

Agreement No. \_\_\_\_\_  
COMPANY NAME

**COMMONWEALTH OF VIRGINIA**

**DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

**FUND FOR CONSTRUCTION OF INDUSTRIAL ACCESS RAILROAD TRACKS**

**GRANT AGREEMENT**

**GRANTEE: COMPANY NAME**

**PROJECT: Rail Spur Construction**

**CITY OR COUNTY NAME, Virginia**

**AGREEMENT NUMBER: \_\_\_\_\_**

**APPLICATION NUMBER: \_\_\_\_\_**

**Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment.**

Agreement No. \_\_\_\_\_  
COMPANY NAME

## FUND FOR CONSTRUCTION OF INDUSTRIAL ACCESS RAILROAD TRACKS GRANT AGREEMENT

**Agreement Number:** \_\_\_\_\_

**THIS FUND FOR CONSTRUCTION OF INDUSTRIAL ACCESS RAILROAD TRACKS GRANT AGREEMENT** for construction or rehabilitation of a sidetrack in the City or County of \_\_\_\_\_, Virginia ("Agreement") is by and between the Virginia Department of Rail and Public Transportation ("Department"), acting by and through its Director, and COMPANY NAME ("Grantee") (collectively, the "Parties").

### RECITALS

WHEREAS, the Grantee proposes to construct or rehabilitate approximately insert number feet of track as set out in its application dated Application Date ("Project"); and

WHEREAS, the Grantee's application for funds was acknowledged and a resolution of support was issued by the City Council of the City of \_\_\_\_\_ OR Board of Supervisors of the County of \_\_\_\_\_ dated Insert Date; and

WHEREAS, the Grantee's facility is located at Insert Address (the "Facility"); and

WHEREAS, in accordance with § 33.2-1600 of the Code of Virginia (1950), as amended, the Commonwealth Transportation Board ("CTB"), on Insert Date, approved funding for the Project, having considered the cost thereof in relation to the prospective volume of rail traffic, capital investment, potential employment and other economic and public benefits; and

WHEREAS, the Grantee acknowledges that this grant is to fund only industrial track improvements and associated direct costs and that the funding shall not be used for any other purpose; and

WHEREAS, the Grantee understands and acknowledges that § 33.2-1600(F) of the *Code of Virginia* (1950), as amended, requires that the tracks and facilities constructed with such funds shall be the property of the Commonwealth of Virginia ("Commonwealth") for the useful life of the Project as determined by the Director of the Department, and shall be maintained in perpetuity by the Grantee, its successors or assigns, and made available for use by all common carriers using the railway system to which they connect; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

### AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements in this Agreement, the sufficiency of which is acknowledged, the Parties agree as follows:

The Recitals above are incorporated into this Agreement as if stated herein.

## ARTICLE 1

### DEFINITIONS

§ 1.1 **Annual Carloads** means the total number of loaded revenue rail cars handled by the Facility during the Department's fiscal year from July 1 through June 30 (counted and reported for purposes of Section 4.1. A single carload is considered (1) a loaded inbound car received by the Facility or (2) a loaded outbound car shipped from the Facility. Empty and non-revenue car movements do not count towards the Annual Carload total, unless the Grantee's business by rail involves the construction or rehabilitation of railroad cars.

§ 1.2 **Container** means a standardized intermodal freight cargo unit (counted as a Container for purposes of Section 3.2) that can be loaded onto ships, railroad cars, and trucks. There are several different common standard lengths and heights, with approximate dimensions of 40 to 53 feet in length and 8.5 to 9.5 feet in height.

§ 1.3 **Contractor** means a private contractor, including consultants, which may be engaged by Grantee to perform the Work.

§ 1.4 **Department's Interest Period** means the period of the Department's ownership interest in the completed Project. The Department's ownership interest in the completed Project begins after acceptance of the Work by the Department and runs for a period lasting 15 years. The Department's calculation of the interest in years four through 15 is detailed in Attachment A.

§ 1.5 **Eligible Project Cost** means a cost directly associated with the Work which is reimbursable as set out by the Rail Industrial Access Program and Procedures Manual.

§ 1.6 **Grant Expiration Date** means the date two years from the date of CTB's allocation of funds for the Project.

§ 1.7 **Improvements** means all improvements to real property constructed, installed, or placed pursuant to this Agreement.

§ 1.8 **Letter of No Prejudice** means formal acknowledgement of the Project by the Department that allows the Grantee to perform the Work or portions thereof to which the Department agrees, at the Grantee's own risk prior to the execution of the Agreement and issuance of Notice to Proceed.

§ 1.9 **Performance Period** means the three-year period following acceptance and payment of the Project Invoice.

§ 1.10 **Project** means the Work that is performed in accordance with this Agreement.

§ 1.11 **Project Benefit** means the specific benefit that shall be achieved by completion of the Project and the Grantee achieving the performance requirements.

§ 1.12 **Project Budget** means the budget for the Work in single or multiple years as broken into total costs, Department and Grantee participation, and any subsequent amendments thereto.

§ 1.13 **Project Invoice** means the final invoice submission including the invoice letter and invoice summary (Attachment B), certification letter of capital expenditures (Attachment C), Form W-9, Contractor invoices, and proof of payment provided to the Department by the Grantee to submit for reimbursement of Eligible Project Costs incurred and paid by the Grantee.

§ 1.14 **Project Schedule** means the schedule for completing the Work as agreed to by the Parties and any subsequent amendments thereto.

§ 1.15 **Project Scope** means the description of the Work including plans, specifications, schedule of values, cost estimates, and any other documents necessary to complete the Work relating to the Project and any subsequent amendments.

§ 1.16 **Re-work** means work required to correct deficiencies in the Project brought about by incomplete Work, incorrect Work, failure to comply with the provisions of this Agreement, or federal, state, or local regulations.

§ 1.17 **Work** means any and all tasks, duties, obligations, services, requirements, and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by the Grantee to complete the Project.

## ARTICLE 2

### SCOPE OF WORK AND BUDGET

§ 2.1 The Work under the terms of this Agreement will accomplish the following:

- A. Develop a final Project Scope, Project Budget, and Project Schedule for the items specified in Section 2.1.B., for approval by the Department.
- B. Beginning at the Insert RR Name Railroad turnout, construct or rehabilitate approximately insert number feet of track, as specified in Grantee's insert date application. Insert RR Name Railroad, by letter dated Insert Date, has indicated its support for the project and has agreed to serve the facility. A copy of Grantee's application is attached hereto as Attachment E and is incorporated into this Agreement.

§ 2.1 The maximum funding available for reimbursement by the Department for the Project under this Agreement is the lesser of seventy percent (70%) of the overall Project Budget or \$Insert requested amount.

§ 2.2 Unless the Grantee receives a written extension from the Director prior to the Grant Expiration Date, the Grantee shall complete the Work and submit the Project invoice to the Department by the Grant Expiration Date. If all allocated funds are not expended by the Grant Expiration Date, this Agreement shall terminate.

§ 2.3 The Grantee is responsible for constructing or having the Project proposed in the final Project Scope constructed. All Work shall be competitively bid and the contract shall be awarded to the lowest responsive and responsible bidder, as defined in § 2.2-4301 of the *Code of Virginia* (1950), as amended.

§ 2.4 In the event that the Grantee receives subsequent allocation of state funding from another source or federal funding applicable to this Project, the amount available for reimbursement shall be reduced by the amount of the subsequent funding. The Grantee will notify the Department of any such subsequent allocations within 30 calendar days. Failure of the Grantee to notify the Department under the terms of this section is a material breach of this Agreement.

§ 2.5 Any cost of completing the Work in excess of the Project Budget shall be the responsibility of the Grantee.

§ 2.6 Funding availability is subject to appropriation by the General Assembly and allocation by the CTB.

§ 2.7 The Grantee certifies that it has the financial and technical capability to complete the Work in accordance with this Agreement.

§ 2.8 The Grantee certifies it owns, controls, or has executed an agreement to purchase or lease the real property upon which the Project will occur and that it will protect and respect the Department's interest in the Project. The Grantee certifies that it has received approvals relative to easements and encroachments that occur as a result of this Project.

### **ARTICLE 3**

#### **PLANNING, DESIGN, ENGINEERING AND CONSTRUCTION**

§ 3.1 By its execution of this Agreement, the Department provides Notice to Proceed only with respect to the Work specified in Section 2.1.A. This Notice to Proceed does not apply to the Work specified in Section 2.1.B. The Department does not make any warranty as to the accuracy or suitability of the information submitted, nor does it relieve the Grantee of any liability under this Agreement.

§ 3.2 The Grantee shall not commence the Work described in Section 2.1.B. until the Department has issued in writing either a Notice to Proceed or a Letter of No Prejudice. The Department shall have no obligation to reimburse the Grantee for any Work performed in the absence of the Department's issuance of a Letter of No Prejudice (if applicable) and a Notice to Proceed.

- A. Notice to Proceed. The Grantee must submit a final Project Scope, Project Budget, Project Schedule, plan title sheet, and Insert RR Name Railroad's written approval of the plan title sheet for the Work to the Department for approval before the Department will issue a Notice to Proceed with respect to Section 2.1.B.
- B. Letter of No Prejudice. In the event the Grantee wishes to perform the Work specified in Section 2.1. prior to receiving a Notice to Proceed from the Department, the Grantee shall formally request a Letter of No Prejudice from the Department with respect to the Work specified in Section 2.1.B. The costs for such Work will only be considered Eligible Project Costs if the costs are incurred after the Department issues a Letter of No Prejudice. These costs will be eligible for payment only after the Department issues a Notice to Proceed with respect to the Work specified in Section 2.1. and determines the costs are Eligible Project Costs.

§ 3.3 The Department reserves the right to reject any Project Scope items, Project Budget, or Project Schedule because the Department's own analysis reveals that significant cost or schedule savings could be achieved while still meeting the Grantee's Annual Carload requirements.

§ 3.4 The Grantee shall inspect the Work or shall have the Work inspected to:

- A. Ensure that it complies with the 1) specifications set forth in this Agreement, the Application, and the Project Scope, 2) any requirements of federal, state, or local law, and 3) the standards set forth by the American Railway Engineering and Maintenance-of-Way Association ("AREMA");
- B. Verify quantitative measures of materials installed, such as tie counts; and
- C. Verify labor and materials charges for contracts providing for payment on an actual cost basis.

§ 3.5 If the Grantee, the Department, or any inspector, determines that any material or construction is not in accordance with the standards of the serving railroad as informed by the AREMA, or any applicable federal, state, or local law, the Grantee shall replace materials or correct any workmanship necessary to cure the deficiency. The Grantee shall not use any funds provided under this Agreement to pay for any Re-work.

§ 3.6 The Department may take any action, including the inspection of the Project site and all books and records of the Grantee, any Contractor or subcontractor, relating to any project or task receiving funds under this Agreement, to review activities under this Agreement and the adequacy of the Grantee's monitoring efforts.

§ 3.7 The Department shall have access to the Project at all times to inspect the Project, to protect its interest in the Project, and to ensure that the Project is being developed consistently with the terms of this Agreement, and entry shall be provided at no cost to the Department. The Department's representatives will contact the Grantee's representatives prior to entering the Grantee's right-of-way, and the Grantee will provide any necessary protection from train

movements. The Department's representatives will comply with all safety rules and regulations of the Grantee, and safety instructions from the Grantee's representatives.

## ARTICLE 4

### PERFORMANCE REQUIREMENTS

§ 4.1 In order to ensure that the Agreement results in public benefit, the Grantee shall ensure the Work described in Articles 1 and 2, results in a minimum of insert minimum number of annual carloads railcars in at least one year of the Performance Period. The Department's Interest Period in the Work is described in Articles 1 and 2 for years four (4) through fifteen (15) and is set forth in Attachment A.

§ 4.2 The Grantee shall provide annually, by no later than July 30 of each reporting period, and beginning July 1 after acceptance of the Work by the Department, the number of Annual Carloads (excluding carloads carrying reported Containers) or Containers carried over the rail line referred to by the Grantee in its application. The annual reporting period shall be from July 1 of the preceding year to June 30 of the report year, which relates to the Department's Fiscal Year.

§ 4.3 All efforts related to reporting annual Project Benefit performance under this Article shall be auditable at the Grantee's expense.

§ 4.4 If the Grantee does not meet the Annual Carload usage goal within the Performance Period, the Grantee must repay the grant funds.

§ 4.5 Upon approval of a three-year extension to the Performance Period, the Grantee must meet the Annual Carload usage goal in one of the additional three years.

§ 4.6 If the Grantee fails to meet the Annual Carload usage goal during the Performance Period, the Grantee will reimburse the Department based on the percentage of the Annual Carload usage goal achieved. The percentage for partial repayment of the grant shall be determined by the difference between the highest Annual Carload count reported to the Department and Annual Carload usage goal, plus accrued annual interest using the prevailing statutory legal rate of interest calculated from the date when payment is made by the Department to date of payment of any reimbursement amount. The reimbursement due from the Grantee to the Department shall not exceed the grant amount.

§ 4.7 After the three-year Performance Period, if the Project improvements are not used for their intended purpose, then the Grantee shall reimburse the Department the value of the Department's ownership interest, calculated as a percentage of grant funds paid to Grantee beginning the year of non-use. Interest applied to the calculated value of the grant funds paid will be calculated from the date when payment is made by the Department to the Grantee to the date of payment of any reimbursement amount by Grantee to the Department.



## **ARTICLE 5**

### **REIMBURSEMENT OF GRANTEE**

§ 5.1 The Grantee shall submit the Project Invoice upon Project completion for reimbursement of Eligible Project Costs. The invoice must reflect the percentage of financial participation agreed to by the Department and the Grantee. The invoice must include all expenses related to the Project. The Grantee must complete the Work and final invoice the Department by the Grant Expiration Date. If the Work is not completed by the Grant Expiration Date, then this Agreement may be terminated.

§ 5.2 The Project Invoice shall be submitted using the form and summary provided by the Department as Attachment B of this Agreement. Upon approval by the Department for payment, Project Invoices will be paid within 30 calendar days of receipt.

§ 5.3 The Project Invoice or line items in the invoice that are not found to be complete as to form or in accordance with the provisions of this Agreement will be separated and a partial payment may be made by the Department on Eligible Project Costs upon approval by the Department.

§ 5.4 Within 60 calendar days of notification of disapproval, the Grantee will repay the Department for any items of Work for which the Department has reimbursed the Grantee which the Department determines not to be in accordance with the agreed Work or with any applicable federal, state, or local law or regulation.

§ 5.5 At the completion of the Work, and as part of the Project Invoice for reimbursement, the Grantee shall submit to the Department a Certification Letter of Capital Expenditures in the form of Attachment C.

## **ARTICLE 6**

### **COMPLETION AND ACCEPTANCE**

§ 6.1 Upon completion of the Work, the Grantee shall submit the Project Invoice.

§ 6.2 The Department shall have 60 calendar days after the Project Invoice submission in which to provide final acceptance of or reject any portion of the Work in writing. Full payment by the Department of the Project Invoice shall be considered written acceptance of the Work. If the Department does not pay the Project Invoice or provide written rejection of the Work within the 60 calendar days, it shall be deemed a rejection of the Work.



§ 6.3 If the Department rejects any portion of the Work, the Grantee shall have 30 days from the date of written rejection to submit a written plan for remedying any identified problem with the Work. The problem shall be remedied according to a schedule approved by the Department.

§ 6.4 After payment of the Project Invoice, the Department will withdraw any remaining Commonwealth funds.

§ 6.5 Any work necessary in connection with the Project, which is not specifically provided for as Work by this Agreement, including but not limited to Re-work, shall be the responsibility of the Grantee.

## **ARTICLE 7**

### **INTEREST IN COMPLETED WORK**

§ 7.1 The Grantee grants to the Department the portion of the Project consisting of the Improvements which are to be constructed and funded under this Agreement in the proportion as set forth in Attachment A.

§ 7.2 If the Project improvements are not used for their intended purpose, the Department will be reimbursed at the percentage of total grant funding shown in Attachment A plus the statutory legal rate of interest, but at no time will Grantee's liability exceed the amount of Eligible Project Costs, plus interest. Interest applied to the percentage value of the grant funds paid will be calculated from the date when payment is made by the Department to the date of payment of any reimbursement amount by the Grantee. The percentage value of the grant funds paid to the Grantee plus applied legal rate of interest equals the total recovery amount to be paid by the Grantee to the Department as reimbursement for non-use of the Project for its intended purpose.

§ 7.3 The Grantee may, with the Director's written approval, purchase, sell, transfer, remove, or otherwise dispose of the Improvements constructed under this Agreement. In the event of sale or transfer of the Project, the Department must be provided with a similar ownership interest in the Improvements by the Grantee's successor or assign. Such ownership interest must be approved by the Department prior to the sale or transfer.

## **ARTICLE 8**

### **TERMINATION**

§ 8.1 The Grantee may terminate the Agreement at any time by notifying the Department in writing 30 calendar days in advance. If such termination occurs, the Grantee shall repay the Department for all funds received.

§ 8.2 The Department may terminate this Agreement at any time by notifying the Grantee in writing 30 calendar days in advance. If such termination occurs as a result of Grantee's breach of this Agreement, then Grantee shall repay the Department for all funds received. If the termination is for the convenience of the Department, then Grantee is not required to repay the

Agreement No. \_\_\_\_\_  
COMPANY NAME \_\_\_\_\_

Department for funds already received. Grantee cannot be reimbursed for expenses accrued after the Department terminates this Agreement.

## ARTICLE 9

### NOTICES

§ 9.1 All notices or communications with respect to this Agreement shall be in writing and shall be deemed delivered upon delivery by hand or sent via email, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a Party to the other Party.

Department: Chief Financial Officer  
c/o Virginia Department of Rail and Public Transportation  
600 East Main Street, Suite 2102  
Richmond, VA 23219

With copy to: Transportation Section Chief  
c/o Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, VA 23219

Grantee: INSERT COMPANY NAME AND ADDRESS

## ARTICLE 10

### GENERAL TERMS AND CONDITIONS

§ 10.1 Applicable Laws and Courts: This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the Circuit Court of the City of Richmond.

§ 10.2 Anti-Discrimination: By agreeing to this Agreement, Grantee certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the

accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

§ 10.3 In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this Agreement, the Grantee agrees as follows: a. The Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. b. The Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that such contractor is an equal opportunity employer. c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section. d. If the Grantee employs more than five employees, the Grantee shall (i) provide annual training on the Grantee's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Grantee's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Grantee owns or leases for business purposes and (b) the Grantee's employee handbook. e. The requirements of these provisions and 2. are a material part of the Agreement. If the Grantee violates one of these provisions, the Commonwealth may terminate the affected part of this Agreement for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific Agreement is terminated. f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the Grantee, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Agreement.
2. The Grantee will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 10.4 Ethics in Public Contracting: By agreeing to this Agreement, Grantee certifies this Agreement was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any supplier, manufacturer or subcontractor in connection with this Agreement, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

§ 10.5 Immigration Reform and Control Act of 1986: By entering into a written contract with the Commonwealth of Virginia, the Grantee certifies that the Grantee does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

§ 10.6 Within seven (7) days of the Grantee's receipt of payment from the Commonwealth, the Grantee is hereby obligated: (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or (2) To notify the agency and the subcontractor(s), in writing, of the Grantee's intention to withhold payment and the reason. b. The Grantee is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Grantee that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A Grantee's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth. 3. Each Grantee who receives a grant in which provision of a SWaM procurement plan is a condition to the grant, shall deliver to the Department, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under this Agreement may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment. 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

§ 10.7 Precedence of Terms: The General Terms and Conditions contained in this Section shall apply in all instances. In the event there is a conflict between any of the General Terms and Conditions and any term in this Agreement, these General Terms and Conditions shall apply.

§ 10.8 Assignment of Contract: The Grantee may not assign any portion of this Agreement without the prior written approval of the Director.

§ 10.9 Amendment: This Agreement may be altered, amended, or revoked only by an instrument in writing signed by both Parties.

§ 10.10 Insurance: By signing this Agreement, Grantee certifies that it has sufficient insurance or self-insurance, subject to review by the Department. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The Grantee further certifies that any contractor or subcontractors will maintain these insurance coverages during the entire term of the contract and that all coverage will be provided by companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Grantee agrees to indemnify the Department for any damages, losses, or liabilities resulting from failure to provide adequate insurance.

§ 10.11 All Grantees must maintain the following insurance:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

If in any instance the Grantee has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert Claims in accordance with the terms of the insurance policies, then for purposes of determining the Grantee's liability, the Grantee will be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had the Grantee performed such obligations.

§ 10.12 Drug-Free Workplace: During the performance of this Agreement, the Grantee agrees to (i) provide a drug-free workplace for the Grantee's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific grant awarded to a Grantee, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 10.13 Nondiscrimination of Contractors: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the

specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

§ 10.14 Authorization to Conduct Business in the Commonwealth: A Grantee organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

§ 10.15 Civility in State Workplaces: The Grantee shall take all reasonable steps to ensure that no individual, while performing work on behalf of the Grantee or any subcontractor in connection with this agreement (each, a "Contract Worker"), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability. The Grantee shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor's (and any subcontractor's) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the Grantee shall provide documentation that each Contract Worker has received such training. For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee. The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section. This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.



§ 10.16 Audit: The Grantee shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

## **ARTICLE 11**

### **MISCELLANEOUS PROVISIONS**

§ 11.1 The Grantee shall at all times observe and comply with all federal, state and local laws, regulations, ordinances, orders, and decrees applicable to the Work or subsequent operation. The obligations of this section shall survive the termination or completion of this Agreement.

§ 11.2 The Grantee shall indemnify, defend, and hold harmless the Commonwealth and the Department and their respective officers, agents, and employees from and against all damages, claims, suits, judgments, losses, expenses, actions and costs of every kind, including but not limited to reasonable attorney's fees and costs, arising out of, resulting from, or in any way relating to the performance of the Work or operation of the Improvements by Grantee, or its Contractors or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.. The obligations of this Section shall survive the termination or completion of this Agreement.

§ 11.3 All funds granted under this Agreement shall be expended by the Grantee in accordance with the Department's guidelines, standard procurement procedures, applicable Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of the Work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders.

§ 11.4 No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest, direct or indirect, that is prohibited by Virginia law in this Agreement.

§ 11.5 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the Parties.

§ 11.6 This Agreement shall be binding upon the Parties and their respective successors and assigns.

§ 11.7 This Agreement, any amendments to this Agreement, and the Grantee's application to receive the funding on which this Agreement is based, constitute the entire and exclusive agreement between the Parties relating to all specific matters covered herein. All other prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked, and rendered ineffective for any



purpose except for any Letter of No Prejudice issued by the Department, which shall remain in effect.

§ 11.8 Grantee shall obtain all permits and certifications required to perform the Work.

§ 11.9 All repayment by the Grantee to the Department for funds granted by the Department under this Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date reimbursement was made by the Department to date of repayment by the Grantee.

§ 11.10 In no event shall the Grantee's total repayment exceed the sums paid by the Department to the Grantee under this Agreement, excluding any interest the Grantee may owe on such repayments.

§ 11.11 The Department does not make any warranty as to the accuracy or suitability of any information it provides to the Grantee, and its provision of such information to the Grantee does not relieve the Grantee of any liability under this Agreement.

IN TESTIMONY THEREOF, the Parties have caused this Agreement to be executed, each by its duly authorized officers.

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF RAIL AND PUBLIC  
TRANSPORTATION

BY: \_\_\_\_\_  
Tiffany P. Robinson, Director

DATE: \_\_\_\_\_

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, to wit:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Tiffany P. Robinson, Director of the Department of Rail and Public Transportation.

\_\_\_\_\_  
Notary Public

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Agreement No. \_\_\_\_\_  
COMPANY NAME \_\_\_\_\_

INSERT COMPANY NAME

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, to wit:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Notary registration number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**ARTICLE 12 Attachment A - Commonwealth's Interest for Years Four through 15**  
**Table for Use in Calculating Reimbursement**  
**(Provided three-year carload usage performance requirement has been fulfilled)**

| A    | B   | C  | D   | E  | F                                     | G                               |
|------|---|--|---|--|---------------------------------------|---------------------------------|
| Year | Year Beginning Non-Use for Intended Purpose | Total Amount of Department's Reimbursement | Percentage of Remaining Department Interest | Amount of Reimbursement (Column B is No) | Annual Interest Rate (Column B is No) | Total Recovery (Column B is No) |
|      | (Yes)                                       |  |   | (C x D)                                  |                                       | E + (E x F)                     |
| 4    | *   | **   | 80.01%                                      | ***                                      | ***                                   | ***                             |
| 5    | *   | **   | 73.34%                                      | ***                                      | ***                                   | ***                             |
| 6    | *   | **   | 66.67%                                      | ***                                      | ***                                   | ***                             |
| 7    | *   | **   | 60.00%                                      | ***                                      | ***                                   | ***                             |
| 8    | *   | **   | 53.33%                                      | ***                                      | ***                                   | ***                             |
| 9    | *   | **   | 46.67%                                      | ***                                      | ***                                   | ***                             |
| 10   | *   | **   | 40.00%                                      | ***                                      | ***                                   | ***                             |
| 11   | *   | **   | 33.33%                                      | ***                                      | ***                                   | ***                             |
| 12   | *   | **   | 26.67%                                      | ***                                      | ***                                   | ***                             |
| 13   | *   | **   | 20.00%                                      | ***                                      | ***                                   | ***                             |
| 14   | *   | **   | 13.33%                                      | ***                                      | ***                                   | ***                             |
| 15   | *   | **   | 6.67%                                       | ***                                      | ***                                   | ***                             |

- \* To be determined throughout the Department's Interest Period by the reporting process  
\*\* To be the value of the Department's final payment after acceptance of the Work by the Department  
\*\*\* To be calculated if Column B, Year Beginning Non-Use for Intended Purpose, is marked "Yes"

## Attachment B - Project Invoice

### Summary Sheet (sample)

| Invoice Number | Vendor Name | Work Performed | Dollar Value of Work | Work Completed Date | Invoice Paid Date |
|----------------|-------------|----------------|----------------------|---------------------|-------------------|
|                |             |                |                      |                     |                   |
|                |             |                |                      |                     |                   |
|                |             |                |                      |                     |                   |
|                |             |                |                      |                     |                   |

Non-Negotiable

## Attachment C - Certification Letter of Capital Expenditures

*(on letterhead)*

DATE

Department of Rail and Public Transportation  
600 East Main Street, Suite 2102  
Richmond, VA 23219

Dear Director Robinson:

Pursuant to the Industrial Access Railroad Track Agreement executed *(Date of Agreement)*, this letter is to act as certification of the total capital investment and current employment for the *(name of industry and location)* site Rail Industrial Access Facility.

At the completion of the construction of this rail project, the total capital outlay by *(name of industry)* was \$\_\_\_\_,\_\_\_\_.\_\_\_\_; and the total employment at the Facility at the time of project completion was \_\_\_\_ full time and \_\_\_\_ part time personnel or \_\_\_\_ full time equivalent.

Sincerely,

Name and Title

c: Linda Balderson, Rail Capital Programs Manager

**Attachment D - Letter of No Prejudice**

*Month Day, Year*

*Name*

*Title*

*Company Name*

*Company Address Line 1*

*Company Address Line 2*

Re: *Project Name*

Letter of No Prejudice

Dear *Name*:

On *Month Day, Year*, the Commonwealth Transportation Board (CTB) allocated \$*Amount* of the Fund for Construction Industrial Access Railroad Tracks to the *Company Name* to assist in funding projects requested in its application dated *Month Day, Year*.

The Rail Industrial Access Contract funding agreements for this program are being finalized by DRPT and the Office of the Attorney General. DRPT intends to forward these agreements to the Rail Industrial Access Program recipients for execution within the next 30 days. Until such time as the Rail Industrial Access Program agreements are executed, the *Company Name* is hereby authorized to begin incurring expenses toward the development of the final specifications, budget, and schedule for submission to DRPT for approval and issuance of Notice to Proceed to construction. Eligible expenses incurred after *Month Day, Year* from the development of the final specifications, project budget, and schedule will be eligible for reimbursement when an agreement is executed between the parties and DRPT receives and approves an acceptable invoice for payment. However, if for some reason a Rail Industrial Access Agreement is not executed, then DRPT has no obligation to reimburse *Company Name* for any expenses.

If you have any questions or comments concerning this Letter of No Prejudice, please contact *Name*, Rail Transportation Programs Administrator, at *Phone Number*.

Sincerely,

*Name*

Director

c: Linda Balderson, Rail Capital Programs Manager

Agreement No. \_\_\_\_\_  
COMPANY NAME \_\_\_\_\_

**Attachment E**  
**Grantee's Application**

Non-Negotiable