

May 23, 2022

## **Consolidated Rail Infrastructure and Safety Improvements Clauses Attachment 1A**

The Grantee agrees to comply with the clauses in this Attachment 1A according to its terms. Consistent with 49 U.S.C. § 22905(e), clauses (c) through (h) do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

### **a. Federal Contribution**

The Federal share of total Project costs shall not exceed 80 percent.

### **b. Performance Measures**

Grantee agrees to measure and report on the performance measures as stated in Attachment 5.

### **c. Buy America**

In lieu of Section 37 of Attachment 1 to this Agreement:

- i. Steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. 22905(a)(1) nor a finding under 49 U.S.C. 22905(a)(2).
- ii. Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- iii. Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

### **d. Operators Deemed Rail Carriers**

The Grantee recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds

provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 *et seq.*); the Railway Labor Act (45 U.S.C. § 151 *et seq.*); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 *et seq.*). The Grantee agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

#### **e. Railroad Agreements**

In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Grantee represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Grantee complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Grantee certifies that the written agreement referenced in this section (e) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

#### **f. Labor Protective Arrangements**

In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Grantee will ensure compliance with the protective arrangements that are equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 836, with respect to employees affected by actions taken in connection with the Project financed in whole or in part by this Agreement.

#### **g. Davis-Bacon and Related Acts Provisions**

In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then, the Grantee will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

#### **h. Replacement of Existing Intercity Passenger Rail Service**

If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).