

ATTACHMENT 1

GENERAL PROVISIONS (FY 2005)

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GENERAL PROVISIONS (FY2005)

Section 1. Definitions. As used in this Agreement:

- a. **Agreement** means any 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 of the Project, the items to be deducted from such total in order to calculate the estimated net Project cost, the maximum amount of Federal assistance for which the Grantee is currently eligible, 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" also includes "Financial Plan" as used in 49 C.F.R., Part 19.
- 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 which the Grantee carries out pursuant to this Agreement, as set forth in Attachment 2.
- 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.

Section 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, the Application, approved Project Budget, 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 applicable 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 the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Grantee agrees to include in all sub-assistance 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.

Section 3. Ethics.

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.

Section 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 from FRA prior to being reimbursed under this Agreement. The Grantee agrees to obtain the prior written approval of FRA's Associate Administrator for Railroad Development for any revisions to the Approved Project Budget.

Section 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.

Section 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.

Section 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's Office of Financial Services at the address shown in Section 17 of the primary agreement, 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," 31 C.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) Advance Payment by FRA. The procedures for advance payment are delineated in Attachment 4 to this Agreement, titled "Recipient Organization Procedures for Requesting Advance Payment," if attached. In addition to procedural requirements, the following apply:

(a) The Grantee may initiate cash drawdowns only when actually needed for immediate disbursement required for Project purposes. Unless provided otherwise by Federal law or regulation, the Grantee agrees to expend all FRA funds obtained under the Project for Project purposes no later than three (3) days after receipt of those funds. Failure to expend FRA funds within three (3) days of their receipt or to return the funds to FRA within a reasonable period, or the failure by the Grantee to establish procedures that will minimize the time elapsing between cash advances and the disbursement, shall cause FRA to revoke or temporarily suspend the Grantee's access to advance payment. In addition, a Grantee's failure to adhere to these requirements may result in other remedies authorized by Federal law or regulation.

(b) The Grantee agrees to report its cash disbursements and balances in a timely manner as required by FRA.

(c) The Grantee agrees to provide for control and accountability for all Project funds consistent with Federal requirements and FRA procedures.

(d) The Grantee may not draw down funds for the Project in an amount that would exceed the sum obligated by FRA or the current available balance for the Project.

(2) Reimbursement Payment by FRA. If the Grantee requests the reimbursement method, or if FRA disallows advance payment to the Grantee, then the reimbursement method will be used. If the reimbursement method is used, the Grantee agrees to:

(a) Complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FRA's Office of Financial Services; and

(b) Complete and submit Standard Form 270, "Request for Advance or Reimbursement," to FRA's Office of Financial Services (Mail Stop 40).

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 (or to be incurred during the requisition period) 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 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 statute 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 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 therefor. Project closeout will not alter the Grantee's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. 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 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.** FRA reserves the right to de-obligate unspent FRA funds prior to Project closeout.

Section 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.

Section 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.

Section 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.

Section 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. Buy American. The Grantee agrees to conform with the Buy American Act (41 U.S.C. §§ 10a-d), as required by Section 508 of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Public Law 108-447 (December 8, 2004)). As required by Section 509 of the appropriations act, the Grantee represents that it has never been convicted of violating the Buy American Act, and agrees that it will not make funding received under the appropriations act available to any person or entity that has been convicted of violating the Buy American Act.

c. 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 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 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 NATIONAL CARGO, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, 400 SEVENTH STREET, SW, 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.

d. 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.

e. 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,

"Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 29.

f. 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.

g. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals. FRA encourages the Grantee to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 C.F.R. Part 26) in carrying out the Project.

Section 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.

Section 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.

Section 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. Unless prohibited 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.

Section 15. Acknowledgment of Support and Disclaimer.

a. An acknowledgment of FRA support and a disclaimer must appear in any publication of any material,

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 materials 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.

Section 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 Technical Representative, clearly referenced with the appropriate identifying information.

Section 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 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 or subcontractor.

Section 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.

Section 19. 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.).

Section 20. 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).

Section 21. 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 Financial Status Report (Standard Form 269), 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.

Section 22. 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.

Section 23. 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.

Section 24. Grant Modifications.

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.

Section 25. 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.

Section 26. Successors and Assignees.

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

Section 27. Execution.

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

Section 28. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the first page hereof as of the date written thereon.