plan completed by or on behalf of the Grantee, and as described in the Statement of Work attached to this Agreement. The Design/Build Program Plan shall include, at a minimum, a description identifying: (1) the suitability of the Project as a design/build candidate, (2) the performance metrics to be used to assess successful Project completion, (3) the composition of the design/build Project team, (4) Project scope, (5) the decision factors to be used for the selection from among the design/build proposals, and (6) methods for contract administration. FRA may issue additional guidance in the future further describing the required contents of Design/Build Program Plans. Except in unusual circumstances and where approved in advance by FRA, the Grantee will be responsible for providing in the Design/Build Program Plan evidence of concurrence by infrastructure owners and operators of rail service whose operations would be affected by the Project improvements. The Grantee may not obligate or expend any funds (federal, state or private) for implementing the design/build implementation process for the Project (not including preparation of the Plan) or any component of the Project or commence any part of implementing the design/build implementation process (not including the preparation of the Plan) without receiving FRA's prior written approval of the Design/Build Program Plan.

Section 9. Property Acquisition.

The Grantee may not obligate or expend any funds (Federal, State, or private) to acquire any real property for the Project, including rights-of-way, unless property acquisition is specifically authorized in the Statement of Work incorporated as an attachment to this Agreement and unless the required National Environmental Policy Act (NEPA) documentation for the associated acquisition step is by then completed as determined in writing by FRA and any required California Environmental Quality Act (CEQA) documentation for the associated acquisition step is by then completed as determined by the Grantee.

Section 10. Detailed Statements of Work For Project Components.

The Grantee may not obligate or expend any funds (federal, state or private) for the final design and/or construction of the Project or commence any activity on or for the Project, that is not specifically authorized in a Statement of Work incorporated as an attachment to this Agreement and/or which has not secured all required FRA approvals. The parties recognize that this Agreement contemplates a phased Project implementation process, whereby individual Project components or phases will be implemented as they are developed by the Grantee and approved by FRA. These phases may be reflected in terms of stages of Project development (e.g., preliminary engineering, final design, or construction) or in terms of individual Project components (e.g., stations, interlocking, or third track construction) of the larger Project. The parties contemplate a series of amendments to this Agreement that will add greater definition to the individual Project components to be undertaken by the Grantee for each phase or component of Project implementation, and will authorize the Grantee to initiate the next phase of Project implementation, as reflected in the agreed-upon amendments or supplements to the Statement of Work. It is the Grantee's responsibility to propose revised or additional statements of work (including a detailed scope, schedule and budget) significantly in advance of proposed implementation, to allow for the Grantee and the FRA to agree on the components of that next phase, and adopt a revised or supplemental Statement of Work through an amendment to this Agreement.

Section 11. Buy America.

The Grantee shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project requiring the use of steel, iron, and manufactured goods produced in the United States, in accordance with the conditions therein set forth.

Section 12. Labor Provisions.

49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this Agreement shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C 231 et seq.), the Railway Labor Act (43 U.S.C.151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). The Grantee shall reflect these provisions in its agreements with the entities operating rail services over such rail infrastructure to the extent required by 49 U.S.C. 24405(b) and other laws referenced above.

Section 13. Labor Protective Arrangements.

For a project that uses rights-of-way owned by a railroad, the Grantee shall comply with the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in

connection with the Project financed in whole or in part under this Agreement (See 49 U.S.C. 24405(c)). The Grantee agrees to include the applicable protective arrangements established by the Department of Labor under 45 U.S.C. 836. in its agreements with entities operating rail services over rail infrastructure constructed as part of the Project. The following definitions apply for purposes of applying those protective arrangements:

‘Protected employee’ means an employee of a railroad who had an employment relationship with such railroad on the date on which the Grantee first applied for financial assistance applicable to the Project involved and who is affected by actions taken pursuant to this Agreement; provided, however, that an employee who was benefitted solely as a result of the Project shall not be a protected employee under these provisions.

‘Railroad’ means a rail carrier or a common carrier by railroad or express as defined in 49 U.S.C. 10102, and includes the National Railroad Passenger Corporation and the Alaska Railroad as well as a person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made pursuant to this Agreement.

Section 14. Maintenance Responsibility and Refunds.

a. Except as otherwise provided herein, the Grantee shall ensure the maintenance of Project property to the level of utility (including applicable FRA track safety standards) which exists when the Project improvements are placed in service (as set forth in the Statement(s) of Work incorporated into this Agreement) for a period of twenty (20) years from the date such Project property was placed in service, consistent with the satisfactory continuing control and maintenance responsibilities of 49 U.S.C. 24402(b)(1) and (c)(1) and as addressed in Section 2 above. In the event the Project property is not maintained as required by this section, for a period of time in excess of six (6) months, or such other period as may be mutually determined by the parties, and is not restored within a reasonable time to the level of utility which exists when the Project improvements are placed in service, the Grantee will refund to FRA a pro-rata share of the Federal contribution, based upon the percentage remaining of the twenty (20) year period that commenced when the Project property was placed in service.

b. In the event that all intercity passenger rail service making use of the Project property is discontinued during the twenty (20) year period, the Grantee shall continue to ensure that maintenance of the Project property, as set forth above, for a period of one (1) year from the date of the discontinuance to allow for the possible reintroduction of intercity rail passenger service.

Section 15. Project Use for Intercity Passenger Rail Service and Refunds.

a. The Grantee acknowledges that the purpose of the Project is to benefit intercity passenger rail service. In the event that all intercity passenger rail service making use of the Project improvements is discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project improvements were placed in service, as set forth above, and if such intercity passenger rail service is not reintroduced during a one (1) year period following the date of such discontinuance, the Grantee shall refund to FRA, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.

b. To the extent necessary and appropriate, sections 14 and 15 shall be implemented in a manner so as to avoid any double counting of any refunds paid or required to be paid to the FRA.

Section 16. Davis-Bacon Act Provisions.

Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2) for Project components that use or would use rights-of-way owned by a railroad. The Grantee shall comply with the provisions of 49 U.S.C. 24405(c) (2), and the relevant section(s) of the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding (see, e.g., Appendix 3.4.5 of the NOFA published in the Federal Register on June 23, 2009 (74 FR 29900), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

Section 17. Replacement of Existing Intercity Passenger Rail Service.

49 U.S.C. 24405(d) requires any entity providing intercity passenger railroad transportation on a project funded by this Agreement to comply with certain requirements with respect to its employees and the employees of preexisting intercity rail passenger services. The Grantee shall comply with the applicable provisions of 49 U.S.C. 24405(d) to the extent it is or becomes a provider of intercity passenger railroad transportation. If it is not the operator or provider of the intercity passenger rail services benefitting from the Project funded under this Agreement, then it shall notify its selected operator of the requirements imposed by section 24405(d).

Section 18. Additional Guidance.

As noted above, additional guidance for Grantees in complying with the requirements of this Appendix 1A (and with the Cooperative Agreement generally) is found in the HSIPR Program Interim Guidance/NOFA through which this Project was selected for funding. The Grantee should refer to this Guidance as necessary when carrying out the activities associated with implementing the Project.

General Provisions, Attachment 2

1. Definitions. As used in this Agreement:

- a. Agreement** means this Grant Agreement or Cooperative Agreement, including all attachments.
- b. Application** means the signed and dated proposal by or on behalf of the Grantee, as may be amended, for Federal financial assistance for the Project, together with all explanatory, supporting, and supplementary documents heretofore filed with and accepted or approved by FRA.
- c. Approved Project Budget** means the most recently dated written statement, approved in writing by FRA, of the estimated total cost for each individual work effort of the Project, the items to be deducted from such total in order to calculate the estimated net Project cost for each individual work effort of the Project, the maximum amount of Federal assistance for which the Grantee is currently eligible for each individual work effort, the specific items (including contingencies specified) for which the total may be spent, and the estimated cost of each of such items. The term "Approved Project Budget" includes "Financial Plan" as used in 49 C.F.R. Part 18.
- d. Awarding Agency** means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant. In the case of a Federal Agency, the term "Awarding Agency" also includes "Federal Awarding Agency" as used in 49 C.F.R. Part 19.
- e. Federal Railroad Administration** is an operating administration of the U.S. Department of

Transportation.

f. Federal Government means the United States of America and any executive department or agency thereof.

g. Grantee means any entity that receives Federal grant assistance directly from FRA for the accomplishment of the Project.

h. Project means the task or set of tasks set forth in the approved Application as now reflected in and refined by the individual work efforts set forth in Attachment 3 and any supplements thereto which the Grantee carries out pursuant to this Agreement.

i. Subgrantee means any entity that receives FRA assistance from an FRA Grantee, rather than from FRA directly. The term "subgrantee" does not include "third party contractor."

j. U.S. DOT means the U.S. Department of Transportation, including its operating administrations.

2. Accomplishment of the Project:

a. General Requirements:

The Grantee agrees to carry out the Project in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, grant guidance, the Application, the Approved Project Budget, the Statement of Work, Project schedules, and all applicable laws, regulations, and published policies. This includes, but is not limited to the following, as applicable:

- 1) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (common grant management rule), 49 C.F.R. Part 18, applies to Projects with governmental bodies.
- 2) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," 49 C.F.R. Part 19, applies to Projects with institutions of higher education and private nonprofit organizations. 49 C.F.R. Part 19 also applies to grants and cooperative agreements with private for-profit organizations.

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 to this Agreement on the date the 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 of the Agreement has been executed and may apply to this Agreement. If such new or changed Federal laws, regulations, policies, and related administrative practices apply to/or govern, but materially impact the Grantee or the Project or the Grantee's ability to meet its obligations under this Agreement, the Parties agree to consider in good faith amendments to this Agreement as necessary to complete the Project consistent with the intent of this Agreement prior to any such changed laws, regulations, policies or practices. To achieve compliance with changing Federal requirements, the Grantee agrees to include in all subassistance agreements and third-party contracts financed with FRA assistance 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 or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall 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 or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable State or territorial 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 as soon as possible.

c. Funds of the Grantee. Unless approved otherwise by FRA, the Grantee agrees to complete all actions necessary to provide the matching contributory funds or cost share of the Project costs, if applicable, at or before the time that such funds are needed to meet Project expenses.

d. Changed Conditions of Performance (Including Litigation). The Grantee agrees to notify FRA immediately 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 notify FRA immediately 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 FRA; this proviso applies to any type of litigation whatsoever, in any forum.

e. No FRA Obligations to Third Parties. Absent FRA's express written consent, and notwithstanding any concurrence by FRA in or approval of the award of any contract of the Grantee (third party contract) or subcontract of the Grantee (third party subcontract) or the solicitation thereof, FRA shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person not a party to this Agreement in connection with the performance of the Project.

3. Ethics:

a. Standards of Conduct. The Grantee agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal funds. The code or standards shall 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 contractors or subgrantees. 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 shall provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee's officers, employees, board members, or agents, or by contractors or subgrantees 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 Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- a) The employee, officer, board member, or agent;
- b) Any member of his or her immediate family;

- c) His or her partner; or
- d) An organization that employs, or is about to employ, any of the above.

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 third party 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 Provisions.** 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 a.

4. Approved Project Budget:

The Grantee agrees to carry out the Project in accordance with the Approved Project Budget, written approval of which the Grantee shall secure prior to being reimbursed under this Agreement. If the Approved Project Budget is included in this Agreement as Attachment 3, execution of the Agreement shall constitute such written approval. The Grantee agrees to obtain the prior written approval of FRA's Associate Administrator for Railroad Development or the Associate Administrator for Railroad Safety, as applicable, for any revisions to the Approved Project Budget that equal or exceed 10 percent any line item or pertain to a line item involving contingency or miscellaneous costs. For revisions to the Approved Project Budget that are less than 10 percent of any line item, and do not involve contingency or miscellaneous costs, the Grantee agrees to notify FRA of the revisions to the Approved Project Budget. Any revisions to the Approved Project Budget must not affect total project costs or the respective cost-sharing responsibilities set forth in Attachment 1, Section 5.

5. Accounting Records:

a. **Project Accounts.** The Grantee agrees to 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 49 C.F.R. § 18.20, or 49 C.F.R. § 19.21, as amended, whichever is applicable.

b. **Funds Received or Made Available for the Project.** Consistent with the provisions of 49 C.F.R. § 18.21, or 49 C.F.R. § 19.21, as amended, whichever is applicable, the Grantee agrees to record in the Project Account, and deposit in a financial institution all Project payments received by it from FRA pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project (Project Funds). The Grantee is encouraged to use financial institutions owned at least 50 percent by minority group members.

c. **Documentation of Project Costs and Program Income.** All costs charged to the Project, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee also agrees to maintain accurate records of all Program Income derived from Project implementation.

d. **Checks, Orders, and Vouchers.** The Grantee agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

6. Record Retention:

a. **Submission of Proceedings, Contracts and Other Documents.** During the course of the Project and for three years thereafter, 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. Reporting and record-keeping requirements are set forth in-

- 1) 49 C.F.R. Part 18 for governmental Grantees; and
- 2) 49 C.F.R. Part 19 for private non-profit and for-profit Grantees.

Project closeout does not alter these requirements.

b. **Audit and Inspection.**

1) General Audit Requirements. A Grantee that is:

- a) a State, local government or Indian tribal government agrees to comply with the audit requirements of 49 C.F.R. § 18.26 and OMB Circular A-133, and any revision or supplement thereto.
- b) an institution of higher education or nonprofit organization agrees to comply with the audit requirements of 49 C.F.R. § 19.26 and OMB Circular A-133, and any revision or supplement thereto.
- c) a private for-profit organization agrees to comply with the audit requirements of OMB Circular A-133.

The Grantee agrees to obtain any other audits required by FRA. Project closeout will not alter the Grantee's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-21, Revised; or OMB Circular A-122, Revised.

2) 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 pertaining to the Project. The Grantee agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

7. **Payments:**

a. **Request by the Grantee for Payment.** The Grantee's request for payment of the Federal share of allowable costs shall be made to FRA at the address shown in Section 7 of Attachment 1, Special Provisions, and will be acted upon by FRA as set forth in this section. Each payment made to the Grantee must comply with Department of the Treasury regulations, "Rules and Procedures for Funds Transfers," 31C.F.R. Part 205. To receive a Federal assistance payment, the Grantee must:

- 1) Have demonstrated or certified that it has made a binding commitment of non-Federal funds, if applicable, adequate when combined with Federal payments, to cover all costs to be incurred under

the Project to date. A Grantee required by Federal statute or this Agreement to provide contributory matching funds or a cost share agrees:

- a) to refrain from requesting or obtaining Federal funds in excess of the amount justified by the contributory matching funds or cost share that has been provided; and
 - b) to refrain from taking any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized under this Agreement. The requirement for contributory matching funds or cost share may be temporarily waived only to the extent expressly provided in writing by FRA.
- 2) Have submitted to FRA all financial and progress reports required to date under this Agreement; and
 - 3) Have identified the source(s) of financial assistance provided under this Project, if applicable, from which the payment is to be derived.

b. Payment by FRA.

- 1) Reimbursement Payment by FRA. FRA uses the reimbursement method, whereby the Grantee agrees to:
 - a. Complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FRA; and
 - b. Complete and submit Standard Form 270, "Request for Advance or Reimbursement," to FRA.
 - 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, or if requested by the Grantee, by issuance of a treasury check (allow 30 day processing time for issuance of check), provided the Grantee: (i) is complying with its obligations under this Agreement, (ii) has satisfied FRA that it needs the requested Federal funds during the requisition period, 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 FRA's share of the total Project funding.
 - 3) Other Payment Information.
 - a. The Grantee agrees to adhere to and impose on its subgrantees all applicable foregoing "Payment by FRA" requirements of this Agreement.
 - b. If the Grantee fails to adhere to the foregoing "Payment by FRA" requirements of this Agreement, FRA may revoke the portion of the Grantee's funds that has not been expended.
- c. Allowable Costs.** The Grantee's expenditures will be reimbursed only if they meet all requirements set forth below:
- 1) Conform with the Project description, the Statement of Work, and 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 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) after the effective date of this Agreement, unless specific authorization from FRA to the contrary is received in writing;
 - 6) Unless permitted otherwise by Federal status or regulation, conform with Federal guidelines or regulations and Federal cost principles as set forth below:
 - a. For Grantees that are governmental organizations, the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments" apply;
 - b. For Grantees that are institutions of higher education, the standards of OMB Circular A-21, Revised, "Cost Principles for Educational Institutions" apply;
 - c. For Grantees that are private nonprofit organizations, the standards of OMB Circular A-122, Revised, "Cost Principles for Nonprofit Organizations" apply; and
 - d. For Grantees that are for-profit organizations, the standards of the Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" apply.
 - 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 subgrantees and contractors.
- d. Disallowed Costs.** In determining the amount of Federal assistance FRA will provide, FRA will exclude:
- 1) Any Project costs incurred by the Grantee before the obligation date of this Agreement, or amendment or modification thereof, whichever is later, unless specifically allowed by this Agreement, otherwise permitted by Federal law or regulation, or unless an authorized representative of FRA states in writing to the contrary;
 - 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 the "Payment by FRA," part of this Agreement 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 funds requested, FRA will notify the Grantee stating the reasons therefore. 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. Nor will Project closeout 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 assistance funds to be made available under this Project 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, bond interest and other financing costs are allowable.

f. Requirement to Remit Interest. The Grantee agrees that:

- 1) Any interest earned by the Grantee on FRA funds must be remitted to FRA, except as provided by 31 U.S.C. § 6503, or the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., and any regulations thereunder that may be issued by the U.S. Secretary of the Treasury.
- 2) Irrespective of whether the Grantee has deposited funds in an interest-bearing account, the Grantee agrees to pay to FRA interest on any FRA funds that the Grantee has drawn down and failed to spend for eligible Project activities. Unless waived by FRA, interest will be calculated at rates imposed by the U.S. Secretary of the Treasury beginning on the fourth day after the funds were deposited in the Grantee's bank or other financial depository. This requirement does not apply to any Grantee that is a state, state instrumentality, or Indian Tribal Government, except as permitted under applicable state law and by regulations that may be issued by the U.S. Secretary of the Treasury.
- 3) Upon notice by FRA to the Grantee of specific amounts due, the Grantee agrees to promptly remit to FRA any excess payment of amounts or disallowed costs, including any interest due thereon.

g. De-obligation of Funds. Once the Project has been completed, FRA reserves the right to de-obligate unspent FRA funds prior to Project closeout.

8. Property, Equipment and Supplies:

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

a. Use of Property. The Grantee agrees that Project property, equipment, and supplies shall be used for the provision of the Project activity for the duration of its useful life, as determined by FRA. Should the Grantee unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Grantee agrees that FRA may require the Grantee to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Grantee further agrees to notify FRA immediately when any Project property or equipment is withdrawn from use in the Project activity or when such property or equipment is used in a manner substantially different from the representations made by the Grantee in its Application or the text of the Project description.

b. General Federal Requirements.

- 1) a Grantee that is a governmental entity agrees to comply with the property management standards of 49 C.F.R. §§ 18.31, 18.32, and 18.33, including any amendments thereto, and other applicable guidelines or regulations that are issued.
- 2) a Grantee that is not a governmental entity agrees to comply with the property standards of 49 C.F.R. §§ 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued. Exceptions to the requirements of 49 C.F.R. §§ 18.31, 18.32, and 18.33, and 49 C.F.R. §§ 19.30 through 19.37 inclusive, must be specifically approved by FRA.

c. **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.

d. **Records.** The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section of this Agreement.

e. **Transfer of Project Property.** The Grantee agrees that FRA may:

1) require the Grantee to transfer title to any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as permitted by 49 C.F.R. § 18.32(g) or 49 C.F.R. §§ 19.30 through 19.37 inclusive, whichever may be applicable.

2) direct the disposition of property or equipment financed with FRA assistance made available under this Agreement, as set forth by 49 C.F.R. §§ 18.31 and 18.32 or 49 C.F.R. §§ 19.30 through 19.37 inclusive, whichever may be applicable.

f. **Withdrawn Property.** If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, 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 shall be in accordance with 49 C.F.R. §§ 18.31 and 18.32 for a Grantee that is a governmental entity, or 49 C.F.R. §§ 19.30 through 19.37 inclusive, for a Grantee that is an institution of higher education or a private organization.

g. **Encumbrance of Project Property.** Unless expressly authorized in writing by FRA, the Grantee agrees to refrain from:

1) Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect FRA interest in any Project property or equipment; or

2) Obligating itself in any manner to any third party with respect to Project property or equipment.

The Grantee agrees to 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.

9. **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 U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

10. **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.

11. **Procurement:**

a. Federal Standards. The Grantee agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.

b. Cargo Preference -- Use of United States-Flag Vessels. Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, the Grantee shall 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:

As required by 46 C.F.R. Part 381, 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 paragraph (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 funds that will be used to finance the acquisition; and
- 2) express the 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 subgrantees 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. Notification of Third Party Contract Disputes or Breaches. The Grantee agrees to notify FRA of any current or prospective major dispute, breach, or litigation pertaining to any third party contract. If the Grantee seeks to name FRA as a party to litigation for any reason, the Grantee agrees first to inform FRA before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

f. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

- 1) The Grantee agrees to: (a) provide maximum practicable opportunities for small businesses,

including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.

2) An example of a best practice under (b) above would be to incorporate key elements of the Department's Disadvantage Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Grantee would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a Grantee, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.

3) The Grantee must provide FRA a plan for incorporating the above best practice into its implementation of the Project within 30 days following execution of this Agreement. If the Grantee is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the Grantee agrees to provide the FRA with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

12. Metric System:

The Grantee agrees to use the metric system of measurement in its Project activities to the extent practicable, in conformance with applicable regulations, guidelines, and policies that U.S. DOT or FRA may issue. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impracticable or likely to cause significant inefficiencies or loss of markets to U.S. firms.

13. Patent Rights:

a. If any invention, improvement, or discovery of the Grantee or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Grantee agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of the Grantee, third party contractors and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

b. If the Grantee secures a patent with respect to any invention, improvement, or discovery of the Grantee or any of its third party 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, non-exclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

c. The Grantee agrees to include the requirements of the "Patent Rights" section of this Agreement in

its third party contracts for planning, research, development, or demonstration under the Project.

14. Rights in Data and Copyrights:

a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

b. The following restrictions apply to all subject data first produced in the performance of this Agreement:

1) Except for its own internal use, the Grantee may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Grantee authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.

2) As authorized by 49 C.F.R. § 18.34, or 49 C.F.R. § 19.36, as applicable, FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

b) Any rights of copyright to which a Grantee, subgrantee, or a third party contractor purchases ownership with Federal assistance.

c. When FRA provides assistance to a Grantee for a Project involving planning, research, or development, it is generally FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FRA determines otherwise, the Grantee understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FRA may make available to any FRA Grantee, subgrantee, third party contractor, or third party subcontractor, either FRA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FRA may direct.

d. To the extent permitted by State law, the Grantee agrees to indemnify, save and hold harmless FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Grantee shall not be required to indemnify FRA for any such liability arising out of the wrongful acts of employees or agents of FRA.

- e. Nothing contained in this section on rights in data, shall imply a license to FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FRA under any patent.
- f. The requirements of this section of this Agreement do not apply to material furnished to the Grantee by FRA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by the Grantee at the time of delivery of such work.
- g. Unless FRA determines otherwise, the Grantee agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

15. Acknowledgment of Support and Disclaimer:

- a. An acknowledgment of FRA support and a disclaimer must appear in any grantee publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

"This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement, dated ." (Fill-in appropriate identification of grant/cooperative agreement)

- b. All grantee publications must also contain the following:

"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."

- c. The Grantee agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FRA identifying the Project and indicating that FRA is participating in the development of the Project.

16. 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 FRA's Grant Manager, clearly referenced with the appropriate identifying information.

17. Site Visits:

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

18. Safety Oversight:

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 oversight in general, and in

the performance of this Agreement, in particular.

19. Civil Rights:

The Grantee agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title V111 of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing, (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the Grantee.

20. Americans With Disabilities Act:

The Grantee agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

21. Environmental Protection:

a. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.

b. The Grantee will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: 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, and all regulations issued thereunder. The Grantee certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The Grantee will notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Grantee's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. The Grantee will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the Grantee upon the receipt of a communication from the EPA concerning the matters set forth herein.

c. The Grantee may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FRA has provided the Grantee with a written notice authorizing the Grantee to proceed.

d. The Grantee shall assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (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), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, the Grantee may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).

e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by the Grantee without the prior written concurrence of FRA. The Grantee shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).

f. The Grantee agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. '4321 note, except to the extent that the FRA determines otherwise in writing.

22. Project Completion, Audit, Settlement, and Closeout:

a. **Project Completion.** Within 90 days of the Project completion date or termination by FRA, the Grantee agrees to submit a final Federal Financial Report (Standard Form 425), a certification or summary of Project expenses, and third party audit reports, as applicable.

b. **Audits.** Each governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 18.26 and OMB Circular A-128 or any revision or supplement thereto. Each non-governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 19.26 and OMB Circular A-133 or any revision or supplement thereto.

c. **Remittance of Excess Payments.** If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee agrees to promptly remit that excess and interest as may be required by the "Payment by FRA" section of this Attachment.

d. **Project Closeout.** Project closeout occurs when all required Project work and all administrative procedures described in 49 C.F.R. Part 18, or 49 C.F.R. Part 19, as applicable, have been completed, and when FRA notifies the Grantee and forwards the final Federal assistance payment, or when FRA acknowledges the Grantee's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by this Agreement or by the FRA's final notification or acknowledgment.

23. Right of FRA to Terminate:

a. Upon written notice, the Grantee agrees that FRA may suspend or terminate all or part of the financial assistance provided herein if the Grantee has violated the terms of this Agreement, or if FRA

determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate this Agreement.

b. In general, termination of any financial assistance under this Agreement 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, if FRA determines that the Grantee has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Grantee to refund the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA.

c. Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.

24. Transparency Act Requirements—Reporting Subawards and Executive Compensation (Does not Apply to American Recovery and Reinvestment Act Funds):

The Grantee will insert the following clause in all first-tier subgrants of \$25,000 or more--

a. Reporting of First-Tier Subawards.

1) Applicability. Unless you are exempt as provided in paragraph d. of this section, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in subsection e. of this section).

2) Where and when to report.

a. You must report each obligating action described in subsection a.1. of this section to <http://www.fsrs.gov>.

b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a. the total Federal funding authorized to date under this award is \$25,000 or more;

b. in the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or [section 6104 of the Internal Revenue Code of 1986](#). (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2) Where and when to report. You must report executive total compensation described in subsection b.1. of this section:

a. As part of your registration profile at <http://www.ccr.gov>.

b. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1) Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

a. in the subrecipient's preceding fiscal year, the subrecipient received—

(1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or [section 6104 of the Internal Revenue Code of 1986](#). (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2) Where and when to report. You must report subrecipient executive total compensation described in subsection c.1. of this section:

a. To the recipient.

b. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt

from the requirements to report:

a. Subawards,

and

b. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this section:

1) Entity means all of the following, as defined in 2 CFR part 25:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization;

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2) Executive means officers, managing partners, or any other employees in management positions.

3) Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. — .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4) Subrecipient means an entity that:

a. Receives a subaward from you (the recipient) under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see [17 CFR 229.402\(c\)\(2\)](#)):

a. Salary and bonus.

b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- e. Above-market earnings on deferred compensation which is not tax-qualified.
- f. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

25. Entire Agreement:

This Agreement constitutes the entire agreement between the parties. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement.

26. Grant Amendments:

Modifications to this Agreement may be made only in writing, signed by the each party's authorized representative, and specifically referred to as a modification to this Agreement.

27. Flow Down Provisions:

The Grantee shall include provisions to carry out the purposes of this Agreement in all contracts or grant agreements with persons who perform any part of the work under this Agreement. There shall be provisions for a further flow down of such requirements to each sub-tier contractor or grantee as required.

28. Successors and Assignees:

This Agreement may not be assigned without the express prior written consent of the other party.

29. Execution:

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

30. Severability:

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

AWARD ATTACHMENTS

California High-Speed Rail Authority

FR-HSR-0118-12-01-00

1. Statement of Work, Attachment 3
2. Quarterly Progress Report for FRA, Attachment 4

ATTACHMENT 3

STATEMENT OF WORK

(November 2011)

**Initial Central Valley Section: Madera County to Bakersfield (Kern County)
of the California High-Speed Train Program**

INTRODUCTION

In 2008, the California State Legislature adopted AB 3034, finding “it imperative that the state proceed quickly to construct a...high-speed passenger train system to serve the major metropolitan areas...It is the intent of the Legislature that the entire high-speed train system shall be constructed as quickly as possible... ..” Also in 2008, California voters passed Prop 1A, approving \$9 billion in bonds to support construction of the high-speed train. The Legislature and the voters specifically directed that the system should include California’s Central Valley, as well as other major California population centers.

The California High-Speed Rail Authority (Authority or CHSRA) through the California High-Speed Train Program (CHSTP) is working to fulfill AB 3034’s directive. The new high-speed rail system will be grade-separated from road vehicle traffic and will operate almost exclusively on separate, dedicated tracks with a top design speed of up to 250 mph and an operating speed of up to 220 mph. The 800-mile, statewide program will provide reliable, high-speed electrified train service between the Bay Area, the Central Valley, Sacramento, and Southern California.

Phase 1 of the Program involves construction of about 520 miles of the system between San Francisco and Anaheim. When completed, Phase 1 will provide 2-hour and 40-minute nonstop service—competitive with air travel—between San Francisco and Los Angeles compared with over 6 hours of travel time by automobile. Subsequent phases of the CHSTP include a southern extension (Los Angeles to San Diego, via the Inland Empire) and a northern extension (from Merced to Sacramento).

The American Recovery and Reinvestment Act (ARRA), enacted February 17, 2009, contained \$8 billion to fund high-speed and intercity passenger rail (HSIPR) projects. On January 28, 2010, the U.S. Department of Transportation announced the selection of the four CHSRA design/build project sections eligible to receive up to \$2.25 billion¹ in ARRA funds.

In September 2010, the Federal Railroad Administration (FRA) and the Grantee executed Cooperative Agreement FR-HSR-0009-10-01-00 as amended with a Federal award amount of \$194 million for preliminary engineering (PE) (up to 30% design and additional design work for discrete areas as needed and agreed to by FRA), environmental documentation to support final

¹ FRA awarded \$400 million of the \$2.25 billion to Transbay Joint Powers Authority (TJPA) for specific HSR-related improvements to Transbay Terminal, reducing the total funding amount to \$1.85 billion for Phase 1 PE/NEPA/CEQA work and final design/construction.

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environmental decisions in the form of Federal Records of Decisions (RODs) and California Notices of Determination (NODs) for each of the seven sections of Phase 1 of the High-Speed Train (HST) System, and other work required prior to the start of construction including right-of-way (ROW) acquisition planning and development of the necessary procurement plans and documents for final design and construction for Phase 1 of the system all as described in Attachment 3 to that Agreement.

On October 28, 2010, Secretary LaHood announced the selection of a Central Valley project section to receive an additional \$715 million in funding from the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act for 2010 (Div. A of Consolidated Appropriations Act, 2010 (Pub. L. 11-117, December 16, 2010)) (FY 10 Appropriations). The CHSRA Board met on December 2, 2010, to agree on a location to begin construction of California's HST System in the Central Valley and selected a scenario beginning in Madera County to Corcoran, California. Subsequently, FRA announced redistribution of HSIPR funding to California and other States on December 9, 2010. The redistribution provides an additional \$616,176,231 to CHSRA for PE/National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA) work under way and final design and construction of the initial Central Valley section.

On March 16, 2011, FRA published a Notice of Funding Availability in the *Federal Register* to solicit applications for approximately \$2.392 billion in redirected HSIPR Program funding previously announced for the State of Florida which included both Recovery Act and FY 10 Appropriations funds, as well as approximately \$38 million in unallocated Recovery Act funds (76 FR 14443 (March 16, 2011)). In May 2011, Secretary LaHood announced selections based on the merits of the applications received for those funds. As part of this announcement, the Authority was selected to receive an additional \$86,380,000 in ARRA funding and \$213,620,000 in FY10 Appropriations funding for final design and construction of the initial Central Valley section. This Cooperative Agreement (Agreement) obligates the FY 10 funding from both the October 2010 and May 2011 selections totaling \$928,620,000 which will be matched in part with state funds.

BACKGROUND AND KEY ASSUMPTIONS

- In 2005, 2008, and 2010, CHSRA and FRA completed under the NEPA, and certified under the CEQA, program-level environmental impact statements/reports (EIS/EIR) covering the entire CHSTP and subsequently issued the corresponding RODs/NODs.
- CHSRA and FRA are currently preparing project-level EIS/EIR documents for the CHSTP. The CHSRA and FRA released the draft EIS/EIR documents for the two Central Valley CHSTP sections, Merced to Fresno and Fresno to Bakersfield in August 2011. After considering public and agency comments, a revised Draft Environmental Impact Report (EIR)/Supplemental Draft Environmental Impact Statement (EIS) for the Fresno-to-Bakersfield section is now underway and is anticipated for release in the Spring of 2012. CHSRA and FRA will not make final decisions regarding selection of alternatives in each section, or any specific facilities, construction, alignments, or mitigation measures in each

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section that may or may not be related to any alternative, until the associated EIS/EIR for that section is complete and the required NOD/ROD is issued.

- Subject to FRA and CHSRA environmental decisions, CHSRA intends to implement a design/build approach for the Phase 1 Program as funding becomes available in prioritized geographic sections. An RFQ for the first Design-Build civil infrastructure Construction Package was released in November of 2011. Pending completion of environmental review, and any approvals to proceed with construction required under this Agreement, CHSRA would start construction of an initial Central Valley Section from Madera County to Bakersfield (Kern County), California (hereinafter the “Project”). The work necessary to complete the Project is funded from multiple sources including this Agreement and the Cooperative Agreement FR-HSR-0009-10-01-00 (and its amendments) obligating ARRA funding. Subject to the environmental process and as a condition of this Agreement, the Grantee shall be responsible for completing all of the Tasks associated with the Project as described herein.
- To the extent permitted by applicable law, CHSRA and FRA agree to amend this Agreement, after completion and certification of the EIS/EIR document(s) for the Project, as necessary to conform to CHSRA and FRA final Project decisions.
- Because the Project is more expensive than any single funding source available, the Project scope is funded by two federal sources that are integral and interdependent². This Attachment 3 covers specific tasks related to final design and construction activities between Madera County and Bakersfield (Kern County), funded with \$2.321 billion³ in 2009 ARRA funds and through this Agreement, \$928.62 million in Federal FY 10 funding. To satisfy a condition of the May 2011 selection for funding, the Authority shall ensure that at least \$300 million of federal funding will be used to fund civil and track work within the Fresno to Merced HSR section, starting in Fresno and working north.
- The timing and sequencing of each subsequent section of the CHSTP will commence as environmental requirements are met, decisions are made, and funding becomes available.
- Prior to the completion of Phase 1 of the Program, CHSRA will complete an initial operating segment upon which to begin operating HST service. This segment will require electrification, centralized train control and communications systems, maintenance facilities, and a fleet of high-speed trainsets. The initial operating segment will be identified in a future

²The HSIPR Program has multiple funding sources. One of these sources is the ARRA, which contained up to \$8 billion for the development of individual HSIPR projects and larger corridor programs. Another funding source is the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act for 2010 (Div. A of Consolidated Appropriations Act, 2010 (Pub. L. 11-117, December 16, 2010)), which appropriated a total of \$2.5 billion for HSIPR projects. These funding sources have different reporting requirements and necessarily require separate obligations.

³\$2.25 billion minus \$400 million allocated for TJPA’s Transbay Terminal = \$1.85 billion minus \$194 million allocated to Phase 1 PE/NEPA/CEQA work = \$1.656 billion plus \$616.2 million in redistributed HSIPR funds for final design/construction minus \$37.5 million in redistributed HSIPR funds for PE/NEPA/CEQA = \$2.23 billion of Federal funds plus and additional \$86.38 million in HSIPR funds for final design/construction = \$2.321 billion.

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CHSRA Board action and will likely make up an approximately 300-mile line between the San Francisco Bay Area and the Central Valley or between the Los Angeles Basin and the Central Valley.

- The Project spans two EIRs/EISs, which have not been completed by CHSRA and FRA at the time of this Agreement: (1) Merced to Fresno and (2) Fresno to Bakersfield. Prioritization of the Project from Madera County to Bakersfield (Kern County), for initial Central Valley construction, does not preclude or predetermine the selection of any alternative; alternative selection will be determined in the RODs/NODs.
- To comply with FRA requirements for assuring operational independence, an Interim Use Reserve has been established for the Project to be funded through this Agreement. The Interim Use Reserve includes a connection on each end of the initial construction section in the Central Valley with the Burlington Northern and Santa Fe Railway Company (BNSF) mainline, plus associated positive train control (PTC), and interim station (i.e., Amtrak) capital costs, totaling \$108 million. The funds allocated to this Interim Use Reserve are to be 100% Federal funds. This allocation does not alter or affect the overall Federal share associated with funding this Project (see Project Budget). The amount established in this Fund is intended to be sufficient to complete the additional capital investments necessary to allow for the provision of interim Amtrak *San Joaquin* service in this corridor.
 - If at some point before construction of the Project is substantially complete, FRA determines in coordination with CHSRA that there will be a significant delay in securing the funds required to complete the investments needed to begin initial HST revenue operations, the Federal funds set aside in the Interim Reserve Fund will be utilized to cover the capital investments necessary to allow for the section to be placed in service for intercity (non-HST) passenger rail purposes (satisfying Sections 2, 4, and 13 of Attachment 1A to this Agreement). CHSRA would not fund from bond funds, or construct or operate, such connection. Prior to letting of any design/build contracts under this Agreement, CHSRA shall coordinate to secure commitments by the appropriate other government agency(ies) and/or private entities that would construct and operate such connection and related service, including any associated environmental review required by law.
 - If at some point before construction of the Project is substantially complete, FRA determines, in coordination with CHSRA, that sufficient funds are anticipated to be available to complete the investments necessary to build the initial Central Valley Section and to complete an initial operating segment for high-speed train operations, then FRA may authorize, in writing, through an Amendment to this Agreement, reallocation of the Interim Reserve Funds for additional investment in building out the California High-Speed Train Program, prioritizing environmentally cleared sections adjacent to the Project.

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GENERAL OBJECTIVE

Consistent with the terms of this Agreement, the Authority shall complete, or will cause to be completed, the activities necessary for final design and construction of the Project. As described in Tasks 5 through 10 below, the Project includes Design-Build program management, construction management services, ROW acquisition and site work, final design, and construction of fully grade-separated mostly dedicated HST guideway, including aerial structures (viaducts) and track work. Implementation of final design and construction of the Project is conditioned on successful completion of project-level EIS/EIR documents and consistent with all necessary Federal, State, other permits and approvals and mitigation commitments. HST systems elements are not included in this Project (e.g., electrification, communications systems, train control, rolling stock, and vehicle maintenance facilities); these elements will be added by CHSRA as additional funding permits and are required to complete an initial operating segment.

DESCRIPTION OF WORK

The final design and construction of the Project between Madera County and Bakersfield (Kern County), is included in the following major tasks described below, specific elements of which are funded under this Agreement. Associated deliverables are outlined in the Performance Objectives and Deliverables section of Attachment 3.

The Request for Proposals for the Design-Build contracts will define the work to be performed. The Grantee will develop a corresponding work breakdown structure (WBS) that will define the work elements including subtasks, engineer's estimate of cost, and staff necessary to complete Tasks 5 through 8 of this Agreement. This Agreement will be amended, as necessary, to reflect the details in the WBS. The WBS will be updated annually and provided to FRA along with the Annual Work Plan (AWP).

Task 5 Design/Build Program Management

CHSRA will complete or cause to be completed Design/Build Program Management and Construction Management activities as described in this Task 5 and in support of Design Build Construction Packages identified in Task 8. This Task shall be funded by both this Agreement and ARRA Cooperative Agreement FR-HR-009-10-00 as allocated in the Cost Summary Table 3. The Authority shall prepare and submit to FRA a WBS identifying discrete subtasks and an associated budget for this Task 5.

Task 5 includes management, oversight, and reporting of all tasks necessary to, and all contractors associated with, completing the Project including coordination with appropriate local, regional, State, and Federal agencies, all railroad owners and operators within the Project area, and outreach to local communities affected by the Project. Specific construction management activities will include contract administration, submittal review, quality assurance inspection, materials inspection, management of claims and change orders, and review and approval of progress payment requests and final acceptance of the work. CHSRA is also responsible for public communication and outreach to citizens, communities, and stakeholders during all aspects and phases of Project design and construction.

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CHSRA will provide to FRA the following documents to reflect Project progress:

- Work Breakdown Structure (WBS) and Budget Detail – CHSRA will prepare a detailed WBS and budget subtasks for the task.
- Annual Work Plan (AWP): CHSRA will prepare a detailed staffing plan and cost estimate for the Project. The AWP outlines the work necessary to establish and manage project control systems to maintain, manage, and monitor project schedule, budget, documentation, procurement, and tracking of deliverables so that implementation of the Project stays on schedule and within budget.
- Program Management Plan (PMP) Updates: CHSRA will update the Phase 1 Program Management Plan (PMP) and produce a Project-specific PMP addressing the management requirements of this Project and submit it to FRA for review and written approval. CHSRA will update both documents annually.
- Financial Plan Updates: CHSRA will review the Financial Plan and provide annual updates of the relevant information to FRA. The Financial Plan and updates specific to this Project shall incorporate the Interim Use Reserve discussed above and in Task 9 below. Updates of the Financial Plan will be submitted to FRA for review and written approval.
 - Prior to the release of the first Request for Proposals (RFPs), and annually thereafter, for the design and/or construction contracts, CHSRA will provide for FRA review and written approval a financial plan for the Project (Central Valley Project Financial Plan) that demonstrates CHSRA has identified the sources of all funding (other than that provided through this Agreement) required to complete construction of the Project and has a strategy to secure firm commitments of such funds. No contract for final design or construction may be executed until all funding for the contract is fully committed. As used in the preceding sentence, “fully committed” means a state legislature budget appropriation, enacted into law, with sufficient state match funding to fund, with FRA’s match, the annual budget of the contract in question. The financial plan shall provide (in year-of-expenditure dollars) finalized annual projections for the sources and uses of all funds, during the development and construction phases of the Project and a detailed assessment of financial risks facing the Central Valley Project during construction (including risks such as capital cost overruns), along with proposed actions for mitigating or accommodating such risks (including assessment of additional funding sources available to compensate for potential capital financing shortfalls). The financial plan shall also include projections, as reasonably foreseeable at the time of submission, of the financial risks during operations of an operating segment that would include the Project.
 - CHSRA will provide FRA with a financial plan that covers the Phase 1 Program (including the Central Valley Project) (the Phase 1 Financial Plan) that lays out in

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as much detail as possible (1) annual projections for the sources and uses of all funds, during the development and construction phases of the Phase 1 Program and for the first 20 years of operations, and (2) a detailed assessment of financial risks facing the Phase 1 Program during both the construction and operations phases (including risks such as capital cost overruns, revenue shortfalls, and operating and maintenance cost overruns), along with proposed actions for mitigating or accommodating such risks (including assessment of additional funding sources available to compensate for potential capital or operating financing shortfalls).

- For post-RFP period review, CHSRA will provide FRA with (1) updates to the Central Valley Project Financial Plan, on at least an annual basis, or more often if there are material changes to the previous plan, (2) updates to the Phase 1 Financial Plan, on at least an annual basis, or more often if there are material changes to the previous plan and (3) financial plans for any additional projects funded with HSIPR funds, including the initial operating segment.
- The Financial Plan(s) shall address the financial soundness of the reserve scenario in the event Amtrak's *San Joaquin* service might operate over the new infrastructure.
- Design/Build Program Plan: CHSRA will prepare a Design/Build Program Plan that identifies: (1) the suitability of the Project as a design/build candidate, (2) the performance metrics to be used to assess successful Project completion, (3) the composition of the design/build Project team, (4) Project scope, (5) the decision factors to be used for the selection from among the design/build proposals, and (6) the methods for contract administration. Submittal of a Design/Build Program Plan must be submitted to FRA for review and written approval prior to completing procurements.
- RFQs and RFPs for Design and/or Construction Services: CHSRA will provide a copy of the proposed terms and conditions of the RFQs and the RFPs related to proposed contracts for final design and/or construction services funded by this Agreement to FRA for its review and written approval prior to formally soliciting such proposals. CHSRA will work closely with FRA to complete such reviews in sufficient time to avoid impacting the Project schedule.
- Final Inspection and Acceptance Reports: Upon completion of construction, CHSRA shall invite FRA to participate in the final inspection and acceptance of the work.
- Service Development Plan Updates: CHSRA will refine and update the Phase 1 Service Development Plan and provide two updates to FRA (once prior to commencing construction activities and once prior to commencing operations) of the relevant information based on mutual agreement with FRA that may include Operations (Service Goals, Operations Analysis, including railroad operation simulation and equipment, operations planning, and crew scheduling analysis); Fleet Management Plan (this includes a determination of the number of trainsets required for the HSIPR Corridor);

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Capital Needs (Phase 1 Investments and Cost Estimate); and Operating and Financial Results (Methods, Assumptions, and Outputs for Travel Demand Forecasts; Expected Revenue; and all Operating Expenses). The Service Development Plan shall be developed and updated for the purpose of informing design and construction determinations and decision making and shall be limited in scope to such purpose.

Task 6 Real Property Acquisition

CHSRA will complete or cause to be completed Real Property Acquisition activities as described in this Task 6 in support of Design Build Construction Packages identified in Task 8. This Task and corresponding funding amount in Cost Summary Table 3 shall be funded by both this Agreement and ARRA Cooperative Agreement FR-HR-009-10-00 as amended. The Authority shall prepare and submit to FRA a WBS identifying discrete subtasks and an associated budget for this Task 6.

This task includes only real property acquisition and associated activities detailed below that are not already covered under Task 3 ROW Acquisition Support of the PE/NEPA/CEQA Agreement, (see Task 3.2 Regional Consultant ROW Work (RC Task 9) and Task 3.3 PMT ROW Work (PMT Task 6) of Exhibits 1 and 2 of Attachment 3 of ARRA Cooperative Agreement FR-HR-009-10-00 as amended).

The CHSTP will use or be adjacent to existing transportation ROWs to the extent feasible and will require numerous property acquisitions. Such acquisitions (the allowable costs of which are reimbursable under this Agreement) include right-of-way for the track alignment and stations consistent with Project requirements. Real property acquisition and associated activities described in the Task 6 shall be carried out in close coordination with FRA. The level of FRA's involvement may be refined through Project development and this Agreement shall be amended as necessary.

CHSRA will obtain and manage the necessary property rights for the system in a lawful, fiscally sound, and publicly acceptable manner. Real property acquisition will comply with all Federal, State, and local laws including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended). Real property acquisition will be accomplished through a headquarters element, a regional specialist oversight office, and a local team that will conduct on-the-ground real property acquisition functions. These responsibilities will be carried out through the leadership of a CHSRA HQ element consisting of a Real Property Director reporting to the CEO, and a senior State real property specialist responsible for:

- Appraisals and acquisition
- Coordination of real property aspects regarding utilities relocations and railroad and other public agency agreements and
- Relocation assistance and property management

CHSRA will have appropriate legal support which will provide real property legal services to the Director. A specialist real property consultant for program support will provide program-wide services to the Director, such as recommending acquisition standards and procedures as well as providing quality assurance and audit of the acquisition process.

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On-the-ground real property activities will be carried out by onsite real property specialty consultants and may include:

- Parcel identification
- Survey and mapping
- Appraisals
- Offers of just compensation
- Negotiations
- Property acquisition and
- Relocation entitlement

CHSRA shall establish a Regional Real Property Office for the Project, which will have appropriate legal support and be staffed by senior State real property specialists who oversee the functions carried out by the onsite consultants and process those cases where State governance is appropriate.

Task 7 Early Work Program

CHSRA will complete or cause to be completed Early Works Program activities as described in this Task 7 in support of Design Build Construction Packages identified in Task 8. This Task 7 is funded under ARRA Cooperative Agreement FR-HR-009-10-00 as amended. Certain work activities associated with implementing the Project may be advanced as part of an early work program as described in the deliverables below. The Early Works Program will include soft (e.g., planning, design, coordination, negotiation, legal) and hard (e.g., construction, land acquisition, implementation) costs as described below and associated with (1) utility relocation, (2) site clearing/demolition, (3) railroad track relocation, (4) highway/roadway relocation/grade separations, (5) environmental remediation/hazardous materials disposal, and (6) environmental (NEPA/CEQA) mitigation. Implementing these activities with Federal funds is contingent upon FRA written approval of the planning for these activities, which are outlined below. Design work undertaken as part of this Task 7 is presumed not to qualify as Final Design Activities under this Agreement, subject to final determination by FRA. Activities in the early work program will occur only to the extent that they are consistent with legal requirements associated with satisfying environmental review requirements and approved by FRA.

CHSRA will provide to FRA the following documents to reflect Project progress:

- Work Breakdown Structure (WBS) and Budget Detail – CHSRA will prepare a detailed WBS and budget subtasks for this task.
- Utility Relocation Plan: CHSRA will identify all utilities that will be relocated and outline the roles and responsibilities to successfully complete all early utility relocation for the Project, contracting approach, and schedule for completing all necessary utility relocations. CHSRA will submit the Utility Relocation Plan to FRA for review and

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written approval. CHSRA will implement the FRA approved Utility Relocation Plan and periodically update the Plan to reflect implementation progress.

- Site Clearing and Demolition Plan: CHSRA will define the area of the Project that will need to be cleared and any demolition of existing structures and outline the roles and responsibilities to successfully complete Project site clearing and demolition activities, contracting approach, and schedule for completing all necessary site clearing and demolition of existing structures. CHSRA will submit the Site Clearing/Demolition Plan to FRA for review and written approval. CHSRA will implement the FRA approved Site Clearing/Demolition Plan and periodically update the Plan to reflect implementation progress.
- Railroad Track Relocation Plan: Portions of the Project are on or adjacent to existing railroad ROW. Although it is anticipated that owning railroad(s) will be responsible for their own railroad track relocation design and construction, CHSRA will work with the railroad(s) to develop a Railroad Track Relocation Plan. CHSRA will submit the Railroad Track Relocation Plan to FRA for review and written approval. This plan will describe in detail what tracks and supporting railroad infrastructure will need to be relocated at each location along the route where such relocation is required to support the Project. CHSRA will implement any elements of the FRA approved Railroad Track Relocation Plan it is responsible for under the Plan, coordinate with the railroad(s) for completion of railroad-specific work, and periodically update the Plan to reflect implementation progress.
- Highway/Roadway Relocation/Grade Separations Plan: Highway/roadway relocations and grade separations will be completed in coordination with California Department of Transportation (Caltrans) or other owners of roadway facilities (e.g., counties, local jurisdictions) during the early stages of construction, consistent with CHSRA/Caltrans Master Agreement. CHSRA will work with Caltrans and other interested parties to develop a Highway/Roadway Relocation/Grade Separations Plan that describes in detail what Highway/Roadway relocation and grade separations are required at each location along the route where such relocation or grade separation is required to support the Project. CHSRA will submit the Highway/Roadway Relocation/Grade Separations Plan to FRA for review and written approval. CHSRA will implement any elements of the FRA approved Highway/Roadway Relocation/Grade Separations Plan it is responsible for under the Plan, coordinate with Caltrans for completion of highway/roadway-specific work, and periodically update the Plan to reflect implementation progress.
- Environmental Remediation/Hazardous Materials Disposal Plan: CHSRA will develop a plan to implement remediation and hazardous material disposal activities consistent with mitigation measures CHSRA and FRA adopt and document in the CEQA/NEPA environmental process. This plan will include compliance with existing and applicable Federal and State regulations, appropriate Authority policies, and the use of best management practices. This plan will identify procedures for testing and remediating known or suspected hazardous materials encountered during the construction of the Project. CHSRA will submit the Environmental Remediation/Hazardous Materials

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Disposal Plan to FRA for review and written approval. CHSRA will implement the FRA approved Environmental Remediation/Hazardous Materials Disposal Plan and periodically update the Plan to reflect implementation progress.

- Environmental (NEPA/CEQA) Mitigation: The EIS/EIR final decisions by FRA and CHSRA may require mitigation measures that could include, but are not limited to purchase of wetlands mitigation sites, noise control (for example, construction of noise walls, reinforcement of structure in sensitive receptors), preservation of agricultural lands, construction of local traffic control improvements (for example, traffic calming measures, geometric roadway improvements, installation of traffic lights). Adopted mitigation measures and associated plans for implementation would be set forth in the Environmental (NEPA/CEQA) Mitigation Implementation Plan required by the PE/NEPA/CEQA Agreement. CHSRA will implement the FRA approved Environmental (NEPA/CEQA) Mitigation Implementation Plan. Updates to the Plan to reflect implementation progress are covered under the PE/NEPA/CEQA Agreement.

Task 8 Final Design and Construction Contract Work

CHSRA will complete or cause to be completed Final Design and Construction Work as described in this Task 8. This Task shall be funded by both this Agreement and ARRA Cooperative Agreement FR-HR-009-10-00, as amended, as allocated in the Cost Summary Table 3. CHSRA will prepare a detailed WBS and budget subtasks for this Task.

The vast majority of the work associated with this Agreement is associated with the final design and construction contracts that will be procured, awarded, and administered by CHSRA for delivery of this Project. As a deliverable in Task 1 of this Attachment 3 for review and written approval by FRA, CHSRA will prepare and deliver to FRA a Design/Build Program Plan that identifies: (1) the suitability of the Project as a design/build candidate; (2) the performance metrics to be used to assess successful Project completion; (3) the composition of the design/build Project team; (4) Project scope; (5) the decision factors to be used for the selection from among the design/build proposals; and (6) the methods for contract administration. As currently envisioned the work under this Attachment 3 will be covered by up to four separate geographically-based civil design-build civil infrastructure contracts and at least one Project-wide design-build track work contract. CHSRA's detailed Design/Build Program Plan was prepared in the third quarter of FY2011. CHSRA will provide the Design/Build RFPs and CHSRA's selected Design/Build contractors to FRA for review and written approval prior to award. The contract packages and work items below are subject to the environmental review process and the Authority's and FRA's final decision documents.

Final Design and Construction Civil Infrastructure Contract Package #1

Design/Build of civil infrastructure extending from either approximately Avenue 17 on the BNSF alignment or approximately Avenue 10 on the UPRR alignment (both in Madera County) depending on the alignment selected in the NOD/ROD; through Fresno to East America Way on the BNSF alignment south of Fresno.

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Final Design and Construction Civil Infrastructure Contract Package #2

Design/Build of civil infrastructure extending from East America Way to Lansing Avenue north of Corcoran.

Final Design and Construction Civil Infrastructure Contract Package #3

Design/Build of civil infrastructure extending from Lansing Avenue to Perkins Avenue north of Wasco.

Final Design and Construction Civil Infrastructure Contract Package #4

Design/Build of civil infrastructure extending from Perkins Avenue southward towards Bakersfield. The southern limit will be dependent upon the alignments selected in the NOD/RODs; and the residual funding available once the actual contracted and the revised estimated cost are considered.

Final Design and Construction Project-wide Trackwork Contract Package #5

Design/Build of project-wide trackwork covering all the design-build geographic areas of inclusive.

Task 9 Project Reserves

CHSRA will establish two Project Reserve accounts which shall be funded under this Agreement. The first would be for funds over and above the Unallocated Contingency that have been budgeted but not yet allocated to specific tasks. The second would be the aforementioned "Interim Use Reserve". The Interim Use Reserve includes a connection on each end of the initial construction section in the Central Valley with the BNSF mainline plus associated PTC, and interim station (i.e., Amtrak) capital costs, totaling \$108 million. The management and use of these reserve funds will be described in the Project Reserve Plan and proceed only upon written approval from FRA and as an Amendment to this Agreement.

Task 10 Unallocated Contingency

CHSRA has allocated 5% of the Project budget as unallocated contingency which shall be funded under this Agreement. The management and use of contingency funds will be described in a Contingency Management Plan which shall be submitted for FRA review and approval.

PROJECT SCHEDULE

CHSRA shall complete or cause to be completed the Project, and all reimbursable expenses for the Tasks funded by this Agreement will have been submitted and approved by FRA by December 2018. A detailed schedule outlining additional milestones for the initial construction section is on file with FRA.

TABLE 1: PROJECT SCHEDULE

	Start	Finish
Task 5: Design/Build Program Management	4-1-11	9-30-17
Task 6: Real Property Acquisition	7-1-11	6-30-14
Task 7: Early Work Program	7-1-11	12-1-14
Task 8: Design/Build Contract Work	1-4-13	12-4-2018
Task 9: Project Reserve	Throughout the Project	12-2018
Task 10: Unallocated Contingency	Throughout the Project	12-2018

PERFORMANCE OBJECTIVES AND DELIVERABLES

CHSRA shall achieve the following performance objectives to be authorized for funding of Project components and for the Project to be considered complete.

Overall Postaward Prerequisites

1. Prior to commencing any activities described Tasks 6-8, CHSRA shall provide to FRA an updated Program Management Plan, including an updated cost estimate appropriate to the level of project development. This submittal must be approved by FRA in writing.
2. Prior to award of Design/Build contract work funded by this Agreement, CHSRA shall complete PE and environmental documentation for the Project as defined in Attachment 3 of ARRA Cooperative Agreement FR-HR-009-10-00 as amended.
3. CHSRA shall execute any required stakeholder agreements with railroad infrastructure owners and operators (principally BNSF and Union Pacific Railroad) in advance of the commencement of work on any final design or construction activities, copies of which will be submitted to FRA for approval prior to execution. CHSRA shall enter into any other agreements with appropriate stakeholders necessary to complete the Project.
4. Within 60 days of executing this Agreement, CHSRA shall provide FRA with a preliminary list and schedule for completion of all potential stakeholder agreements with public and quasi-public infrastructure owners (or as otherwise appropriate) that are necessary to complete the Project, recognizing that the preliminary list will be broad because it will cover multiple environmental alternatives currently under evaluation. Within 60 days of issuing the RODs/NOD, CHSRA shall provide FRA with the final list and schedule of stakeholder agreements. This list will be updated by CHSRA as needed.

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CHSRA will provide FRA with copies of all such agreements prior to execution for FRA's review and comment if FRA determines such review and comment is appropriate.

TABLE 2: DELIVERABLES

CHSRA shall achieve the following deliverables.

<i>Task Description</i>	<i>Delivery Date</i>
<i>Task 5: Design/Build (D/B) Program Management</i>	
Unless FRA determines otherwise in writing, the Authority may not continue to conduct any construction activities, as described in Attachment 3, unless and until the Authority submits, and FRA approves in writing, the following deliverables:	
Detailed WBS and budget subtasks for this task	4-12
2011 Annual Work Plan (AWP)	10-11
2012 AWP	10-12
2013 AWP	10-13
2014 AWP	10-14
2015 AWP	10-15
2016 AWP	10-16
2017 AWP	10-17
2012 Operations Modeling/Schedules/Demand Forecasts for Ridership & Revenue	4-12
Design/Build (D/B) Program Plan	11-11
2011 Financial Plan Update	12-11
2012 Financial Plan Update	12-12
2012 PMP Update	12-12
2012 Service Development Plan Update	12-12
2013 Financial Plan Update	12-13
2013 PMP Update	12-13
2014 Financial Plan Update	12-14
2014 PMP Update	12-14
2015 Financial Plan Update	12-15
2015 PMP Update	12-15
2016 Financial Plan Update	12-16
2016 PMP Update	12-16

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<i>Task Description</i>	<i>Delivery Date</i>
2016 Service Development Plan Update	12-16
2016 Operations Modeling/Schedules/Demand Forecast Update for Ridership & Revenue	7-16
<i>Task 6: Real Property Acquisition</i>	
Detailed WBS and budget subtasks for this task	4-12
Quarterly Updates to the Real Property Acquisition Plan	Quarterly
<i>Task 7: Early Work Program⁴</i>	
Detailed WBS and budget subtasks for this task	4-12
Utility Relocation Plan	4-12
Site Clearing/Demolition Plan	4-12
Railroad Track Relocation Plan	4-12
Highway Relocation Plan	4-12
Environmental Remediation/HazMat Disposal Plan	6-12
<i>Tasks 8 and 8.1: D/B Contract Work</i>	
Detailed WBS and budget subtasks for this task	4-12
D/B Contract #1 RFP	2-12
D/B Contract #2 RFP	6-12
D/B Contract #3 RFP	9-12
D/B Contract #4 RFP	12-12
D/B Contract #5 - Project-wide Track Work RFP	5-14
Interim Use Construction RFP	<i>If needed</i>
CHSRA D/B Contractor Selection	1-13
D/B Contract #1 Final Inspection and Acceptance Report	12-16
D/B Contract #2 Final Inspection and Acceptance Report	11-15
D/B Contract #3 Final Inspection and Acceptance Report	11-16
D/B Contract #4 Final Inspection and Acceptance Report	11-17
D/B Contract #5 – Project-wide Track Work Inspection and Acceptance Report	5/18
Interim Use Construction Final Inspection and Acceptance Report	<i>If needed</i>

⁴ The Plans associated with Early Works activities covered by this Agreement will be updated periodically to reflect implementation progress.

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<i>Task Description</i>	<i>Delivery Date</i>
Task 9: Project Reserves	
Project Reserve Plan	3-12
Project Reserve Plan Quarterly Updates	Quarterly
Task 10: Unallocated Contingency	
Contingency Management Plan (CMP)	3-12
CMP Quarterly Updates	Quarterly

To the extent any of foregoing schedule tasks or associated deliverables cannot be completed until associated environmental review is completed, FRA and CHSRA agree to modify the schedule by Amendment to this Agreement.

PROJECT ADMINISTRATION

CHSRA will provide Project receipts and documents as required by FRA. CHSRA will obtain documentation of materials, payrolls and work performed, invoices and receipts, etc., during the Program from contractors and consultants as conditions of payment. These will be submitted or made available to FRA as required.

PROJECT BUDGET

The total estimated cost of the Tasks funded under this Agreement is \$1,288,425,000 of which FRA will contribute no more than \$928,620,000. Of the FY 10 funding selected in December 2010, FRA shall contribute up to 70% but no more than \$715,000,000. Of the FY 10 funds selected in May 2011 FRA shall contribute up to 80% but no more than \$213,620,000. Any additional expense required to complete the Project beyond that provided in this statement of work shall be borne by CHSRA. Table 3 below provides the Cost Summary by task and funding source, for the FY 10 funding. This Project is also funded through ARRA Agreement FR-HSR-0009-10-01-00 (and its amendments). A revised Project budget, as relevant, will be submitted to FRA for review and approval after the conclusion of the environmental process to reflect the alternative(s) selected. The Project budget will be updated quarterly and provided to FRA for approval or as otherwise required consistent with requirements in Attachment 2, Section 4 of the Cooperative Agreement.

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TABLE 3: COST SUMMARY FY 10 FUNDING

Phase 1 Initial Central Valley Section CN							
FY 2010 Funding Agreement							
Cost Summary							
Task/Acct Code	Description	Fed	State	Fed	State	Local	Total
5 D/B Program Management				\$38,014,789	\$11,952,479	\$0	\$49,967,268
5.ARRA 5050	2009 ARRA (50/50)	50%	50%				
5.FY10 7030	Dec 2010 FY10 (70/30)	70%	30%	\$13,713,176	\$5,877,075		\$19,590,251
5.FY10 8020	May 2011 FY10 (80/20)	80%	20%	\$24,301,614	\$6,075,403		\$30,377,017
6 Real Property Acquisition				\$8,984,784	\$3,850,622	\$0	\$12,835,405
6.ARRA 5050	2009 ARRA (50/50)	50%	50%				
6.FY10 7030	Dec 2010 FY10 (70/30)	70%	30%	\$8,984,784	\$3,850,622		\$12,835,405
7 Early Work Program (2009 ARRA 50/50)				\$0	\$0	\$0	\$0
7.ARRA 5050	2009 ARRA (50/50)	50%	50%				
8 D/B Contract Work				\$624,787,161	\$233,959,071	\$0	\$858,746,232
8.ARRA 5050	2009 ARRA (50/50)	50%	50%				
8.ARRA 8020	2009 ARRA (80/20)	80%	20%				
8.FY10 7030	Dec 2010 FY10 (70/30)	70%	30%	\$435,468,774	\$186,629,475		\$622,098,249
8.FY10 8020	May 2011 FY10 (80/20)	80%	20%	\$189,318,386	\$47,329,597		\$236,647,983
9 Project Reserve				\$108,023,253	\$46,267,109	\$0	\$154,290,362
9.FY10 7030	Project Reserve (Dec 2010 FY 10)	0%	100%	\$0	\$46,267,109		\$46,267,109
9.FY10 7030	Interim Use Reserve (Dec 2010 FY 10)	100%	0%	\$108,023,253	\$0		\$108,023,253
10 Unallocated Contingency (Dec 2010 FY 10 70/30)				\$148,810,013	\$63,775,720	\$0	\$212,585,733
10.FY10 7030	Dec 2010 FY 10 (70/30)	70%	30%	\$148,810,013	\$63,775,720		\$212,585,733
Total				\$928,620,000	\$359,805,000	\$0	\$1,288,425,000

PROJECT COORDINATION

CHSRA will perform all tasks required for the Project including necessary coordination with all involved Federal and State agencies, local governments, and all railroad owners and operators and stakeholders using processes already in place. CHSRA's Project coordination process is based on ongoing practice, executed Memoranda of Understanding and other Agreements, and public involvement processes developed for the NEPA/CEQA phase of the Project.

PROJECT MANAGEMENT

The Authority's staff organization currently consists of a Chief Executive Officer, a Chief of Staff, a Chief Financial Officer, Chief Counsel and two Deputy Executive Directors (for Communication, Policy and Public Outreach, and for Environmental Review and Planning), a small support staff, as well as a Chief Engineer contractor, a Project Management Oversight (PMO) contractor, a Government Relations Management contractor, a Program Management Team, and seven RC Teams (plus an additional team for the "Altamont Corridor Rail Project"). Additionally, CHSRA employs a financial consultant contractor and a public outreach and communications contractor. CHSRA plans to hire a Construction Management consultant for this Project. The Authority's organization for this work will be supported by appropriate legal services.

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CHSRA will engage contractors through the competitive bidding process established by the State of California for all construction activities and in compliance with Federal regulations. CHSRA will provide construction oversight and will give direction to the construction engineering and contractor.

CHSRA shall satisfy the requirements of this Agreement including providing all of the deliverables in a timely manner for FRA's review, acceptance, or approval. FRA approval is specifically required for all Project deliverables, in this Agreement. Failure to satisfy the deliverables within the prescribed timeframes may result in FRA withholding grant payments or any other action consistent with the terms of the Cooperative Agreement and Federal law. FRA normally requires a minimum of 30 calendar days for review and approvals.

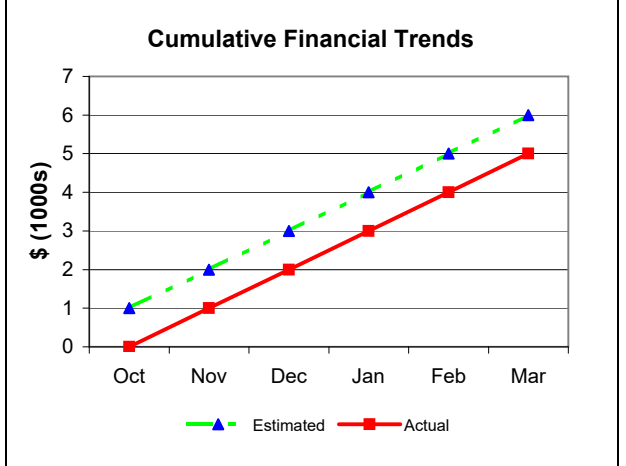
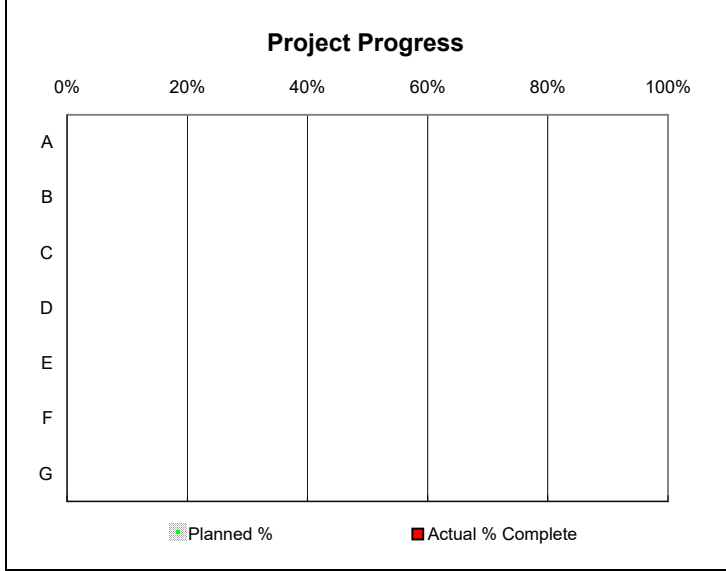
Nothing herein is intended to, or shall be construed to or shall operate to, preclude or to limit CHSRA from negotiating such changes in its contracts with its consultants as it finds are necessary and appropriate to secure the performance of the work described herein in an adequate and timely manner, provided, however, that CHSRA shall provide FRA timely written notice of all such contractual changes relevant to the work to be performed under this Agreement.

Quarterly Progress Report for FRA

Grant No. WBS No. Description Grantee Manager: FRA Manager:	Performance Progress		Financial Progress	
	Period Ending:		Funding Level:	\$0.00
	Start Date:		Expended:	\$0.00
	End Date:		Remaining:	\$0.00
		% Expended:	0%	

Project Description:

Significant Accomplishments This Period:



\$1000s	Oct	Nov	Dec	Jan	Feb	Mar
Estimated	1	2	3	4	5	6
Actual	0	1	2	3	4	5
Monthly		1	1	1	1	1

Milestones and Deliverables:	Start	Planned Completion	Revised Completion	Actual Completion	Planned %	Actual % Complete
A						
B						
C						
D						
E						
F						
G						

Technical/Cost/Schedule Problems:

Work Planned for Next Period: