



CALIFORNIA

High-Speed Rail Authority

Trainset Agreement No.: HSR 14-30

SUPPLEMENTAL GENERAL PROVISIONS

INDUSTRY REVIEW DRAFT – 1/30/2015

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ARTICLE 1 REQUIREMENTS UNDER STATE LAW:

Contractor shall comply with and insert the following provisions in all Subcontracts entered into pursuant to the Contract:

1.1 Child and Family Support Obligations.

Contractor acknowledges the policy of the State set forth in Public Contract Code 7110(a). Public Contract Code 7110(a) provides:

It is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

Contractor acknowledges that, to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

1.2 Notification of Third Party Claims

Each Party shall provide timely notification to the other Party of the receipt of any third party claims relating to the Contract.

1.3 Nondiscrimination.

Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations Tit. 2, Section 78250.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full.

1.4 Public Records.

Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in Authority's possession, including materials submitted by Contractor, are subject to the provisions of the Public Records Act. Contractor shall be solely responsible for all determinations made by it under the Public Records Act, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. Contractor is advised to contact legal counsel concerning the Public Records Act and its application to Contractor.

If any of the materials submitted by Contractor to Authority are clearly and prominently labeled "Trade Secret" or "Confidential" by Contractor, Authority will endeavor to advise Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will Authority be responsible or liable to Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by



Applicable Law, by court order or occurs through inadvertence, mistake or negligence on the part of Authority.

In the event of litigation concerning the disclosure of any material submitted by Contractor to Authority, Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

1.5 Interest of Public Officials.

No Contractor-Related Entity shall enter into any contract involving services or property with a person or business prohibited by Government Code 1090 et seq. and 87100 et seq. from transacting such business. Unless an explicit statement to the contrary accompanied Contractor's Proposal, Contractor affirms that no board member, officer, or employee of the Authority has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of Contractor. If any such interest becomes known to Contractor at any time, Contractor shall submit a full and complete written disclosure of such information to the Authority, even if such interest would not be considered a conflict under Government Code 1090 et seq. and 87100 et seq.

Neither Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official or employee of Authority any gifts, entertainment, payments, loans or gratuities. Authority may, by written notice to Contractor, terminate Contractor's right to proceed under the Contract if it is found that gratuities (in the form of gifts, entertainment, or otherwise) were offered or given by Contractor, or any agent of Contractor, to any board member, officer, agent and/or employee of Authority.

Employment by Contractor of personnel on the payroll of Authority is not permitted in the performance of the Contract, even though such employment may be outside Authority employee's regular working hours or on Saturdays, Sundays, holidays or vacation time; further, employment by Contractor of personnel who have been on Authority's payroll within one year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with Authority, is also prohibited.

Contractor shall include the language of this provision in subcontracts for any first tier Subcontractor whose contract exceeds \$100,000.

The rights and remedies of Authority specified in this clause are not exclusive and are in addition to any other rights and remedies allowed by Applicable Law.

1.6 Drug-Free Workplace Certification.

Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code 8355(a)(1).



b) Establish a Drug-Free Awareness Program as required by Government Code 8355(a)(2) to inform employees about all of the following:

- i) the dangers of drug abuse in the workplace;
- ii) the person's or organization's policy of maintaining a drug-free workplace;
- iii) any available counseling, rehabilitation and employee assistance programs; and,
- iv) penalties that may be imposed upon employees for drug abuse violations.

c) Provide, as required by Government Code 8355(a)(3), that every employee who works on the proposed or resulting Contract:

- i) will receive a copy of the company's drug-free policy statement; and,
- ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

1.7 Sweatfree Code of Conduct.

Contractor certifies that no apparel, garments or corresponding accessories, or equipment, materials, or supplies furnished to the State pursuant to the Contract have been or will be produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code 6108.

1.8 Recycling.

Contractor certifies under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code 12200 et seq., in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code 12209. With respect to printer or duplication cartridges that comply with the requirements of Public Contract Code 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

1.9 Use Tax Collection.

Contractor certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of Public Contract Code 10295.1.



1.10 Expatriate Corporations.

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code 10286 and 10286.1, and is eligible to Contract with the State.

1.11 Domestic Partners.

Contractor certifies that it is in compliance with Public Contract Code 10295.3.

1.12 Tax Delinquency

Consistent with Public Contract Code section 10295.4, Contractor represents that at the time of Contract award, the name of Contractor and each of its members, if any, does not appear on either list of the 500 largest tax delinquencies created pursuant to Revenue and Taxation Code sections 7063 and 19195.

1.13 National Labor Relations Board Certification.

Contractor certifies that no more than one final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296).



ARTICLE 2 FEDERAL PROVISIONS REQUIRED FOR CONSTRUCTION AGREEMENTS

References to the “Agreement” in this Article 2 shall mean the Contract.

2.1. Federal Requirements

The Contractor understands that the Authority has received federal funding from the Federal Railroad Administration (FRA) for the Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. The Contractor acknowledges that federal laws, regulations, policies, and related administrative practices may change and that such changed requirements shall apply to the Project. The Contractor shall ensure compliance by its subcontractors and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein.

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

Notwithstanding anything to the contrary contained in this Agreement, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which may cause the Authority to be in violation of FRA requirements.

2.2. Compliance with Federal Requirements

The Contractor’s failure to comply with Federal Requirements shall constitute a breach of this Agreement.

2.3. Federal Procurement Standards

The Contractor 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. Department of Transportation (U.S. DOT) or FRA directives or regulations. If determined necessary for proper Project administration, the FRA reserves the right to review the Contractor’s technical specifications and requirements.

2.4. Federal Lobbying Activities Certification

The Contractor certifies, to the best of its knowledge and belief, that:

A. No state or federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of



any state or Federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

D. The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

2.5. Debarment and Suspension

This Agreement is a covered transaction for purposes of 2 C.F.R. Part 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689; "Debarment and Suspension," 31 U.S.C. § 6101 note; and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that each subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://www.sam.gov/portal/public/SAM/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the Authority.

The Contractor's signature affixed herein shall also constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Have not had one or more public transactions (federal, state, and local) terminated within the preceding three years for cause or default;



3. Has not been convicted within the preceding three years of any of the offenses listed in 2 C.F.R. § 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period; and

4. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses listed in 2 C.F.R. § 180.800.

Should the Contractor or any subcontractor become excluded or disqualified as defined in this section during the life of the Agreement, the Contractor shall immediately inform the Authority of this exclusion or disqualification.

The Contractor shall include a term or condition in the contract documents for each lower-tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor will review the “Excluded Parties Listing System,” will obtain certifications from lower-tier subcontractors, and will include a similar term or condition in each of its lower-tier covered transactions.

2.6. Civil Rights

A. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102; Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; and 49 U.S.C. § 306, the Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that the FRA may issue.

B. **Access Requirements for Individuals with Disabilities:** The Contractor agrees to comply with, and assure that any subcontractor under this Agreement complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable Federal regulations, including any amendments thereto.

C. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Agreement:

1. **Race, Color, Religion, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” including 41 C.F.R. 60 et seq. (which implements Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer,



recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.

2. Age: In accordance with Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the FRA may issue.

3. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. Further, in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor also agrees that it will comply with the requirements of U.S. Department of Transportation, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the FRA may issue.

The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-2, cited in FR-HSR-0009-10-01-05 as 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that the FRA may issue.

2.7. ARRA Funded Project

Funding for this Agreement has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All Contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (state) entities. The Authority has the right to cancel, terminate, or suspend the Agreement if the Contractor or any subcontractor fails to comply with the reporting and operational requirements contained herein.

2.8. Whistleblower Protection

The Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors, including the state, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- A. Gross mismanagement of a contract relating to ARRA funds;
- B. Gross waste of ARRA funds;
- C. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;



- D. An abuse of authority related to implementation or use of ARRA funds; or
- E. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

The Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

2.9. Fraud and False Claims Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. Part 13), as amended, 31 U.S.C. § 3801 et seq., and the U.S. DOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of this Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FRA assisted project, for which Work is being performed under this Agreement. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as cited above on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FRA, the federal government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

The Contractor agrees that it shall promptly notify the Authority and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

The Contractor agrees to include the above paragraphs in each subcontract financed in whole or in part with Federal assistance provided by the FRA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to the provisions.

2.10. Prohibition on Use of ARRA-Funds

The Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

2.11. Enforceability

The Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the state may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent



funds allowing an audit. This provision is in addition to all other remedies available to the state under all applicable state and federal laws.

2.12. Access and Inspection of Records

A. In accordance with ARRA Sections 902, 1514, and 1515, the Contractor agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

i. Access any books, documents, papers and records of the Contractor that directly pertain to, and involve transactions relating to, this Agreement for the purposes of making audits, examinations, excerpts and transcriptions; and

ii. Interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. Pursuant to 49 C.F.R. § 18.26(i)(11), 49 C.F.R. § 19.26, or A-133 (whichever applicable), the Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. The Contractor shall notify the Authority not less than six months prior to disposal of any books, records, accounts and reports required under this Agreement.

D. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a). The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to the individuals involved with the maintenance of federal records, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement.

E. The Contractor shall include this provision in all of the Contractor's agreements with its subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded work.

2.13. Safety Oversight

To the extent applicable in the performance of this Agreement, the Contractor agrees to comply with any federal regulations, laws, or policies and other guidance that the FRA or U.S. DOT may issue pertaining to safety oversight.

2.14. Reporting Requirements



The Contractor agrees to provide the Authority with the following information not later than five days after the end of each quarter:

- A. The total amount of funds received by the Contractor during the time period defined in the Authority's request;
- B. The amount of funds actually expended or obligated during the time period requested;
- C. A detailed list of all projects or activities for which funds were expended or obligated, including:
 - i. The name of the project or activity;
 - ii. A description of the project activity;
 - iii. An evaluation of the completion status of the project or activity; and
 - iv. An estimate of the number of jobs created and/or retained by the project or activity.
- D. For any contracts or subcontracts equal to or greater than \$25,000:
 - i. The name of the entity receiving the contract;
 - ii. The amount of the contract;
 - iii. The date of execution of the contract;
 - iv. The transaction type;
 - v. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number, if known;
 - vi. The location of the entity receiving the contract;
 - vii. The primary location of the contract, including city, state, congressional district, and county;
 - viii. The DUNS number, or name and zip code for the entity headquarters, if known;
 - ix. A unique identifier of the entity receiving the contract and the parent entity of that entity, should the entity be owned by another; and
 - x. The names and total compensation of the five most highly compensated officers of the company if the company received:
 - 80% or more of its annual gross revenues in federal awards;
 - \$25,000,000 or more in annual gross revenue from Federal awards; and
 - If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or Section 6104 of Internal Revenue Code of 1986.



E. Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and Federal instruction for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this Agreement by amendment.

2.15. Reprints of Publications

Whenever an employee of a Contractor-Related Entity writes an article regarding the Project or otherwise resulting from work under this Agreement that is published in a scientific, technical, or professional journal or publication, the Contractor shall ensure that the Authority is sent two reprints of the publication, clearly referenced with the appropriate identifying information.

An acknowledgment of FRA support and a disclaimer must appear in any 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 FR-HSR-0009-10-01-05, dated December 5, 2012. 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.”

2.16. Site Visits

The Contractor agrees that the FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and for other reasons. If any site visit is made by the FRA on the premises of the Contractor or any of its subcontractors under this Agreement, the Contractor shall provide and shall require its 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 Contractor or subcontractor. All individuals making site visits must comply with the Contractor's safety standards. If an individual fails to comply with Contractor's safety standards, that individual may be removed from the work site.

2.17. Environmental Protections

When performing work under this Agreement, the Contractor and any subcontractor shall comply with all applicable environmental requirements and regulations, as amended, including, but not limited to, the following:

A. Clean Air: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

B. Clean Water: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.



C. **Energy Conservation:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6421 et seq.).

D. **Agreement Not To Use Violating Facilities:** The Contractor agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Contractor shall promptly notify the Authority if the Contractor or any 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 Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

E. **Environmental Protection:** The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

F. **Incorporation of Provisions:** The Contractor shall include the above provisions (A) through (F) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with Federal assistance provided by the FRA.

2.18. Cargo Preference

As required by 46 C.F.R. Part 381, the Contractor agrees to the following:

A. To use privately owned United States-flag commercial vessels to ship at least 50 percent 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 Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 30 Working Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Part A of this section. This bill-of-lading shall be furnished to the Authority (through the Contractor in the case of a subcontractor's bill-of-lading) and to the Division of National Cargo and Domestic Trade, Maritime Administration, 1200 New Jersey Ave SE, Washington, D.C. 20590, marked with appropriate identification of the Project.

C. To include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2.19. Property, Equipment and Supplies

A. The Contractor agrees that Project property, equipment, and supplies shall be used for the Project activity for the duration of its useful life, as determined by the FRA. Should the Contractor unreasonably delay or fail to use Project property, equipment, or supplies during its useful life, the Contractor agrees that the FRA may require the Contractor to return the entire amount of FRA assistance expended on that property, equipment, or supplies. The Contractor further agrees to notify the Authority 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 Contractor in its justification for purchase of the property or equipment.

B. The Contractor 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.

C. The Contractor agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that the FRA may issue.

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

E. The Contractor agrees that the FRA may:

i. Require the Contractor to transfer title to any property, equipment, or supplies financed with FRA assistance, as permitted by 49 C.F.R. §§ 19.30 through 19.37 inclusive.

ii. Direct the disposition of property or equipment financed with FRA assistance as set forth by 49 C.F.R. §§ 19.30 through 19.37 inclusive.

F. Unless expressly authorized in writing by the Authority, the Contractor agrees to refrain from:

i. Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect the Authority's or the FRA's interest in any Property or equipment; or

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

The Contractor agrees to refrain from taking any action or acting in a manner that would adversely affect the FRA's interest or impair the Authority's continuing control over the use of Project property or equipment.

2.20. Maintenance

If any Project property, equipment, or supplies are not used for the Project for the duration of its useful life, as determined by the FRA, whether by planned withdrawal, misuse or casualty loss, the Contractor agrees to notify the Authority immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 19.30 through 19.37 inclusive.

2.21. Wage Rate Requirements

Payment of prevailing wages on the Project is required by 49 U.S.C. § 24405(c)(2) and ARRA section 1606. For Project components that use or would use rights-of-way owned by a railroad, the Contractor shall comply with the Provisions of 49 U.S.C. § 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act (45 U.S.C. § 151, et seq.) are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor



shall comply with the provisions of 40 U.S.C §§ 3141, et seq. The Contractor shall also comply with the Copeland “Anti-Kickback” Act provisions of 18 U.S.C. § 874 and 29 C.F.R. Part 3.

When prevailing wage rates apply, the Contractor must submit, with each invoice, a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Authority.

A. If there is any conflict between the state prevailing wages and the federal prevailing wages, the higher rate shall be paid.

B. Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of this clause.

2.22. Required Use of American Iron, Steel and Other Manufactured Goods (Buy America)

The Contractor agrees that in accordance with the Passenger Rail Investment and Improvement Act (PRIIA) of 2008, Pub. L. 110-432, section 24405(a), which provides that federal funds may not be obligated unless steel, iron, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the U.S. Secretary of Transportation. For more information on the FRA’s Buy America requirements and processes please see FRA’s Answers to Frequently Ask Questions (FAQ) available at, <http://www.fra.dot.gov/Page/P0391>.

Should the Contractor fail to demonstrate compliance with 49 U.S.C. § 24405(a) and a waiver has not been granted, the Contractor must take the necessary steps in order to achieve compliance, at no cost to the Authority. The Contractor’s failure to comply with this provision shall be a material breach of this Agreement.

If evidence indicates noncompliance with Buy America requirements, the Authority will initiate an investigation. The FRA may also initiate its own investigation. The Contractor shall have the burden of proof to establish compliance. If the Contractor fails to demonstrate compliance, then the Contractor shall substitute sufficient domestic materials without revision of the Agreement terms. Failure to comply with the provisions of this clause may lead to the initiation of debarment proceedings pursuant to 49 C.F.R. Part 29.

Where the Contractor is unable to certify that it will meet the Buy America requirements and believes it may qualify, pursuant to 49 U.S.C. § 24405(a)(2) for a waiver from the Buy America requirements set forth therein, the Contractor must submit to the Authority a written justification detailing the reasons it believes it meets the particular waiver exception(s). At a minimum, the Contractor’s written waiver request justification shall contain:

- i. A description of the project;
- ii. A description of the steel, iron, or manufactured goods not meeting the Buy America requirement;
- iii. A description of the percentage of U.S. content in the steel, iron or manufactured goods, as applicable;
- iv. A description of the efforts made to secure the Buy America compliant steel, iron or manufactured goods;



- v. A description of the bidding process used in the procurement (e.g., whether open or closed, how many bids were received, were any compliant products offered in competing bids);
- vi. If a waiver request is based on price, cost differential(s) that would be incurred in order to secure compliant Buy American steel, iron or manufactured goods;
- vii. Citation to specific waiver categories in 49 U.S.C. § 24405(a)(2) under which the waiver is sought;
- viii. Justification supporting the application of the waiver categories cited; and
- ix. Contact information for the responsible party.

2.23. Small Business/Disadvantaged Business Enterprises

The Authority encourages the Contractor to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals, also known as Disadvantaged Business Enterprises (DBE), in carrying out the Contract. The Authority has established a Small and Disadvantaged Business Enterprise (SB/DBE) Program, and an overall 30 percent goal for small business utilization, to include within the 30 percent goal, a ten percent goal for DBE and 3 percent Disabled Veteran Business Enterprise (DVBE) in the Authority's contracting and procurement program. The SB/DBE Program is in compliance with the Best Practices of 49 C.F.R. Part 26, Executive Order S-02-06, Military and Veterans Code 999 and Title VI of the Civil Rights Act of 1964 and related statutes.

The Authority has established a 30 percent Small Business (SB) goal as described above. The Contractor is expected to make efforts to meet the goal and provide a SB Performance Plan on how the goal will be met throughout the duration of this Agreement. For more detailed information regarding what components should be in the SB Performance Plan see the SB/DBE Program. The Authority's SB/DBE Program requirements, including the SB Performance Plan expectations, SB utilization reporting, Substitution/Termination processes, prompt payment Provisions, Recognized SB Roster of Certifying Agencies, and other performance related factors, are included in the Authority's Small and Disadvantaged Business Enterprise Program. The document is on the Authority's Small Business web page:

http://www.hsr.ca.gov/Programs/Small_Business/index.html

The Contractor shall provide quarterly SB utilization reports to reflect the level of small business, including DBE and DVBE utilization on the contract, including any amended portion of the Contract.

The Contractor shall also comply with 41 C.F.R. Part 60, Best Practices of 49 C.F.R. Part 26, Executive Order 11246 and Title VI of the Civil Rights Act of 1964 and related statutes.

2.24. Signage

The Contractor is strongly encouraged to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated rail cars announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance issued by the



Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

2.25. Fly America

The Contractor agrees to comply with 49 U.S.C. § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier, and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2.26. Recycling Certification

The Contractor shall comply with all applicable requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

2.27. 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, U.S.C., and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. §§ 231 et seq.), the Railway Labor Act (45 U.S.C. §§ 151, et seq., cited in FR-HSR-0009-10-01-05 as 43 U.S.C. §§ 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351 et seq.). To the extent required by 49 U.S.C. § 24405(b) and other laws referenced above, the Contractor shall reflect these provisions in its agreements funded in whole or in part by this Agreement with entities operating rail services over such rail infrastructure.

2.28. Labor Protective Arrangements

The Contractor agrees to comply with the applicable 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. The Contractor also agrees to include the applicable protective arrangements established by the U.S. DOL under 45 U.S.C. § 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this Agreement.

2.29. Existing Inter-City Rail

49 U.S.C. § 24405(d) requires any entity providing intercity passenger railroad transportation on an FRA-funded project to comply with certain requirements with respect to its employees and the employees of preexisting intercity rail passenger services. The Contractor shall comply with



the applicable provision 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).

2.30. Maintenance Standards

Contractor shall comply with 49 CFR 260.39. To the extent the Contract contains a provision that is more onerous or beneficial to Authority than is required by 49 CFR 260.39, that provision shall take precedence.

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