

DRPT RAIL GRANT AGREEMENT TEMPLATE

The following agreement template will be used for all awarded DRPT rail grant program projects; including Rail Industrial Access, Rail Preservation, and FREIGHT Program projects.

Terms of the agreement are non-negotiable; highlighted sections will be completed with grantee and project specific language based on the submitted application.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

GRANT AGREEMENT

For

FUNDING PROGRAM

GRANTEE: GRANTEE NAME

PROJECT: PROJECT NAME

LOCALITY, Virginia

AGREEMENT NUMBER: AGREEMENT NUMBER
APPLICATION 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.

Grantee Name: **GRANTEE NAME**
FUNDING PROGRAM AGREEMENT NUMBER

**FUNDING PROGRAM
GRANT AGREEMENT**

Agreement Number: **AGREEMENT NUMBER**

THIS FUNDING PROGRAM GRANT AGREEMENT for the **NAME OF PROJECT** (“Agreement”) is by and between the Virginia Department of Rail and Public Transportation (“Department”), acting by and through its Director, and the **GRANTEE NAME** (“Grantee”) (the Department and the Grantee individually are a “Party” and collectively are the “Parties”).

RECITALS

WHEREAS, the **FUNDING PROGRAM** was established under Virginia Code Section **CODE SECTION**; and

WHEREAS, the Grantee proposes to **PROJECT DESCRIPTION** as set out in its application dated **APPLICATION DATE** (“Project”); and

WHEREAS, in accordance with **FUNDING PROGRAM VIRGINIA CODE REFERENCE**, as amended, the Commonwealth Transportation Board (“CTB”), on **CTB APPROVAL DATE**, approved funding for the Project for Fiscal Year 20**XX**, and determined the Project is for the common good of a region of the Commonwealth of Virginia (“Commonwealth”) or the Commonwealth as a whole; and

WHEREAS, the Grantee understands and acknowledges that **FUNDING PROGRAM VIRGINIA CODE REFERENCE**, as amended, requires that the tracks and facilities constructed with such funds shall be the property of the 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.

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.

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AGREEMENT

ARTICLE 1. DEFINITIONS

The Agreement includes the following defined terms as may be further defined by other terms of the Agreement. Additional terms are defined as they occur in the Agreement.

- § 1.1. **Carloads** means the total number of loaded revenue rail cars handled by the Grantee over the improved facility during the Department's fiscal year from July 1 through June 30 (counted and reported for purposes of the Performance Requirement). Empty non-revenue 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. **Carload Equivalent** means three Intermodal Units - a standardized intermodal freight cargo unit 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 - or one Carload handled by the Grantee during the Fiscal Year.
- § 1.3. **Closeout** means the date the Department approves the Grantee's Closeout Request and the Department's Interest Period begins.
- § 1.4. **Closeout Request** means the Grantee's request to close the project, deobligate any remaining Commonwealth Funds, and begin the Performance Period. The request can be made in the Department's designated online grant management system.
- § 1.5. **Contractor** means a private contractor, including consultants, which may be engaged by the Grantee to perform the Work.
- § 1.6. **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 # of YEARS years. The Department's calculation of the interest is detailed in Attachment D.
- § 1.7. **Eligible Project Cost** means a cost directly associated with the Work which is reimbursable.
- § 1.8. **Final Project Invoice** means the last and final invoice submitted at the completion of the Work, including the remainder of all project costs eligible for reimbursement. For the Rail Industrial Access Program, the only invoice submitted shall be the Final Project Invoice.
- § 1.9. **Funding Program** based on the funding source, this project is part of the FUNDING PROGRAM and is required to follow any specific provisions of this program, as noted in this Agreement.
- § 1.10. **Grant Expiration Date** means the date two years from the date of CTB's most recent approval of funds for the Project.
- § 1.11. **Improvements** means all improvements to real property constructed, installed, or placed pursuant to this Agreement.
- § 1.12. **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.
- § 1.13. **Performance Period** means the # of YEARS period following acceptance and payment of the Project Invoice.
- § 1.14. **Project** means the Work that is performed in accordance with this Agreement.

- § 1.15. **Project Benefit** means the specific benefit that shall be achieved by completion of the Project and the Grantee achieving the performance requirements.
- § 1.16. **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.
- § 1.17. **Project Schedule** means the schedule for completing the Work as agreed to by the Parties and any subsequent amendments thereto.
- § 1.18. **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.
- § 1.19. **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.
- § 1.20. **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

- § 2.1. By execution of this Agreement, the Department approves the initial Project Scope, initial Project Schedule, and initial Project Budget specified in the Grantee's Application, attached hereto as Attachment A and incorporated herein by reference, and provides a Notice to Proceed for the Work specified in § 2.1.1:
- § 2.1.1. The Grantee shall develop a final Project Scope, final Project Budget, and final Project Schedule for the Work listed in Grantee's Application.
- § 2.1.2. The Grantee shall not commence construction for the Work until the Department has issued a Notice to Proceed for construction. For the Department to consider issuing a Notice to Proceed, the Grantee must submit a final Project Scope, final Project Budget, and final Project Schedule for the Work to the Department for approval.
- § 2.1.3. The Grantee shall Construct the Project in accordance with the final Project Scope as developed by the Grantee and approved by the Department in accordance with § 2.1.2.
- § 2.2. The Grantee shall not deviate from the accepted final Project Scope, final Project Schedule, or final Project Budget without good cause and the Department's consent, which the Department shall not unreasonably withhold. Any changes shall be agreed to and acknowledged in writing signed by both Parties
- § 2.3. The Grantee certifies that it either owns, controls, has executed an agreement to purchase or lease the real property upon which the Project will be performed and constructed, or will do so within six months of the date of the Agreement. The Grantee certifies that it has received approvals relative to easements and encroachment that occur as a result of this Project. No Eligible Project Costs shall be paid by the Department to the Grantee until Grantee has provided evidence of control of all real property on which the Project will be constructed and all recorded easements (if any) necessary to access the Project.
- § 2.4. 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.

ARTICLE 3. ESTIMATED COST, BUDGET, and FUNDING

- § 3.1. The Grantee's estimated Project Budget is \$.

Grantee Name: **GRANTEE NAME**
FUNDING PROGRAM AGREEMENT NUMBER

§ 3.2. Funding for the Project is a combination of Department Funding, as defined herein and which shall not exceed the Maximum Department Funding set forth below, and the Grantee Contribution. The Grantee Contribution shall be cash contribution obtained by or on behalf of the Grantee from a private source, which may include a railroad, a regional authority, private industry, a local government source, or a combination of such sources. The value of the Grantee Contribution shall be **XX** percent of the total Eligible Project Costs accepted as reimbursable by the Department and 100 percent of all costs not deemed to be Eligible Project Costs. The expiration date for Department Funding under this Agreement shall be two (2) years from the Grant Expiration Date.

§ 3.3. The Total Project Funding broken down by maximum funding available from the Department ("Maximum Department Funding") and the required Grantee Contribution is:

Maximum Department Funding:	\$
Grantee Contribution:	\$
Total Project Funding:	\$

§ 3.4. The Maximum Department Funding and required Grantee Contribution, by Fiscal Year, are:

Fiscal Year 20 XX	
Maximum Department Funding:	\$
Grantee Contribution:	\$

Fiscal Year 20 XX	
Maximum Department Funding:	\$
Grantee Contribution:	\$

Fiscal Year 20 XX	
Maximum Department Funding:	\$
Grantee Contribution:	\$

Fiscal Year 20 XX	
Maximum Department Funding:	\$
Grantee Contribution:	\$

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

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

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

§ 3.8. Funding Purpose, Limitations, and Potential Decreases

§ 3.8.1. Department Funding under this Agreement shall be for the reimbursement of Eligible Project Costs and no other purpose. Available Department Funding not used to reimburse the Grantee for Eligible Project Costs by the close of any Fiscal Year shall be carried over and made available during the next Fiscal Year, up to the Grant Expiration Date.

§ 3.8.2. At all times, Department Funding is subject to change, including decrease or elimination, based on the availability of appropriation from the Virginia General Assembly and allocation by the CTB, which are subject to deappropriation and deallocation respectively.

§ 3.9. In the event the Grantee receives a subsequent award of funds from a source other than Commonwealth Rail Funds ("Subsequent Funds") for the Project covered by this Agreement, the Maximum Department Funding will be reduced by the amount of the Subsequent Funds. The Grantee shall notify the Department of any such Subsequent Funds within 30 Days of its award. This Section shall not apply if:

- § 3.9.1. The Maximum Department Funding has been reimbursed in its entirety;
- § 3.9.2. the amount of the Maximum Department Funding is insufficient to fund the reasonable cost of the Work necessary to complete the Project; and
- § 3.9.3. the Grantee's sole purpose for obtaining the Subsequent Funds is to fund the completion of the Project.

ARTICLE 4. EXECUTION OF THE WORK

- § 4.1. Any costs for Work incurred after the issuance of a Letter of No Prejudice may be considered Eligible Project Costs upon execution of this Agreement and the issuance by the Department of a Notice to Proceed. However, nothing shall obligate the Department to reimburse the Grantee for any portion of the cost of such Work in the absence of the Department's Letter of No Prejudice, executed Agreement, and Notice to Proceed.
- § 4.2. The Grantee certifies that it has the financial and technical ability to complete the Work, or cause the Work to be completed, in accordance with this Agreement.
- § 4.3. Construction of the Work:
 - § 4.3.1. The Grantee shall construct, or cause to be constructed, the Project in accordance with:
 - § 4.3.1.1. the most recent Department-accepted final Project Scope, final Project Schedule, and final Project Budget;
 - § 4.3.1.2. the Grantee's specifications provided those specifications meet or exceed the recommended practices accepted by the American Railway Engineering and Maintenance-of-Way Association ("AREMA"); and
 - § 4.3.1.3. applicable federal, state, and local laws and regulations.
 - § 4.3.2. The Grantee shall be solely responsible for the construction means, methods, techniques, sequences, and procedures, and the safety precautions and programs in connection with the Work. If, at any time, the Department, the Grantee, or an authority having jurisdiction determine that construction of the Work is not in accordance with the requirements of this Agreement, the Grantee shall undertake the Re-work necessary to correct the deficiency.
- § 4.4. 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.
- § 4.5. 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 5. REIMBURSEMENT OF THE GRANTEE

- § 5.1. Eligible Project Costs
 - § 5.1.1. The Grantee shall be responsible for paying for the Work. The Department shall reimburse the Grantee for the percentage of the Eligible Project Costs set forth herein properly submitted in accordance with this Agreement. The Grantee must support all Eligible Project Costs with accurate records such as

properly executed payrolls, time records, invoices, contracts, vouchers, and other documentation describing in detail the nature and propriety of all costs and charges Grantee submits.

§ 5.1.2. To constitute an Eligible Project Cost for which reimbursement is allowed, an expenditure must meet all of the following conditions:

§ 5.1.2.1. be necessary in order to accomplish the Project and be within the final Project Scope;

§ 5.1.2.2. be reasonable for the goods or services purchased;

§ 5.1.2.3. be actual net costs, including overhead and additives for Work performed by the Grantee or at the Grantee's direction (e.g., no markups, the price paid must be minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);

§ 5.1.2.4. be incurred and for Work performed pursuant to a Notice to Proceed or a Letter of No Prejudice issued by the Department specifying the Work to be performed; and

§ 5.1.2.5. be treated uniformly and consistently under generally accepted accounting principles.

§ 5.2. Invoicing

§ 5.2.1. For FREIGHT Funding Program projects or Rail Preservation Funding Program projects, the Grantee shall render invoices for reimbursement for its percentage of Eligible Project Costs no more frequently than once every 30 Days.

§ 5.2.2. For Rail Industrial Access Funding Program projects, the Grantee shall submit only one (1) invoice at the completion of the project Work. The invoice must include all expenses related to the project.

§ 5.2.3. Invoices shall be submitted via the Department's designated online grant management system. Invoices shall be accompanied by a Progress Report, a summary sheet in the form attached as Attachment B, and documentation showing that the Grantee has paid the costs for which reimbursement is sought.

§ 5.2.4. The Department shall not reimburse the Grantee for Eligible Project Costs recorded in each invoice received for more than the percent specified in § 3.2, or to exceed the maximum Department Funding specified in § 3.3.

§ 5.3. Department Review & Payment

§ 5.3.1. The Department shall have the right to request an accounting or more detailed statement of invoices. Upon such a request, the Grantee shall provide the requested information within thirty (30) days.

§ 5.3.2. The Department will pay properly submitted invoices submitted in conformance with the requirements of this Agreement within thirty (30) days of receipt of such an invoice. The Department shall have the right, in its sole discretion, to withhold payment for invoices or line items in invoices it finds not to be in conformance with the requirements of this Agreement. The Department will notify the Grantee of the basis for withholding payment and work with the Grantee to resolve disputed items.

§ 5.3.2.1. Reimbursement of a cost by the Department does not constitute:

§ 5.3.2.1.1. a final decision by the Department that the cost constitutes an Eligible Project Cost, or

§ 5.3.2.1.2. a waiver of any violation of the terms of this Agreement by the Grantee.

§ 5.3.3. The Department will not make a final determination about the eligibility of any cost for reimbursement until it has performed an audit of the Work and the Grantee's records.

ARTICLE 6. COMPLETION AND ACCEPTANCE

- § 6.1. Upon completion of the Work, the Grantee shall submit the Final Project Invoice.
- § 6.2. If the Department rejects the Work, in whole or in part, it shall specify the basis for its rejection. The Grantee shall have 30 Days from receipt of the Department's rejection to submit a corrective action plan to the Department addressing the identified deficiencies. The Department shall notify Grantee of Department's acceptance or rejection of the Grantee's corrective action plan within 15 Days of receipt. If the Department rejects the corrective action plan, the Parties shall meet within 30 Days of the rejection to develop a mutually acceptable path forward. Once the Grantee has corrected all deficiencies, as determined in the reasonable discretion of the Department. If the corrective action cannot be agreed upon or completed by the Grantee, the project will be considered incomplete, the Department will withhold any final payments and the Grantee will reimburse the Department for any previous payments.
- § 6.3. Any work necessary in connection with the Project, which is not specifically provided for as Work by this Agreement, including but not limited to any Re-work, shall be the responsibility of the Grantee.
- § 6.4. Upon payment of the Final Project Invoice, the Grantee shall submit a Closeout Request. The Department will withdraw any remaining Commonwealth funds.

ARTICLE 7. PERFORMANCE REQUIREMENTS

- § 7.1. To ensure that the Agreement results in public benefit, the Grantee shall ensure the Work results in a minimum number of Carloads throughout the Performance Period.
- § 7.2. After the Project has been closed by the Department, the Annual Performance Reporting requirement will commence at the start of the next Fiscal Year (July 1).
- § 7.3. The Department will assign the Annual Performance Report in the designated online grant management system. The Grantee shall report its annual Carload / Carload Equivalent movement by Fiscal Year, by the assigned deadline, with at least 30 days' notice from the Department.
- § 7.4. The specific performance criteria that shall be met is detailed in Attachment C.

ARTICLE 8. INTEREST IN THE COMPLETED WORK

- § 8.1. To ensure that the Agreement results in public benefit, the Grantee grants to the Department an ownership interest in 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 D.
- § 8.2. The Grantee shall ensure that the Improvements are kept in a properly maintained condition for the duration of the Department Interest Period, at no cost to the Department. The Grantee's maintenance of the Improvements shall conform to all applicable standards and regulations.
- § 8.3. If the Project Improvements are not used for their intended purpose, Grantee shall reimburse the Department, at the percentage of total grant funding shown in Attachment D 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 the Department notifies the Grantee in writing of the reimbursement amount. 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.
- § 8.4. 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.

- § 8.5. From commencement of construction of the Improvements through the expiration of the Department's Interest Period, the Grantee shall not expand, modify, rearrange, remove, sell, transfer, encumber, convey, or dispose of, in whole or in part, the Improvements without the Department's written consent which may be conditioned on any terms the Department deems appropriate, in its sole discretion.

ARTICLE 9. TERMINATION

- § 9.1. 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, plus interest as noted in § 8.3, within 60 days of Department notification.
- § 9.2. 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, plus interest. If the termination is for the convenience of the Department, then Grantee is not required to repay the Department for funds already received. Grantee cannot be reimbursed for expenses accrued after the Department terminates this Agreement.

ARTICLE 10. INSURANCE

- § 10.1. 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.
- § 10.2. Minimum Insurance Coverages and Limits:
- § 10.2.1. 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.
- § 10.2.2. Employer's Liability - \$100,000.
- § 10.2.3. Commercial General Liability and Hazard Insurance - \$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. Hazard insurance will cover the full replacement value of the Project improvements. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
- § 10.2.4. 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.)
- § 10.3. 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.

ARTICLE 11. GENERAL TERMS AND CONDITIONS

- § 11.1. 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.
- § 11.2. 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).
- § 11.3. In every contract over \$10,000 the provisions in § 11.3.1 and § 11.3.2 below apply:
- § 11.3.1. 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 Grantee. 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 Grantee 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 § 11.3.1 and § 11.3.2 are a material part of the contract. If the Grantee violates any of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of any of these provisions may also result in debarment from State contracting regardless of whether the specific contract 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 contract.
- § 11.3.2. The Grantee will include the provisions of § 11.3.1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each contractor, subcontractor or vendor.
- § 11.4. 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.

- § 11.5. 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.
- § 11.6. Precedence of Terms. The General Terms and Conditions contained in this Section shall apply in all instances.
- § 11.7. Assignment of Agreement. The Grantee may not assign any portion of this Agreement without the prior written approval of the Director of the Department.
- § 11.8. Amendment. This Agreement may be altered, amended, or revoked only by an instrument in writing signed by both Parties.

ARTICLE 12. MISCELLANEOUS PROVISIONS

- § 12.1. The Grantee shall at all times comply with, and ensure compliance with, federal, state, and local laws, regulations, ordinances, orders, and decrees applicable to the Work, the Grantee's expenditure of Department Funding as identified in Article 3, and the operation of the Improvements. The obligations of this Section shall survive the termination or completion of this Agreement.
- § 12.2. 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.
- § 12.3. All funds granted under this Agreement shall be expended by the Grantee in accordance with this Agreement, the Department's regulations, 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.
- § 12.4. No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest in this Agreement, direct or indirect, that is prohibited by Virginia law.
- § 12.5. This Agreement and the Grantee's Application on which it is based, and any amendments thereto, 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 a Letter of No Prejudice issued by the Department, which shall remain in effect.
- § 12.6. If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality, validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the Parties.
- § 12.7. This Agreement shall be binding upon the Parties and their respective successors and assigns.
- § 12.8. 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.

Grantee Name: GRANTEE NAME
FUNDING PROGRAM AGREEMENT NUMBER

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

§ 12.10. 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.

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

ARTICLE 13. NOTICES

§ 13.1. All notices or communications with respect to this Agreement shall be in writing and shall be deemed delivered upon delivery by email.

Department:

Funding Program Manager
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102 Richmond, VA 23219
Linda.balderson@drpt.virginia.gov

Or

Mike.Todd@drpt.virginia.gov

Grantee:

COMPANY NAME
ADDRESS
CITY, STATE ZIP
EMAIL

This space left intentionally blank.

Grantee Name: **GRANTEE NAME**
FUNDING PROGRAM AGREEMENT NUMBER

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: _____ DATE: _____
Tiffany P. Robinson, Director

STATE OF _____, CITY/COUNTY OF _____, to wit:

Subscribed and sworn to before me this ____ day of _____, 20____ by _____, as Director of the Commonwealth of Virginia Department of Rail and Public Transportation.

Notary Public

Notary registration number: _____

My commission expires: _____

GRANTEE COMPANY NAME

BY: _____ DATE: _____

NAME: _____

TITLE: _____

STATE OF _____, CITY/COUNTY OF _____, to wit:

Subscribed and sworn to before me this ____ day of _____, 20____ by _____, as
_____ of _____ Railroad.

Notary Public

Notary registration number: _____

My commission expires: _____

Grantee Name: GRANTEE NAME
FUNDING PROGRAM AGREEMENT NUMBER

Attachment A

Grantee Application

Non-Negotiable

Grantee Name: GRANTEE NAME
FUNDING PROGRAM AGREEMENT NUMBER

Attachment B

Invoice Summary Sheet / Index Example

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

Attachment C

Performance Requirements

FREIGHT Funding Program Projects:

The Annual Performance Requirement will be determined by the “Current Railcar Demand” and “Additional Rail Carload Demand per Year” provided in the Grantee’s Application. The Department will request the total rail carload count that traversed the Improvement / Project area annually, for the preceding Fiscal Year. The Grantee will report the total rail carload count, the “Current Railcar Demand”, serving as the baseline demand, will be subtracted from the total annual reported carload count. The result will be compared to the “Additional Rail Carload Demand per Year” for the corresponding Fiscal Year. If the result meets or exceeds the “Additional Rail Carload Demand per Year”, the Grantee will have met the Annual Performance Requirement.

The exact calculation includes:

$$\frac{\text{Grantee Reported Annual Carload Count} - \text{Current Railcar Demand (from Grantee Application)}}{\text{Additional Rail Carload Demand per Year (from Grantee Application)}} \geq 1$$

The Annual Performance Requirement will be assessed each year for a total of six years.

After the final year of performance has been reported, the Parties agree to assess achievement of the prior annual performance requirements to date (the “Final Assessment”). If the Final Assessment confirms the Grantee has failed to achieve the Performance Requirement, the Director will determine if any repayment plus interest is necessary. Repayment as a result of performance failure after the Final Assessment would be based on a prorated amount of the Department’s total reimbursement to the Grantee as calculated pursuant to the formula for “Total Recovery”.

Total Recovery Calculation:

$$\frac{(\text{Total Performance Requirement} - \text{Total Reported Carload Count})}{\text{Total Performance Requirement}} \times \text{Total Dollar Amount Reimbursed by the Department}$$

Repayment shall not exceed the sums reimbursed by the Department to the Grantee, plus interest.

Rail Preservation Funding Program Projects:

The Department will request the total rail carload count that traversed the Improvement / Project area annually, for the preceding Fiscal Year. The Grantee will report the total rail carload count, by the assigned deadline (with a minimum of 30 days advance notice by the Department) in order to fulfill the Performance Requirement.

No minimum carload count is required, simply reporting the total rail carload count meets the Performance Requirement.

Rail Industrial Access Funding Program Projects:

In order to ensure that the Agreement results in public benefit, the Grantee shall ensure the Work completed results in a minimum of **# CARLOADS** Carloads in at least one year of the three-year Performance Period.

The Department will request the total rail carload count that traversed the Improvement / Project area annually, for the preceding Fiscal Year. The Grantee will report the total rail carload count, by the assigned deadline (with a minimum of 30 days advance notice by the Department).

Grantee Name: GRANTEE NAME
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All efforts related to reporting annual Project Benefit performance under this Article shall be auditable at the Grantee's expense.

If the Grantee does not meet the Annual Carload usage goal within the Performance Period, the Grantee must repay the grant funds, or the Grantee can request a three-year extension to the Performance Period. If approved, the Grantee must meet the Annual Carload usage goal in one of the additional three years.

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.

Repayment shall not exceed the sums reimbursed by the Department to the Grantee, plus interest.

Attachment D

Contingent Interest

FREIGHT Funding Program Projects:

The Grantee grants the Department an ownership interest in the improvements for the duration of the Annual Performance Requirement period; six years. The Interest period will begin upon the project Closeout date.

If the Improvements are abandoned, removed, disposed of, sold, transferred or otherwise not used for their intended purpose, the Department will be reimbursed at the percentage of total grant funding reimbursed to the Grantee, plus interest.

The following repayment formula is applied to each year remaining in the interest period and added together to calculate the total repayment to the Department:

$$\frac{(\text{Annual Carload Commitment} / \text{Total Carload Performance})}{x} \times \text{Total Dollar Amount Reimbursed by the Department}$$

Repayment shall not exceed the sums reimbursed by the Department to the Grantee, plus interest.

Rail Preservation Funding Program Projects:

The Grantee grants the Department an ownership interest in the improvements for an Interest Period of 15 years; beginning upon the project Closeout date.

If the Improvements are abandoned, removed, disposed of, sold, transferred or otherwise not used for their intended purpose, the Department will be reimbursed at the percentage of total grant funding reimbursed to the Grantee, plus interest.

$$\begin{aligned} & \frac{(\text{Total Reimbursement by the Department} / \text{Interest Period})}{x} \times \text{Number of Years Remaining in Interest Period} \\ & = \\ & \text{Repayment Amount Subtotal} \\ & + \\ & (\text{Repayment Amount Subtotal} \times \text{Number of Years Remaining in Interest Period} \\ & \times \text{Statutory Legal Rate of Interest}) \end{aligned}$$

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.

Repayment shall not exceed the sums reimbursed by the Department to the Grantee, plus interest.

Rail Industrial Access Funding Program Projects:

The Grantee grants the Department an ownership interest in the improvements for an Interest Period of 15 years; beginning upon the project Closeout date.

If the Improvements are abandoned, removed, disposed of, sold, transferred or otherwise not used for their intended purpose, the Department will be reimbursed at the percentage of total grant funding reimbursed to the Grantee, plus interest.

Grantee Name: GRANTEE NAME
FUNDING PROGRAM AGREEMENT NUMBER

$$\begin{aligned} & \frac{(Total\ Reimbursement\ by\ the\ Department\ /\ Interest\ Period)}{Number\ of\ Years\ Remaining\ in\ Interest\ Period} \\ & \times \\ & = \\ & \text{Repayment Amount Subtotal} \\ & + \\ & (Repayment\ Amount\ Subtotal\ x\ Number\ of\ Years\ Remaining\ in\ Interest\ Period \\ & \quad x\ Statutory\ Legal\ Rate\ of\ Interest) \end{aligned}$$

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.

Repayment shall not exceed the sums reimbursed by the Department to the Grantee, plus interest.