

# ADDENDUM

## SPECIAL TERMS AND CONDITIONS FOR PROJECTS FUNDED IN WHOLE OR IN PART BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

This document sets forth the special terms and conditions applicable to all contracts and subcontracts, at any tier, issued or awarded by CSX Transportation Inc. (“CSXT”) in connection with projects funded in whole or in part by U.S. Government grants under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). Other special terms and conditions may be developed and included when appropriate or as required by the Federal grantor or State contracting agency.

The full text of the following requirements can be found in 2 C.F.R. Part 176, issued on April 23, 2009, which provides additional guidance and standard award terms to implement the Recovery Act provisions applicable to Recovery Act-funded grants and financial assistance awards. These documents and other guidance issued by the White House Office of Management and Budget (“OMB”) relating to Recovery Act requirements can be found at [www.recovery.gov](http://www.recovery.gov), [FederalReporting.gov](http://FederalReporting.gov), and [FHWA.gov](http://FHWA.gov).

- GENERAL:** This contract or subcontract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (“ARRA” or the “Recovery Act”) and Federal regulations and other guidance issued by the Federal government implementing the Recovery Act (collectively, “Recovery Act Requirements” or “ARRA Requirements”). Contractor/Subcontractor agrees that it will comply with all Recovery Act Requirements applicable to this contract or subcontract. In the event of a conflict between the terms of this contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. Contractor/Subcontractor acknowledges that these Special Terms and Conditions may require changes due to future revisions to the Recovery Act Requirements, and Contractor/Subcontractor agrees that it shall comply with any such changes. Such changes will become a material part of the contract or subcontract without the necessity of either party executing an amendment to this contract or subcontract.
- DUNS NUMBER:** Contractor/Subcontractor shall maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (“DUNS”) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.
- AUDITING:** Contractor/Subcontractor shall retain all books, records, and other documents relating to this contract or subcontract for three (3) years after final payment. Under the authority of Section 902 of the American Recovery and Reinvestment Act of 2009, the U.S. Comptroller General and his representatives or any

representative of an appropriate Inspector General appointed under § 3 or §8G of the Inspector General Act of 1978, as amended ( 5 U.S.C. App.), shall have the right to:

(1) Examine any records of Contractor/Subcontractor, or any of its subcontractors that pertain to, and involve transactions that relate to, the contract or subcontract; and

(2) Interview any officer or employee of Contractor/Subcontractor regarding the contract or subcontract.

In addition, CSXT shall have a right of access to review any Contractor/Subcontractor books, records, and other documents relating to the contract or subcontract for three (3) years after final payment.

4. **BUY AMERICAN REQUIREMENTS:** Section 1605 of the Recovery Act and the implementing grant regulations contain an award term requiring the use of American iron, steel, and manufactured goods on all projects funded with Recovery Act funds. However, on Recovery Act projects awarded by the Federal Highway Administration (“FHWA”), a component of the U.S. Department of Transportation, the FHWA has determined that, due to the applicability of Title 2, U.S. Code requirements in Title XII, there will be no changes in the FHWA’s Buy American requirements for Recovery Act projects. Accordingly, FHWA’s Buy American statutory provisions in 23 U.S.C. § 313 and the regulatory policies set forth in the implementing regulations at 23 C.F.R. § 635.410 shall apply to this contract or subcontract. Contractor/Subcontractor should consult with CSX in the event of any questions concerning applicable requirements.

5. **WAGE RATE REQUIREMENTS:**

(a) Contractor/Subcontractor shall comply with Section 1606 of the Recovery Act, which requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code. Contractor/Subcontractor shall further comply with Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, and regulations issued by the Department of Labor at 29 CFR parts 1, 3, and 5, implementing the Davis-Bacon and related Acts. The standard Davis-Bacon contract clauses found in 20 CFR 5.5(a) are incorporated into this contract or subcontract, if the contract or subcontract amount exceeds \$2,000 for construction, alteration or repair (including painting and decorating).

(b) Additional guidance on application of Davis-Bacon wage rate requirements to a particular federally assisted project should be directed to CSXT, which shall present the question to the Federal or state agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

**6. RECOVERY ACT REPORTING REQUIREMENTS:**

(a) Quarterly Reporting: Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the Federal government containing information on the use of ARRA funds no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, Contractor/Subcontractor agrees to provide CSXT with such information, no later than five (5) calendar days after the end of each calendar quarter. Section 1512 of ARRA, its implementing regulations (2 CFR § 176.50), guidance provided by the White House Office of Management and Budget and the terms of the ARRA grant that provides funds for this contract/subcontract provide guidance on the information to be reported. This data includes the following:

- (1) Contractor/Subcontractor DUNS Number
- (2) Contractor/Subcontractor CCR information
- (3) Contractor/Subcontractor type
- (4) Amount received by Contractor/Subcontractor
- (5) Amount awarded to Contractor/Subcontractor
- (6) Contract/subcontract award date
- (7) Contract/subcontract period
- (8) Contractor/Subcontractor place of performance
- (9) Contractor/Subcontractor area of benefit
- (10) Contractor/Subcontractor officer names and compensation (Top 5)

(b) Monthly Reporting: In addition, the FHWA requires monthly reporting of employment information on each ARRA project from states, contractors and subcontractors no later than the 10<sup>th</sup> calendar day of the following month. Contractor/Subcontractor shall provide CSXT with the information specified in Form FHWA-1589 (Monthly Employment Report) for direct, on-project jobs by the 5<sup>th</sup> business day following the end of each calendar month. Contractor/Subcontractor shall provide this labor and employment data electronically to CSXT in the form of actual labor invoiced and unburdened payroll data on the “CSXT ARRA Contract Labor Reporting Form,” in accordance with the entry instructions provided by CSXT. Contractor/Subcontractor shall provide to CSXT an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this contract/subcontract.

Contractor/Subcontractor shall provide a brief description of the types of jobs created or jobs retained in the United States and the general nature of the work. This description may rely on job titles, broader labor categories, or Contractor/Subcontractor’s existing practice for job descriptions,, provided the terms are widely understood in the industry.

**7. NON-DISCRIMINATION:** In addition to the State’s equal employment opportunity requirements set forth in the contract or subcontract, Contractor/Subcontractor shall comply with the following federal laws: Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.); Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688);

the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107); and other civil rights laws applicable to recipients of Federal financial assistance.

- 8. WHISTLEBLOWER PROTECTION:** In accordance with Section 1553 of ARRA, Contractor/Subcontractor shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosures by the employee of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to 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 a contract, including the competition for or negotiation of a contract or grant, awarded or issued relating to ARRA funds. Contractor/Subcontractor shall post a notice of the rights and remedies available to employees under ARRA § 1553 in all workplaces where employees perform work that is funded in whole or in part by funds authorized under the ARRA. A sample notice can be found at [www.recovery.gov](http://www.recovery.gov). Contractor/Subcontractor specifically acknowledges that it and its employees are aware of and shall abide by the provisions of ARRA § 1553. Contractor/Subcontractor shall include the language and requirements of this subsection in all of its contracts and agreements with employees, subcontractors and anyone else who performs work on behalf of the Contractor/Subcontractor relating to this contract/subcontract.
- 9. PUBLICATION:** Information about this contract/subcontract may be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. To protect any technical data or other data, including trade secrets and/or privileged information, which Contractor/Subcontractor does not want disclosed to the public or used by the Government for any purposes other than the project, Contractor/Subcontractor shall mark each page containing data to be protected with the appropriate protective legend restricting disclosure and use of the data.
- 10. SUPPORTING INFORMATION:** If requested by CSXT or a federal or state government agency responsible for Recovery Act reporting, Contractor/Subcontractor shall submit backup documentation for expenditures under the Recovery Act, including, but not limited to, items such as timecards and invoices.
- 11. AVAILABILITY OF FUNDS:** Funds appropriated under the Recovery Act and obligated to this contract/subcontract are available for reimbursement of costs until September 30, 2015.
- 12. FALSE CLAIMS ACT:** Contractor/Subcontractor, at any tier, shall promptly report to CSXT any credible evidence that a principal, employee, agent, contractor, subcontractor or any other person has submitted 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 those funds. CSXT will refer all reports to the appropriate Inspector General.

13. **FLOWDOWN REQUIREMENTS:** Contractor/Subcontractor agrees that it shall include these Special Terms and Conditions, including this requirement, in any of its contracts/subcontracts in connection with projects funded in whole or in part with funds available under ARRA, except that Contractor/Subcontractor shall not be required to flowdown these Special Terms and Conditions to materials suppliers.